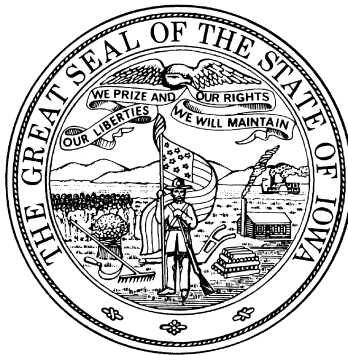


# 2007 IOWA CODE SUPPLEMENT

Containing

Sections of the Laws of Iowa  
of a General and Permanent Nature  
Enacted, Amended, Repealed or  
otherwise affected by the  
2007 Regular Session  
of the

GENERAL ASSEMBLY OF THE  
STATE OF IOWA



Published under the authority of Iowa Code chapter 2B  
by the  
Legislative Services Agency  
GENERAL ASSEMBLY OF IOWA  
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2007



## PREFACE TO 2007 IOWA CODE SUPPLEMENT

This 2007 Iowa Code Supplement is published pursuant to Code chapter 2B. The Supplement includes sections of the laws of Iowa enacted, amended, repealed, or otherwise affected by the 2007 regular session of the Eighty-second Iowa General Assembly or by an earlier session if the effective date was deferred, arranged in the numerical sequence of the 2007 Iowa Code. The Supplement does not include temporary sections, such as appropriation sections, which are not to be codified.

**EFFECTIVE DATES.** Except as otherwise indicated in the text or in a footnote, the new Code sections, amendments, and repeals were effective on or before July 1, 2007. See the 2007 Iowa Acts to determine specific effective dates not shown.

**NOTES.** A source note following each new or amended Code section refers to the appropriate chapter and section number in the Iowa Acts where the new Code section or amendment can be found in the form it had upon passage. Repeals are indicated in the form used in the 2007 Code. A footnote may follow the source note or repeal. A footnote to an amended Code section usually refers only to the amended part and not necessarily to the entire Code section as printed. Many of the footnotes from the 2007 Code are not included but will be corrected as necessary and appear in the 2009 Code. Following the source note or footnote for a new or amended Code section is an explanatory note to indicate whether the section or a part of it is new or how it was changed.

**EDITORIAL DECISIONS.** If multiple amendments were enacted to a Code section or part of a Code section, all changes that were duplicative or otherwise did not appear to conflict were harmonized as required under sections 2B.13 and 4.11 of the Code. If multiple amendments conflicted, a strike or repeal prevailed over an amendment to the same material. If multiple amendments were irreconcilable, the amendment that was last or latest in date of enactment was codified as provided in section 2B.13 of the Code. At the end of this Supplement are Code editor's notes which explain the major editorial decisions. Section 2B.13 of the Code governs the ongoing revision of gender references, authorizes other editorial changes, and provides for the effective date of editorial changes.

**INDEX AND TABLES.** A subject matter index to new or amended Code sections, a table of the disposition of the 2007 Acts and any previous years' Acts codified in this Supplement, a table of corresponding sections from the 2007 Code to the 2007 Code Supplement, and conversion tables of 2007 Senate and House enactment numbers to Acts chapter numbers also appear at the end of this Supplement.

**RETENTION OF CODE SUPPLEMENT VOLUMES.** Users who maintain libraries of previous years' biennial hardbound Codes of Iowa should also retain the Iowa Code Supplement volumes, as the Code Supplements contain Code editor's notes, footnotes, and other aids which are not included in the subsequent hardbound Code.

Because the Iowa General Assembly meets annually, the Supplement also serves as the only record of the original codification of statutes effective in an odd-numbered year if those statutes are amended or repealed in the next even-numbered year.

Dennis C. Prouty, Director  
Legislative Services Agency

Leslie E. W. Hickey  
Iowa Code Editor

Richard L. Johnson  
Legal Services Division Director

Joanne R. Page  
Deputy Iowa Code Editor

*Orders for legal publications, including the Code Supplement, should be addressed to the Legislative Services Agency, 1112 E. Grand Avenue, Miller Building, Des Moines, Iowa 50319. Telephone (515) 281-6766*

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# IOWA CODE SUPPLEMENT

## 2007

### CHAPTER 2

#### GENERAL ASSEMBLY

##### **2.27 Canvass of votes for governor.**

The general assembly shall meet in joint session on the same day the assembly first convenes in January of 1979 and every four years thereafter as soon as both houses have been organized, and canvass the votes cast for governor and lieutenant governor and determine the election. When the canvass is completed, the oath of office shall be administered to the persons or person so declared elected. Upon being inaugurated the governor shall deliver to the joint assembly any message the governor may deem expedient.

2007 Acts, ch 59, §1, 19  
2007 amendment applies to elections held on or after January 1, 2008;  
2007 Acts, ch 59, §19  
Section amended

##### **2.47A Powers and duties of legislative capital projects committee.**

1. The legislative capital projects committee shall do all of the following:

*a.* Receive the recommendations of the governor regarding the funding and priorities of proposed capital projects pursuant to section 8.3A, subsection 2, paragraph “b”.

*b.* Receive the reports of all capital project budgeting requests of all state agencies, with individual state agency priorities noted, pursuant to section 8.6, subsection 13.

*c.* Receive annual status reports for all ongoing capital projects of state agencies.

*d.* Examine and evaluate, on a continuing basis, the state’s system of contracting and subcontracting in regard to capital projects.

2. The legislative capital projects committee, subject to the approval of the legislative council,

may do all of the following:

*a.* Gather information relative to capital projects, for the purpose of aiding the general assembly to properly appropriate moneys for capital projects.

*b.* Examine the reports and official acts of the state agencies, as defined in section 8.3A, with regard to capital project planning and budgeting and the receipt and disbursement of capital project funding.

*c.* Establish advisory bodies to the committee in areas where technical expertise is not otherwise readily available to the committee. Advisory body members may be reimbursed for actual and necessary expenses from funds appropriated pursuant to section 2.12, but only if the reimbursement is approved by the legislative council.

*d.* Compensate experts from outside state government for the provision of services to the committee from funds appropriated pursuant to section 2.12, but only if the compensation is approved by the legislative council.

*e.* Make recommendations to the legislative fiscal committee, legislative council, and the general assembly regarding issues relating to the planning, budgeting, and expenditure of capital project funding.

3. The capital projects committee shall determine its own method of procedure and shall keep a record of its proceedings which shall be open to public inspection. The committee shall meet as often as deemed necessary, subject to the approval of the legislative council, and the committee shall inform the legislative council in advance of its meeting dates.

2007 Acts, ch 115, §1  
Subsection 1, paragraph c amended

## CHAPTER 2C

### CITIZENS' AIDE

#### 2C.11 Subjects for investigations.

1. An appropriate subject for investigation by the office of the citizens' aide is an administrative action that might be:

- a. Contrary to law or regulation.
- b. Unreasonable, unfair, oppressive, or inconsistent with the general course of an agency's functioning, even though in accordance with law.
- c. Based on a mistake of law or arbitrary in ascertainment of fact.

d. Based on improper motivation or irrelevant consideration.

e. Unaccompanied by an adequate statement of reasons.

2. The citizens' aide may also be concerned with strengthening procedures and practices which lessen the risk that objectionable administrative actions will occur.

2007 Acts, ch 126, §1  
Section amended

## CHAPTER 3

### STATUTES AND RELATED MATTERS

#### 3.3 Headnotes and historical references.

Proper headnotes may be placed at the beginning of a section of a bill or a Code section, and at the end of a Code section there may be placed a reference to the section number of the Code, or any Iowa Act from which the matter of the Code section was taken. However, except as provided for the uniform commercial code, pursuant to section 554.1107, headnotes shall not be considered as part of the law as enacted. Historical references shall be considered as a part of the law as enacted.

2007 Acts, ch 41, §40  
Section amended

#### 3.20 Directions to future general assemblies.

The following principles shall be used by the

general assembly in determining whether a procedure should be established and the type of procedure which should be established, for the state licensure of an occupation or profession:

1. The state shall engage in licensing procedures for those professions and occupations where it believes it can assure an objective and measurable level of competence concerning the public health, safety, and well-being which other sources cannot effectively provide.

2. The licensing board shall pursue a meaningful examination and enforcement procedure which upholds the level of competency of the licensee to insure that the public interest is protected.

2007 Acts, ch 10, §1  
Subsection 2 amended

## CHAPTER 4

### CONSTRUCTION OF STATUTES

#### 4.1 Rules.

In the construction of the statutes, the following rules shall be observed, unless such construction would be inconsistent with the manifest intent of the general assembly, or repugnant to the context of the statute:

1. *Appellate court.* The term “*appellate court*” means and includes both the supreme court and the court of appeals. Where an act, omission, right, or liability is by statute conditioned upon the filing of a decision by an appellate court, the term means any final decision of either the supreme court or the court of appeals.

2. *Child* includes child by adoption.

3. *Clerk — clerk's office.* The word “*clerk*” means clerk of the court in which the action or pro-

ceeding is brought or is pending; and the words “*clerk's office*” mean the office of that clerk.

4. *Consanguinity and affinity.* Degrees of consanguinity and affinity shall be computed according to the civil law.

5. “*Court employee*” and “*employee of the judicial branch*” include every officer or employee of the judicial branch except a judicial officer.

6. *Deed — bond — indenture — undertaking.* The word “*deed*” is applied to an instrument conveying lands, but does not imply a sealed instrument; and the words “*bond*” and “*indenture*” do not necessarily imply a seal, and the word “*undertaking*” means a promise or security in any form.

7. *Executor — administrator.* The term “*ex-*

ecutor” includes administrator, and the term “*administrator*” includes executor, where the subject matter justifies such use.

8. *Figures and words.* If there is a conflict between figures and words in expressing a number, the words govern.

9. *Highway — road.* The words “*highway*” and “*road*” include public bridges, and may be held equivalent to the words “*county way*”, “*county road*”, “*common road*”, and “*state road*”.

9A. “*Internet*” means the federated international system that is composed of allied electronic communication networks linked by telecommunication channels, that uses standardized protocols, and that facilitates electronic communication services, including but not limited to use of the world wide web; the transmission of electronic mail or messages; the transfer of files and data or other electronic information; and the transmission of voice, image, and video.

10. *Issue.* The word “*issue*” as applied to descent of estates includes all lawful lineal descendants.

11. *Joint authority.* Words giving a joint authority to three or more public officers or other persons shall be construed as giving such authority to a majority of them, unless it be otherwise expressed in the Act giving the authority.

12. “*Judicial officer*” means a supreme court justice, a judge of the court of appeals, a district judge, a district associate judge, an associate juvenile judge, an associate probate judge, or a magistrate. The term also includes a person who is temporarily serving as a justice, judge, or magistrate as permitted by section 602.1612 or 602.9206.

13. *Land — real estate.* The word “*land*” and the phrases “*real estate*” and “*real property*” include lands, tenements, hereditaments, and all rights thereto and interests therein, equitable as well as legal.

13A. “*Livestock*” includes but is not limited to an animal classified as an ostrich, rhea, or emu.

14. “*Magistrate*” means a judicial officer appointed under chapter 602, article 6, part 4.

15. Reserved.

16. *Month — year — A.D.* The word “*month*” means a calendar month, and the word “*year*” and the abbreviation “*A.D.*” are equivalent to the expression “*year of our Lord*”.

17. *Number and gender.* Unless otherwise specifically provided by law the singular includes the plural, and the plural includes the singular. Words of one gender include the other genders.

18. *Numerals — figures.* The Roman numerals and the Arabic figures are to be taken as parts of the English language.

19. *Oath — affirmation.* The word “*oath*” includes affirmation in all cases where an affirmation may be substituted for an oath, and in like cases the word “*swear*” includes “*affirm*”.

20. *Person.* Unless otherwise provided by law, “*person*” means individual, corporation, limit-

ed liability company, government or governmental subdivision or agency, business trust, estate, trust, partnership or association, or any other legal entity.

21. *Personal property.* The words “*personal property*” include money, goods, chattels, evidences of debt, and things in action.

21A. *Persons with mental illness.* The words “*persons with mental illness*” include persons with psychosis, persons who are severely depressed, and persons with any type of mental disease or mental disorder, except that mental illness does not refer to mental retardation as defined in section 222.2, or to insanity, diminished responsibility, or mental incompetency as defined and used in the Iowa criminal code or in the rules of criminal procedure, Iowa court rules. A person who is hospitalized or detained for treatment of mental illness shall not be deemed or presumed to be incompetent in the absence of a finding of incompetence made pursuant to section 229.27.

22. *Population.* The word “*population*” where used in this Code or any statute means the population shown by the latest preceding certified federal census, unless otherwise specifically provided.

23. “*Preceding*” and “*following*” when used by way of reference to a chapter or other part of a statute mean the next preceding or next following chapter or other part.

24. *Property.* The word “*property*” includes personal and real property.

25. *Quorum.* A quorum of a public body is a majority of the number of members fixed by statute.

26. *Repeal — effect of.* The repeal of a statute, after it becomes effective, does not revive a statute previously repealed, nor affect any right which has accrued, any duty imposed, any penalty incurred, or any proceeding commenced, under or by virtue of the statute repealed.

27. “*Rule*” includes “*regulation*”.

28. *Seal.* Where the seal of a court, public office, public officer, or public or private corporation may be required to be affixed to any paper, the word “*seal*” shall include an impression upon the paper alone, or upon wax or a wafer affixed to the paper, or an official ink stamp if a notarial seal. If the seal of a court is required, the word “*seal*” may also include a visible electronic image of the seal on an electronic document.

29. *Series.* If a statute refers to a series of numbers or letters, the first and the last numbers or letters are included.

30. *Shall, must, and may.* Unless otherwise specifically provided by the general assembly, whenever the following words are used in a statute enacted after July 1, 1971, their meaning and application shall be:

- a. The word “*shall*” imposes a duty.
- b. The word “*must*” states a requirement.
- c. The word “*may*” confers a power.

31. *Sheriff.* The term “*sheriff*” may be extended to any person performing the duties of the sheriff, either generally or in special cases.

32. *State.* The word “*state*”, when applied to the different parts of the United States, includes the District of Columbia and the territories, and the words “*United States*” may include the said district and territories.

33. *Tense.* Words in the present tense include the future.

34. *Time — legal holidays.* In computing time, the first day shall be excluded and the last included, unless the last falls on Sunday, in which case the time prescribed shall be extended so as to include the whole of the following Monday. However, when by the provisions of a statute or rule prescribed under authority of a statute, the last day for the commencement of an action or proceedings, the filing of a pleading or motion in a pending action or proceedings, or the perfecting or filing of an appeal from the decision or award of a court, board, commission, or official falls on a Saturday, a Sunday, a day on which the office of the clerk of the district court is closed in whole or in part pursuant to the authority of the supreme court, the first day of January, the third Monday in January, the twelfth day of February, the third Monday in February, the last Monday in May, the fourth day of July, the first Monday in September, the eleventh day of November, the fourth Thursday in November, the twenty-fifth day of December, and the following Monday when any of the foregoing named legal holidays fall on a Sunday, and any day appointed or recommended by the governor of Iowa or the president of the United States as a day of fasting or thanksgiving, the time shall be extended to include the next day which the office of the clerk of the court or the office of the board, commission, or official is open to receive the filing of a commencement of an action, pleading or a motion

in a pending action or proceeding, or the perfecting or filing of an appeal.

35. “*United States*” includes all the states.

36. The word “*week*” means seven consecutive days.

37. *Will.* The word “*will*” includes codicils.

38. *Words and phrases.* Words and phrases shall be construed according to the context and the approved usage of the language; but technical words and phrases, and such others as may have acquired a peculiar and appropriate meaning in law, shall be construed according to such meaning.

39. *Written — in writing — signature.* The words “*written*” and “*in writing*” may include any mode of representing words or letters in general use, and include an electronic record as defined in section 554D.103. A signature, when required by law, must be made by the writing or markings of the person whose signature is required. “*Signature*” includes an electronic signature as defined in section 554D.103. If a person is unable due to a physical disability to make a written signature or mark, that person may substitute either of the following in lieu of a signature required by law:

*a.* The name of the person with a disability written by another upon the request and in the presence of the person with a disability.

*b.* A rubber stamp reproduction of the name or facsimile of the actual signature when adopted by the person with a disability for all purposes requiring a signature and then only when affixed by that person or another upon request and in the presence of the person with a disability.

40. The word “*year*” means twelve consecutive months.

2007 Acts, ch 33, §1

Similar provision on population, §9F.6

Definition of “special state agents”, §80.23

Transition provisions for court reorganization in chapter 602, article 11

Subsection 28 amended

## CHAPTER 6A

### EMINENT DOMAIN LAW (CONDEMNATION)

**6A.23 Exception for certain urban renewal areas.** Repealed by own terms; 2006

Acts, 1st Ex, ch 1001, § 4, 49.

Section repeal is effective December 31, 2007

## CHAPTER 6B

### PROCEDURE UNDER EMINENT DOMAIN

#### **6B.14 Appraisalment — report.**

1. The commissioners shall, at the time fixed in the aforesaid notices, view the land sought to be condemned and assess the damages which the

owner will sustain by reason of the appropriation. The commission shall file its written report, signed by all commissioners, with the sheriff. At the request of the condemner or the condemnee,

the commission shall divide the damages into parts to indicate the value of any dwelling, the value of the land and improvements other than a dwelling, and the value of any additional damages. The appraisal and return may be in parcels larger than forty acres belonging to one person and lying in one tract, unless the agent or attorney of the applicant, or the commissioners, have actual knowledge that the tract does not belong wholly to the person in whose name it appears of record; and in case of such knowledge, the appraisal shall be made of the different portions as they are known to be owned.

2. Prior to the meeting of the commission, the commission or a commissioner shall not communicate with the applicant, property owner, or tenant, or their agents, regarding the condemnation proceedings. The commissioners shall meet in open session to view the property and to receive evidence, but may deliberate in closed session. When deliberating in closed session, the meeting is closed to all persons who are not commissioners except for personnel from the sheriff's office if such personnel is requested by the commission. After deliberations commence, the commission and each commissioner is prohibited from communicating with any party to the proceeding. However, if the commission is deliberating in closed session, and after deliberations commence the commission requires further information from a party or a witness, the commission shall notify the property owner and the acquiring agency that they are allowed to attend the meeting at which such additional information shall be provided but only for that period of time during which the additional information is being provided. The property owner and the acquiring agency shall be given a reasonable opportunity to attend the meeting. The commission shall keep minutes of all its meetings showing the date, time, and place, the members present, and the action taken at each meeting.

The minutes shall show the results of each vote taken and information sufficient to indicate the vote of each member present. The vote of each member present shall be made public at the open session. The minutes shall be public records open to public inspection.

3. In determining fair market value of property, the commissioners shall not consider only the assessed value assigned to such property for purposes of property taxation.

4. In assessing the damages the owner or tenant will sustain, the commissioners shall consider and make allowance for personal property which is damaged or destroyed or reduced in value.

5. An owner or tenant occupying land which is proposed to be acquired by condemnation shall be awarded a sum sufficient to remove such owner's or tenant's personal property from the land to be acquired, which sum shall represent reasonable costs of moving the personal property from the land to be acquired to a point no greater than fifty miles; but in any event, damages awarded under this section for moving shall not exceed five thousand dollars for each owner or tenant occupying land proposed to be condemned. An owner or tenant may apply for an award pursuant to this section only if all other damages provided by law have been awarded and such amount awarded is insufficient to pay the owner's or tenant's reasonable costs of moving.

2007 Acts, ch 22, §1

2006 amendment to subsection 2 takes effect January 1, 2007; 2006 enactment of subsection 3 takes effect July 14, 2006, and applies to applications for condemnation filed pursuant to §6B.3 on or after that date; 2006 Acts, 1st Ex, ch 1001, §49

Unnumbered paragraph 1 editorially designated as subsection 1 and former unnumbered paragraph 2 amended and editorially designated as subsection 2

Former unnumbered paragraphs 3 – 5 editorially designated as subsections 3 – 5

**6B.53 Procedure for homesteading projects.** Repealed by 2007 Acts, ch 54, § 45.

## CHAPTER 7A

### OFFICIAL REPORTS AND MISCELLANEOUS PUBLICATIONS

#### **7A.3 Biennial reports — time covered and date of filing.**

1. Reports of the following officials and departments shall cover the biennial period ending June 30 in each even-numbered year, and shall be filed as soon as practicable after the end of the reporting period:

- a. Treasurer of state as to the condition of the treasury.
- b. Director of the department of education.

- c. Director of the department of human services.
- d. Board of regents.
- e. State historical society board of trustees.
- f. State librarian.
- g. Commission of libraries.
- h. Department of administrative services.
- i. Director of department of natural resources.
- j. Adjutant general.
2. The officials and departments required by

this section to file biennial reports shall, in addition thereto, in each odd-numbered year, file summary reports relating to their operations for the preceding fiscal year. Such reports shall be filed as soon as practicable after June 30 of each odd-numbered year and shall be as detailed as may be required by the governor, or in case the reports are to be filed with the general assembly, the presiding officers of the two houses of the general assembly.

3. The officials and departments required by this section to file reports shall submit the reports

on standardized forms furnished by the director of the department of management. All officials and agencies submitting reports shall consult with the director of the department of management and shall devise standardized report forms for submission to the governor and members of the general assembly.

2007 Acts, ch 115, §2  
 Subsection 1 stricken and former unnumbered paragraph 1, subsections 2 – 11, and unnumbered paragraphs 2 and 3 redesignated as subsection 1, unnumbered paragraph 1 and paragraphs a – j, and subsections 2 and 3 respectively

## CHAPTER 7E

### EXECUTIVE BRANCH ORGANIZATION AND RESPONSIBILITIES

#### 7E.4 Definitions and terminology for executive branch organization.

In statutory references and administrative usage, the following terminology and definitions shall be used as guidelines for the terminology applicable to state governmental structure and organization to the extent practicable:

1. “*Authority*” means a body with independent power to issue and sell bonds.

2. a. “*Board*” means a policymaking or rule-making body that has the power to hear contested cases.

b. “*Board*” includes a professional licensing board which sets standards of professional competence and conduct for the profession or occupation under its supervision, which may prepare and grade the examinations of prospective new practitioners when authorized by law, which may issue licenses when authorized by law, which investigates complaints of alleged unprofessional conduct, and which performs other functions assigned to it by law.

3. “*Commission*” means a policymaking body that has rulemaking powers.

4. “*Committee*” means a part-time body appointed to study a specific problem and to recommend a solution or policy alternative with respect to that problem, and intended to terminate on the completion of its assignment.

5. “*Council*” means an advisory body appointed to function on a continuing basis for the study, and recommendation of solutions and policy alternatives, of the problems arising in a specified functional area of state government.

6. “*Department*” means a principal administrative agency within the executive branch of state government, but does not include independent agencies.

7. “*Division*”, “*bureau*”, “*section*”, and “*unit*” mean the subunits of a department, whether spe-

cifically created by law or created by the head of the department for the more economic and efficient administration and operation of the programs assigned to the department.

8. “*Head of the department*” means the elective officer, director, commissioner, or other official in charge of a department.

9. “*Independent agency*” is an administrative unit which, because of its unique operations, does not fit into the general pattern of operating departments.

2007 Acts, ch 10, §2, 3  
 Subsection 2 amended  
 Subsection 8 stricken and former subsections 9 and 10 renumbered as 8 and 9

#### 7E.7 Organizational structure.

For organizational purposes only, the following apply:

1. The Iowa economic protective and investment authority shall be considered part of the Iowa department of economic development. The Iowa department of economic development may provide staff assistance and administrative support to the authority.

2. The Iowa higher education loan authority shall be attached to the college student aid commission.

3. The Iowa railway finance authority shall be considered part of the department of transportation. The department of transportation may provide staff assistance and administrative support to the authority.

4. The Iowa advance funding authority shall be considered part of the department of education. The department of education may provide staff assistance and administrative support to the authority.

2007 Acts, ch 215, §77, 78  
 Subsection 1 amended  
 Subsection 2 stricken and former subsections 3 – 5 renumbered as 2 –



## CHAPTER 8

### DEPARTMENT OF MANAGEMENT — BUDGET AND FINANCIAL CONTROL ACT

#### 8.6 Specific powers and duties.

The specific duties of the director of the department of management shall be:

1. *Forms.* To consult with all state officers and agencies which receive reports and forms from county officers, in order to devise standardized reports and forms which will permit computer processing of the information submitted by county officers, and to prescribe forms on which each municipality, at the time of preparing estimates required under section 24.3, shall be required to compile in parallel columns the following data and estimates for immediate availability to any taxpayer upon request:

a. For the immediate prior fiscal year, revenue from all sources, other than revenue received from property taxation, allocated to each of the several funds and separately stated as to each such source, and for each fund the unencumbered cash balance thereof at the beginning and end of the year, the amount received by property taxation allocated to each fund, and the amount of actual expenditure for each fund.

b. For the current fiscal year, actual and estimated revenue, from all sources, other than revenue received from property taxation, and separately stated as to each such source, allocated to each of the several funds, and for each fund the actual unencumbered cash balance available at the beginning of the year, the amount to be received from property taxation allocated to each fund, and the amount of actual and estimated expenditures, whichever is applicable.

c. For the proposed budget year, an estimate of revenue from all sources, other than revenue to be received from property taxation, separately stated as to each such source, to be allocated to each of the several funds, and for each fund the actual or estimated unencumbered cash balance, whichever is applicable, to be available at the beginning of the year, the amount proposed to be received from property taxation allocated to each fund, and the amount proposed to be expended during the year plus the amount of cash reserve, based on actual experience of prior years, which shall be the necessary cash reserve of the budget adopted exclusive of capital outlay items. The estimated expenditures plus the required cash reserve for the ensuing fiscal year less all estimated or actual unencumbered balances at the beginning of the year and less the estimated income from all sources other than property taxation shall equal the amount to be received from property taxes, and such amount shall be shown on the proposed budget estimate.

d. To insure uniformity, accuracy, and efficiency in the preparation of budget estimates by mu-

nicipalities subject to chapter 24, the director shall prescribe the procedures to be used and instruct the appropriate officials of the various municipalities on implementation of the procedures.

2. *Report of standing appropriations.* To annually prepare a separate report containing a complete list of all standing appropriations showing the amount of each appropriation and the purpose for which the appropriation is made and furnish a copy of the report to each member of the general assembly on or before the first day of each regular session.

3. *Budget document.* To prepare the budget document and draft the legislation to make it effective.

4. *Allotments.* To perform the necessary work involved in reviewing requests for allotments as are submitted to the governor for approval.

5. Reserved.

6. *Investigations.* To make such investigations of the organization, activities and methods of procedure of the several departments and establishments as the director of management may be called upon to make by the governor or the governor and executive council, or the legislature.

7. *Legislative aid.* To furnish to any committee of either house of the legislature having jurisdiction over revenues or appropriations such aid and information regarding the financial affairs of the government as it may request.

8. *Rules.* To make such rules, subject to the approval of the governor, as may be necessary for effectively carrying on the work of the department of management. The director may, with the approval of the executive council, require any state official, agency, department or commission, to require any applicant, registrant, filer, permit holder or license holder, whether individual, partnership, trust or corporation, to submit to said official, agency, department or commission, the social security or the tax number or both so assigned to said individual, partnership, trust or corporation.

9. *Budget report.* The director shall prepare and file in the department of management, on or before the first day of December of each year, a state budget report, which shall show in detail the following:

a. Classified estimates in detail of the expenditures necessary, in the director's judgment, for the support of each department and each institution and department thereof for the ensuing fiscal year.

b. A schedule showing a comparison of such estimates with the askings of the several departments for the current fiscal year and with the expenditures of like character for the last two pre-

ceding fiscal years.

c. A statement setting forth in detail the reasons for any recommended increases or decreases in the estimated requirements of the various departments, institutions, and departments thereof.

d. Estimates of all receipts of the state other than from direct taxation and the sources thereof for the ensuing fiscal year.

e. A comparison of such estimates and askings with receipts of a like character for the last two preceding fiscal years.

f. The expenditures and receipts of the state for the last completed fiscal year, and estimates of the expenditures and receipts of the state for the current fiscal year.

g. A detailed statement of all appropriations made during the two preceding fiscal years, also of unexpended balances of appropriations at the end of the last fiscal year and estimated balances at the end of the current fiscal year.

h. Estimates in detail of the appropriations necessary to meet the requirements of the several departments and institutions for the next fiscal year.

i. Statements showing:

(1) The condition of the treasury at the end of the last fiscal year.

(2) The estimated condition of the treasury at the end of the current fiscal year.

(3) The estimated condition of the treasury at the end of the next fiscal year, if the director's recommendations are adopted.

(4) An estimate of the taxable value of all the property within the state.

(5) The estimated aggregate amount necessary to be raised by a state levy.

(6) The amount per thousand dollars of taxable value necessary to produce such amount.

(7) Other data or information as the director deems advisable.

10. *General control.* To perform such other duties as may be required to effectively control the financial operations of the government as limited by this chapter.

11. *Targeted small businesses.* To assist the director of the department of economic development as requested in the establishment and implementation of the Iowa targeted small business procurement Act and the targeted small business loan guarantee program.

12. *State programs for equal opportunity.* To perform specific powers and duties as provided in chapter 19B and other provisions of law with respect to oversight and the imposition of sanctions in connection with state programs emphasizing equal opportunity through affirmative action, contract compliance policies, and procurement set-aside requirements.

13. *Capital project budgeting requests.* To compile annually all capital project budgeting requests of all state agencies, as defined in section

8.3A, and to consolidate the requests, with individual state agency priorities noted, into a report for submission with the budget documents by the governor pursuant to section 8.22. Any additional information regarding the capital project budgeting requests or priorities shall be compiled and submitted in the same report.

14. *Capital project planning and budgeting authority.* To call upon any state agency, as defined in section 8.3A, for assistance the director may require in performing the director's duties under subsection 13. All state agencies, upon the request of the director, shall assist the director and are authorized to make available to the director any existing studies, surveys, plans, data, and other materials in the possession of the state agencies which are relevant to the director's duties.

15. *State tort claims — risk management coordinator.* To designate a position within the department to serve as the executive branch's risk management coordinator.

a. The risk management coordinator shall have all of the following responsibilities:

(1) Coordinating and monitoring risk control policies and programs in the executive branch, including but not limited to coordination with the employees of departments who are responsible for the workers' compensation for state employees and management of state property.

(2) Consulting with the attorney general with respect to the risk control policies and programs and trends in claims and liability of the state under chapter 669.

(3) Coordinating the state's central data repository for claims and risk information.

b. The costs of salary, benefits, and support for the risk management coordinator shall be authorized by the state appeal board established in chapter 73A and shall be paid as claims for services furnished to the state under section 25.2.

2007 Acts, ch 22, §2

Subsection 15, unnumbered paragraph 1 amended and editorially divided into unnumbered paragraph 1 and paragraph a

Subsection 15, former paragraphs a – c editorially redesignated as subparagraphs (1) – (3) of paragraph a

Subsection 15, former unnumbered paragraph 2 editorially redesignated as paragraph b

### 8.57 Annual appropriations — reduction of GAAP deficit — rebuild Iowa infrastructure fund.

1. a. The "cash reserve goal percentage" for fiscal years beginning on or after July 1, 2004, is seven and one-half percent of the adjusted revenue estimate. For each fiscal year in which the appropriation of the surplus existing in the general fund of the state at the conclusion of the prior fiscal year pursuant to paragraph "b" was not sufficient for the cash reserve fund to reach the cash reserve goal percentage for the current fiscal year, there is appropriated from the general fund of the state an amount to be determined as follows:

(1) If the balance of the cash reserve fund in the current fiscal year is not more than six and one-half percent of the adjusted revenue estimate for the current fiscal year, the amount of the appropriation under this lettered paragraph is one percent of the adjusted revenue estimate for the current fiscal year.

(2) If the balance of the cash reserve fund in the current fiscal year is more than six and one-half percent but less than seven and one-half percent of the adjusted revenue estimate for that fiscal year, the amount of the appropriation under this lettered paragraph is the amount necessary for the cash reserve fund to reach seven and one-half percent of the adjusted revenue estimate for the current fiscal year.

(3) The moneys appropriated under this lettered paragraph shall be credited in equal and proportionate amounts in each quarter of the current fiscal year.

b. The surplus existing in the general fund of the state at the conclusion of the fiscal year is appropriated for distribution in the succeeding fiscal year as provided in subsections 3 and 4. Moneys credited to the cash reserve fund from the appropriation made in this paragraph shall not exceed the amount necessary for the cash reserve fund to reach the cash reserve goal percentage for the succeeding fiscal year. As used in this paragraph, “surplus” means the excess of revenues and other financing sources over expenditures and other financing uses for the general fund of the state in a fiscal year.

c. The amount appropriated in this section is not subject to the provisions of section 8.31, relating to requisitions and allotment, or to section 8.32, relating to conditional availability of appropriations.

2. a. There is appropriated from the surplus existing in the general fund of the state at the conclusion of the fiscal year beginning July 1, 2005, and ending June 30, 2006, and at the conclusion of each succeeding fiscal year for distribution to the senior living trust fund, an amount equal to one percent of the adjusted revenue estimate for the current fiscal year. However, if the amount of the surplus existing in the general fund of the state at the conclusion of a fiscal year is less than two percent of the adjusted revenue estimate for that fiscal year, the amount of the appropriation made in this paragraph shall be equal to fifty percent of the surplus amount. The appropriation made in this paragraph shall be distributed to the senior living trust fund in the succeeding fiscal year. For the purposes of this subsection, “surplus” means the same as defined in subsection 1, paragraph “b”.

b. The appropriation made in paragraph “a” shall be made before the appropriations are made pursuant to subsections 1, 3, and 4, of the surplus existing in the general fund of the state at the conclusion of the fiscal year beginning July 1, 2005,

and ending June 30, 2006, and each succeeding fiscal year.

c. The appropriation made in paragraph “a” shall continue until the aggregate amount of the appropriations made, reverted, or transferred to the senior living trust fund for all fiscal years beginning on or after July 1, 2004, pursuant to paragraph “a” of this subsection, section 8.55, subsection 2, paragraph “b”, and any other law providing for an appropriation or reversion or transfer of an appropriation to the senior living trust fund is equal to three hundred million dollars.

d. This subsection and section 8.55, subsection 2, paragraph “b”, are repealed when the aggregate amount specified in paragraph “c” has been distributed, appropriated, reverted, or transferred to the senior living trust fund. The director of the department of management shall notify the Iowa Code editor when the aggregate amount has been distributed, appropriated, reverted, or transferred.

3. Moneys appropriated under subsection 1 shall be first credited to the cash reserve fund. To the extent that moneys appropriated under subsection 1 would make the moneys in the cash reserve fund exceed the cash reserve goal percentage of the adjusted revenue estimate for the fiscal year, the moneys are appropriated to the department of management to be spent for the purpose of eliminating Iowa’s GAAP deficit, including the payment of items budgeted in a subsequent fiscal year which under generally accepted accounting principles should be budgeted in the current fiscal year. These moneys shall be deposited into a GAAP deficit reduction account established within the department of management. The department of management shall annually file with both houses of the general assembly at the time of the submission of the governor’s budget, a schedule of the items for which moneys appropriated under this subsection for the purpose of eliminating Iowa’s GAAP deficit, including the payment of items budgeted in a subsequent fiscal year which under generally accepted accounting principles should be budgeted in the current fiscal year, shall be spent. The schedule shall indicate the fiscal year in which the spending for an item is to take place and shall incorporate the items detailed in 1994 Iowa Acts, chapter 1181, section 17. The schedule shall list each item of expenditure and the estimated dollar amount of moneys to be spent on that item for the fiscal year. The department of management may submit during a regular legislative session an amended schedule for legislative consideration. If moneys appropriated under this subsection are not enough to pay for all listed expenditures, the department of management shall distribute the payments among the listed expenditure items. Moneys appropriated to the department of management under this subsection shall not be spent on items other than those included in

the filed schedule. On September 1 following the close of a fiscal year, moneys in the GAAP deficit reduction account which remain unexpended for items on the filed schedule for the previous fiscal year shall be credited to the Iowa economic emergency fund.

4. To the extent that moneys appropriated under subsection 1 exceed the amounts necessary for the cash reserve fund to reach its maximum balance and the amounts necessary to eliminate Iowa's GAAP deficit, including elimination of the making of any appropriation in an incorrect fiscal year, the moneys shall be appropriated to the Iowa economic emergency fund.

5. As used in this section, "GAAP" means generally accepted accounting principles as established by the governmental accounting standards board.

6. *a.* A rebuild Iowa infrastructure fund is created under the authority of the department of management. The fund shall consist of appropriations made to the fund and transfers of interest, earnings, and moneys from other funds as provided by law. The fund shall be separate from the general fund of the state and the balance in the fund shall not be considered part of the balance of the general fund of the state. However, the fund shall be considered a special account for the purposes of section 8.53, relating to generally accepted accounting principles.

*b.* Moneys in the infrastructure fund are not subject to section 8.33. Notwithstanding section 12C.7, subsection 2, interest or earnings on moneys in the infrastructure fund shall be credited to the infrastructure fund. Moneys in the infrastructure fund may be used for cash flow purposes during a fiscal year provided that any moneys so allocated are returned to the infrastructure fund by the end of that fiscal year.

*c.* Moneys in the fund in a fiscal year shall be used as directed by the general assembly for public vertical infrastructure projects. For the purposes of this subsection, "vertical infrastructure" includes only land acquisition and construction, major renovation and major repair of buildings, all appurtenant structures, utilities, site development, and recreational trails. "Vertical infrastructure" does not include routine, recurring maintenance or operational expenses or leasing of a building, appurtenant structure, or utility without a lease-purchase agreement. However, appropriations may be made for the fiscal years beginning July 1, 1997, and July 1, 1998, for the purpose of funding the completion of Part III of the Iowa communications network.

*d.* The general assembly may provide that all or part of the moneys deposited in the GAAP deficit reduction account created in this section shall be transferred to the infrastructure fund in lieu of appropriation of the moneys to the Iowa economic emergency fund.

*e.* Notwithstanding provisions to the contrary

in sections 99D.17 and 99F.11, for the fiscal year beginning July 1, 2000, and for each fiscal year thereafter, not more than a total of sixty million dollars shall be deposited in the general fund of the state in any fiscal year pursuant to sections 99D.17 and 99F.11. The next fifteen million dollars of the moneys directed to be deposited in the general fund of the state in a fiscal year pursuant to sections 99D.17 and 99F.11 shall be deposited in the vision Iowa fund created in section 12.72 for the fiscal year beginning July 1, 2000, and for each fiscal year through the fiscal year beginning July 1, 2019. The next five million dollars of the moneys directed to be deposited in the general fund of the state in a fiscal year pursuant to sections 99D.17 and 99F.11 shall be deposited in the school infrastructure fund created in section 12.82 for the fiscal year beginning July 1, 2000, and for each fiscal year thereafter until the principal and interest on all bonds issued by the treasurer of state pursuant to section 12.81 are paid, as determined by the treasurer of state. The total moneys in excess of the moneys deposited in the general fund of the state, the vision Iowa fund, and the school infrastructure fund in a fiscal year shall be deposited in the rebuild Iowa infrastructure fund and shall be used as provided in this section, notwithstanding section 8.60.

If the total amount of moneys directed to be deposited in the general fund of the state under sections 99D.17 and 99F.11 in a fiscal year is less than the total amount of moneys directed to be deposited in the vision Iowa fund and the school infrastructure fund in the fiscal year pursuant to this paragraph "e", the difference shall be paid from lottery revenues in the manner provided in section 99G.39, subsection 3.

*f.* There is appropriated from the rebuild Iowa infrastructure fund to the secure an advanced vision for education fund created in section 423E.4, for each fiscal year of the fiscal period beginning July 1, 2004, and ending June 30, 2014, the amount of the moneys in excess of the first forty-seven million dollars credited to the rebuild Iowa infrastructure fund during the fiscal year, not to exceed ten million dollars.

*g.* Notwithstanding any other provision to the contrary, and prior to the appropriation of moneys from the rebuild Iowa infrastructure fund pursuant to paragraph "c", and section 8.57A, subsection 4, moneys shall first be appropriated from the rebuild Iowa infrastructure fund to the vertical infrastructure fund as provided in section 8.57B, subsection 4.

*h.* Annually, on or before January 15 of each year, a state agency that received an appropriation from the rebuild Iowa infrastructure fund shall report to the legislative services agency and the department of management the status of all projects completed or in progress. The report shall include a description of the project, the progress of work completed, the total estimated cost of the

project, a list of all revenue sources being used to fund the project, the amount of funds expended, the amount of funds obligated, and the date the project was completed or an estimated completion date of the project, where applicable.

2007 Acts, ch 22, §114, 116; 2007 Acts, ch 219, §27  
Subsection 6, paragraph h amended

#### **8.57A Environment first fund.**

1. An environment first fund is created under the authority of the department of management. The fund shall consist of appropriations made to the fund and transfers of interest, earnings, and moneys from other funds as provided by law. The fund shall be separate from the general fund of the state and the balance in the fund shall not be considered part of the balance of the general fund of the state. However, the fund shall be considered a special account for the purposes of section 8.53, relating to generally accepted accounting principles.

2. Notwithstanding section 12C.7, subsection 2, interest or earnings on moneys in the environment first fund shall be credited to the rebuild Iowa infrastructure fund.

3. Moneys in the fund in a fiscal year shall be used as appropriated by the general assembly for the protection, conservation, enhancement, or improvement of natural resources or the environment.

4. There is appropriated from the rebuild Iowa infrastructure fund for the fiscal year beginning July 1, 2007, and for each fiscal year thereafter, the sum of forty million dollars to the environment first fund, notwithstanding section 8.57, subsection 6, paragraph “c”.

5. Annually, on or before January 15 of each year, a state agency that received an appropriation from the environment first fund shall report to the legislative services agency and the department of management the status of all projects completed or in progress. The report shall include a description of the project, the progress of work completed, the total estimated cost of the project, a list of all revenue sources being used to fund the project, the amount of funds expended, the amount of funds obligated, and the date the project was completed or an estimated completion date of the project, where applicable.

2007 Acts, ch 215, §8; 2007 Acts, ch 219, §28  
Subsections 4 and 5 amended

#### **8.57B Vertical infrastructure fund.**

1. A vertical infrastructure fund is created under the authority of the department of management. The fund shall consist of appropriations made to the fund and transfers of interest, earnings, and moneys from other funds as provided by law. The fund shall be separate from the general fund of the state and the balance in the fund shall not be considered part of the balance of the general fund of the state. However, the fund shall be con-

sidered a special account for the purposes of section 8.53, relating to generally accepted accounting principles.

2. Notwithstanding section 12C.7, subsection 2, interest or earnings on moneys in the vertical infrastructure fund shall be credited to the rebuild Iowa infrastructure fund.

3. Moneys in the fund in a fiscal year shall be used as appropriated by the general assembly for public vertical infrastructure projects. For the purposes of this section, “vertical infrastructure” includes only land acquisition and construction, major renovation, and major repair of buildings, all appurtenant structures, utilities, and site development. “Vertical infrastructure” does not include routine, recurring maintenance, debt service, or operational expenses or leasing of a building, appurtenant structure, or utility without a lease-purchase agreement.

4. There is appropriated from the rebuild Iowa infrastructure fund to the vertical infrastructure fund, the following:

a. For the fiscal year beginning July 1, 2005, and ending June 30, 2006, the sum of fifteen million dollars.

b. For the fiscal year beginning July 1, 2006, and ending June 30, 2007, the sum of fifteen million dollars.

c. For the fiscal year beginning July 1, 2007, and ending June 30, 2008, the sum of fifty million dollars.

d. For the fiscal year beginning July 1, 2008, and ending June 30, 2009, the sum of fifty million dollars.

5. Annually, on or before January 15 of each year, a state agency that received an appropriation from the vertical infrastructure fund shall report to the legislative services agency and the department of management the status of all projects completed or in progress. The report shall include a description of the project, the progress of work completed, the total estimated cost of the project, a list of all revenue sources being used to fund the project, the amount of funds expended, the amount of funds obligated, and the date the project was completed or an estimated completion date of the project, where applicable.

2007 Acts, ch 219, §29  
Subsection 5 amended

#### **8.57C Technology reinvestment fund.**

1. A technology reinvestment fund is created under the authority of the department of management. The fund shall consist of appropriations made to the fund and transfers of interest, earnings, and moneys from other funds as provided by law. The fund shall be separate from the general fund of the state and the balance in the fund shall not be considered part of the balance of the general fund of the state. However, the fund shall be considered a special account for the purposes of section 8.53, relating to generally accepted account-

ing principles.

2. Moneys in the fund in a fiscal year shall be used as appropriated by the general assembly for the acquisition of computer hardware and software, software development, telecommunications equipment, and maintenance and lease agreements associated with technology components and for the purchase of equipment intended to provide an uninterruptible power supply.

3. There is appropriated from the general fund of the state for the fiscal year beginning July 1, 2006, and for each subsequent fiscal year, the sum of seventeen million five hundred thousand dollars to the technology reinvestment fund.

4. Annually, on or before January 15 of each year, a state agency that received an appropriation from this fund shall report to the legislative services agency and the department of management the status of all projects completed or in progress. The report shall include a description of the project, the progress of work completed, the total estimated cost of the project, a list of all revenue sources being used to fund the project, the amount of funds expended, the amount of funds obligated, and the date the project was completed or an estimated completion date of the project, where applicable.

2007 Acts, ch 219, §30  
FY 2007-2008 appropriations from technology reinvestment fund; revision: 2007 Acts, ch 219, §14, 15  
Subsection 4 amended

#### LOCAL GOVERNMENT INNOVATION COMMISSION AND FUND AND CENTER FOR GOVERNING EXCELLENCE

##### 8.64 Definitions.

For purposes of sections 8.65 through 8.69:

1. “*Commission*” means the local government innovation commission.

2. “*Community-wide area*” means a distinct geographical area voluntarily formed by and comprised of counties, cities, or townships, or any combination thereof, all of which possess a degree of autonomy in a varying number of matters. State agencies and school districts may also participate in a community-wide area if joined by a county, city, or township.

3. “*Department*” means the department of management.

2007 Acts, ch 117, §1, 7  
For future repeal of section, see §8.68; 2007 Acts, ch 117, §5, 7  
Section stricken and rewritten

##### 8.65 Local government innovation commission.

1. A local government innovation commission is created consisting of fifteen voting members and six nonvoting members.

a. Voting members of the commission shall be appointed for a term of three years as follows:

(1) One member representing the executive

branch appointed by the governor.

(2) Two members representing county government appointed by the president of the Iowa state association of counties.

(3) Two members representing city government appointed by the president of the Iowa league of cities.

(4) One member representing community colleges appointed by the president of the Iowa association of community college presidents.

(5) One member representing school districts appointed by the president of the Iowa association of school boards.

(6) One member representing the councils of governments appointed by the president of the Iowa association of regional councils.

(7) One member representing local law enforcement or fire protection appointed by the governor.

(8) Two members appointed by the governor, both of whom shall possess private business expertise and who are not employees of any level of government.

(9) Four members representing the general public, one each appointed by the majority leader of the senate, the minority leader of the senate, the speaker of the house of representatives, and the minority leader of the house of representatives.

b. Four nonvoting members of the general assembly shall be appointed for a term of two years commencing at the convening of each general assembly, one each appointed by the majority leader of the senate, the minority leader of the senate, the speaker of the house of representatives, and the minority leader of the house of representatives. However, initial appointments of members under this paragraph shall be made on April 27, 2007.

c. Two nonvoting members shall be appointed for a term of three years. One of the members shall be the administrator of the homeland security and emergency management division of the Iowa department of public defense, and the other member shall be the director of the department of economic development or the director’s designee.

d. To the extent feasible, in making the appointments under paragraphs “a” through “c”, the persons authorized to appoint shall give consideration to the appointment of minority persons to the commission.

2. a. Terms of voting members and of nonvoting members specified in subsection 1, paragraph “c”, shall begin and end as provided by section 69.19. Any vacancy shall be filled in the same manner as regular appointments are made for the unexpired portion of the regular term.

b. Members of the commission shall be allowed their actual and necessary expenses incurred in the performance of their duties. The members of the commission representing the general public shall also be compensated as provided in section 7E.6. Per diem and expenses paid to

commission members shall be paid from moneys appropriated to the local government innovation fund, except that the per diem and expenses of members of the general assembly shall be paid pursuant to section 2.12.

c. The commission shall meet in May of each year for the purpose of electing one of its voting members as chairperson. The commission shall meet at the call of the chairperson or when a majority of the voting members of the commission files a written request with the chairperson for a meeting. Written notice of the time and place of each meeting shall be given to each member of the commission.

d. A majority of the voting members of the commission constitutes a quorum. Any action taken by the commission must be adopted by the affirmative vote of a majority of its voting membership.

e. The commission is located for administrative purposes within the department. The department shall provide office space, staff assistance, administrative support, and necessary supplies and equipment to the commission.

2007 Acts, ch 117, §2, 7; 2007 Acts, ch 215, §240  
For future repeal of section, see §8.68; 2007 Acts, ch 117, §5, 7  
NEW section

### 8.66 Duties of commission.

The commission shall do all of the following:

1. Promote, encourage, and advance innovation and creativity in local governance.

2. Develop an application and review process for local governance and revenue models submitted to the commission by a community-wide area. Results, strategies, and desired outcomes identified by the commission in developing its application and review process shall include but not be limited to the following:

a. Cost savings to citizens, in particular lowering of local government property taxes.

b. Creation of, or inducement to create, high-wage, stable employment opportunities for a local government's citizens and more effective leveraging of resources to improve competitive advantage.

c. Elimination of duplication of government administration.

d. More efficient and effective delivery of services by government, including eliminating duplication of service delivery by more than one unit of government in the same area and modernizing services and service delivery to meet the changing public service needs of the area.

e. Creation of a state-local partnership in one or more areas of service delivery and governance that would increase quality and efficiency on the local level.

3. Design an application form to be completed by a community-wide area seeking review of a local governance and revenue model. The application form shall require the community-wide area

to demonstrate how the local governance and revenue model will result in reduced local government or state general fund expenditures, how local government fund revenues will increase without an increase in state costs, how local government services will be provided more efficiently or will be of increased quality resulting in greater value from the expenditure of local government revenues, or how the model develops partnerships with the state to provide increased quality and efficiency on the local level.

4. Utilize the department of management, the department of revenue, or other sources of technical expertise designated by the commission to certify savings projected for a proposed local governance and revenue model.

5. Report to the general assembly on or before June 30, 2010, and every three years thereafter, on the accomplishments of community-wide area efforts funded by grants from the local government innovation fund authorized under section 8.67, in achieving the objectives described in subsection 2, paragraphs "a" through "e".

6. On or before January 1, 2009, submit to the general assembly and to the office of the governor recommendations for legislation that would provide flexibility and freedom to local governments in implementing governance and revenue models.

7. a. Prepare a request for proposals for establishment of the Tim Shields center for governing excellence in Iowa as provided in section 8.69, and prepare procedures and a timetable for submission and review of proposals and for selection of a proposal. The proposal process shall be open to public and private not-for-profit institutions of higher education, either individually or in collaboration, located in this state and accredited by the north central association of colleges and secondary schools.

b. The request for proposals shall require each proposal to provide for employment of a full-time director and administrative assistant at the center.

c. The request for proposals shall require each proposal to specify all of the following:

(1) The number and subject area specialties of the research staff; the office space; the support staff; and the computer, library, and research facilities to be provided by the proposing institution or institutions.

(2) The personnel, facilities, and support provided for the training of policymakers, public officials, and students in areas including but not limited to public administration and management, budgetary preparation and analysis, electronic government, local-state government relations, and public policy formulation, implementation, and evaluation.

(3) The funding to be committed by the proposing institution or institutions.

8. Oversee and direct the activities of the Tim

### Shields center for governing excellence in Iowa.

2007 Acts, ch 117, §3, 7  
For future repeal of section, see §8.68; 2007 Acts, ch 117, §5, 7  
NEW section

#### 8.67 Local government innovation fund.

1. A local government innovation fund is created in the state treasury under the control of the department of management for the purpose of stimulating and encouraging innovation in local government by providing moneys for the purpose of providing grants to assist in the implementation of local governance and revenue models.

2. Officials of a community-wide area who have submitted a local governance and revenue model to the commission for review may apply to the commission for a grant from the local government innovation fund to implement all or a portion of such governance and revenue model. Officials seeking a grant from the fund shall complete an application form designed by the commission. Minimum requirements for local government grant requests shall be determined by the commission and adopted by rule by the department of management.

3. Notwithstanding section 12C.7, subsection 2, interest or earnings on moneys deposited in the local government innovation fund shall be credited to the local government innovation fund. Notwithstanding section 8.33, moneys appropriated to and moneys remaining in the local government innovation fund at the end of a fiscal year shall not revert to the general fund of the state.

2007 Acts, ch 117, §4, 7  
For future repeal of section, see §8.68; 2007 Acts, ch 117, §5, 7  
NEW section

#### 8.68 Future repeal of commission and fund.

Sections 8.64 through 8.67 and this section are repealed effective June 30, 2019.

2007 Acts, ch 117, §5, 7  
NEW section

#### 8.69 Tim Shields center for governing excellence in Iowa.

1. The commission shall establish the Tim Shields center for governing excellence in Iowa. The purpose of the Tim Shields center for governing excellence in Iowa is to do all of the following:

a. Enhance the accountability, effectiveness, and efficiency of Iowa's local governments and state agencies by providing objective and nonpartisan research and training support for policy-makers and government officials.

b. Integrate the research capacities of the community colleges and public and private universities located in this state and of organizations representing local governments to support management and policy research.

c. Facilitate dialogues among Iowa's state agencies, local governments, community colleges, public and private universities, organizations representing local governments, and citizens on government policy design, implementation, and evaluation.

2. After its creation, the center may solicit, accept, and administer moneys contributed to the center by any source, and may enter into contracts with public or private agencies or may enter into agreements subject to chapter 28E with public and private agencies in order to carry out its purposes. All records of the center including but not limited to records of donations to the center and contracts or agreements entered into by the center shall be public records for purposes of chapter 22.

3. The center shall submit an annual report of the activities of the center to the governor and to the general assembly as provided in section 7A.11A by January 15 of each year.

4. The local government innovation commission created in section 8.65, or a successor agency, shall oversee and direct the activities of the Tim Shields center for governing excellence in Iowa.

2007 Acts, ch 117, §6, 7  
Legislative intent to fund Tim Shields center for governing excellence in Iowa; 2007 Acts, ch 215, §54  
NEW section

## CHAPTER 8A

### DEPARTMENT OF ADMINISTRATIVE SERVICES

#### 8A.101 Definitions.

As used in this chapter, unless the context otherwise requires:

1. "Agency" or "state agency" means a unit of state government, which is an authority, board, commission, committee, council, department, examining or licensing board, or independent agency as defined in section 7E.4, including but not limited to each principal central department enumerated in section 7E.5. However, "agency" or "state agency" does not mean any of the following:

a. The office of the governor or the office of an elective constitutional or statutory officer.

b. The general assembly, or any office or unit under its administrative authority.

c. The judicial branch, as provided in section 602.1102.

d. A political subdivision of the state or its offices or units, including but not limited to a county, city, or community college.

2. "Department" means the department of administrative services.



3. “*Director*” means the director of the department of administrative services or the director’s designee.

4. “*Governmental entity*” means any unit of government in the executive, legislative, or judicial branch of government; an agency or political subdivision; any unit of another state government, including its political subdivisions; any unit of the United States government; or any association or other organization whose membership consists primarily of one or more of any of the foregoing.

5. “*Governmental subdivision*” means a county, city, school district, or combination thereof.

6. “*Public records*” means the same as defined in section 22.1.

2007 Acts, ch 10, §4

Subsection 1, unnumbered paragraph 1 amended

### 8A.122 Services to governmental entities and nonprofit organizations.

1. The director shall enter into agreements with state agencies, and may enter into agreements with any other governmental entity or a nonprofit organization, to furnish services and facilities of the department to the applicable governmental entity or nonprofit organization. The agreement shall provide for the reimbursement to the department of the reasonable cost of the services and facilities furnished. All governmental entities of this state may enter into such agreements. For purposes of this subsection, “*nonprofit organization*” means a nonprofit entity which is exempt from federal income taxation pursuant to section 501(c)(3) of the Internal Revenue Code and which is funded in whole or in part by public funds.

2. This chapter does not affect any city civil service programs established under chapter 400.

3. The state board of regents shall not be required to obtain any service for the state board of regents or any institution under the control of the state board of regents that is provided by the department pursuant to this chapter without the consent of the state board of regents.

2007 Acts, ch 115, §3

Subsection 1 amended

### 8A.201 Definitions.

As used in this subchapter, unless the context otherwise requires:

1. “*Information technology*” means computing and electronics applications used to process and distribute information in digital and other forms and includes information technology devices, information technology services, and value-added services.

2. “*Information technology device*” means equipment or associated software, including programs, languages, procedures, or associated documentation, used in operating the equipment which is designed for utilizing information stored in an electronic format. “*Information technology*

*device*” includes but is not limited to computer systems, computer networks, and equipment used for input, output, processing, storage, display, scanning, and printing.

3. “*Information technology services*” means services designed to do any of the following:

a. Provide functions, maintenance, and support of information technology devices.

b. Provide services including, but not limited to, any of the following:

(1) Computer systems application development and maintenance.

(2) Systems integration and interoperability.

(3) Operating systems maintenance and design.

(4) Computer systems programming.

(5) Computer systems software support.

(6) Planning and security relating to information technology devices.

(7) Data management consultation.

(8) Information technology education and consulting.

(9) Information technology planning and standards.

(10) Establishment of local area network and workstation management standards.

4. “*Participating agency*” means any agency other than any of the following:

a. The state board of regents and institutions operated under the authority of the state board of regents.

b. The public broadcasting division of the department of education.

c. The state department of transportation mobile radio network.

d. The department of public safety law enforcement communications systems and capitol complex security systems in use for the legislative branch.

e. The telecommunications and technology commission established in section 8D.3, with respect to information technology that is unique to the Iowa communications network.

f. The Iowa lottery authority.

g. A judicial district department of correctional services established pursuant to section 905.2.

h. The Iowa finance authority, including the title guaranty division.

5. “*Technology governance board*” means the board established in section 8A.204.

6. “*Value-added services*” means services that offer or provide unique, special, or enhanced value, benefits, or features to the customer or user including, but not limited to, services in which information technology is specially designed, modified, or adapted to meet the special or requested needs of the user or customer; services involving the delivery, provision, or transmission of information or data that require or involve additional processing, formatting, enhancement, compilation or security; services that provide the customer or user with

enhanced accessibility, security or convenience; research and development services; and services that are provided to support technological or statutory requirements imposed on participating agencies and other governmental entities, businesses, and the public.

2007 Acts, ch 54, §1  
Subsection 4, NEW paragraph h

**8A.204 Technology governance board — members — powers and duties.**

1. *Definitions.* For purposes of this section, unless the context otherwise requires:

a. “Agency” means a participating agency as defined in section 8A.201.

In addition, the following definitions shall also apply:

(1) “Large agency” means a state agency with more than seven hundred full-time, year-round employees.

(2) “Medium-sized agency” means a state agency with at least seventy or more full-time, year-round employees, but not more than seven hundred permanent employees.

(3) “Small agency” means a state agency with less than seventy full-time, year-round employees.

b. “Board” means the technology governance board.

c. “Department” means the department of administrative services, including the information technology enterprise.

2. *Membership.*

a. The technology governance board is composed of ten members as follows:

(1) The director.

(2) The director of the department of management, or the director’s designee.

(3) Eight members appointed by the governor as follows:

(a) Three representatives from large agencies.

(b) Two representatives from medium-sized agencies.

(c) One representative from a small agency.

(d) Two public members who are knowledgeable and have experience in information technology matters.

b. (1) Members appointed pursuant to paragraph “a”, subparagraph (3), shall serve two-year staggered terms. The department shall provide, by rule, for the commencement of the term of membership for the nonpublic members. The terms of the public members shall be staggered at the discretion of the governor.

(2) Sections 69.16, 69.16A, and 69.19 shall apply to the public members of the board.

(3) Public members appointed by the governor are subject to senate confirmation.

(4) Public members appointed by the governor may be eligible to receive compensation as provided in section 7E.6.

(5) Members shall be reimbursed for actual

and necessary expenses incurred in performance of the members’ duties.

(6) A director, deputy director, or chief financial officer of an agency is preferred as an appointed representative for each of the agency categories of membership pursuant to paragraph “a”, subparagraph (3).

c. The technology governance board annually shall elect a chair and a vice chair from among the members of the board, by majority vote, to serve one-year terms.

d. A majority of the members of the board shall constitute a quorum.

e. Meetings of the board shall be held at the call of the chairperson or at the request of three members.

3. *Powers and duties of the board.* The powers and duties of the technology governance board as they relate to information technology services shall include, but are not limited to, all of the following:

a. On an annual basis, prepare a report to the governor, the department of management, and the general assembly regarding the total spending on technology for the previous fiscal year, the total amount appropriated for the current fiscal year, and an estimate of the amount to be requested for the succeeding fiscal year for all agencies. The report shall include a five-year projection of technology cost savings, an accounting of the level of technology cost savings for the current fiscal year, and a comparison of the level of technology cost savings for the current fiscal year with that of the previous fiscal year. This report shall be filed as soon as possible after the close of a fiscal year, and by no later than the second Monday of January of each year.

b. Work with the department of management and the state accounting enterprise of the department, pursuant to section 8A.502, to maintain the relevancy of the central budget and proprietary control accounts of the general fund of the state and special funds to information technology, as those terms are defined in section 8.2, of state government.

c. Develop and approve administrative rules governing the activities of the board. The department shall assist in development of the rules and shall adopt the rules under the department’s name.

d. In conjunction with the department, develop and adopt information technology standards pursuant to section 8A.206 applicable to all agencies.

e. Make recommendations to the department regarding all of the following:

(1) Technology utility services to be implemented by the department or other agencies.

(2) Improvements to information technology service levels and modifications to the business continuity plan for information technology operations developed by the department pursuant to

section 8A.202 for agencies, and to maximize the value of information technology investments by the state.

(3) Technology initiatives for the executive branch.

*f.* Review the recommendations of the IowAccess advisory council regarding rates to be charged for access to and for value-added services performed through IowAccess, pursuant to section 8A.221. The board shall report the establishment of a new rate of change in the level of an existing rate to the department, which shall notify the department of management and the legislative services agency regarding the rate establishment or change.

*g.* Designate advisory groups as appropriate to assist the board in all of the following:

(1) Development and adoption of an executive branch strategic technology plan.

(2) Annual review of technology operating expenses and capital investment budgets of agencies by October 1 for the following fiscal year, and development of technology costs savings projections, accountings, and comparisons.

(3) Quarterly review of requested modifications to budgets of agencies due to funding changes.

(4) Review and approval of all concept papers and documentation related to requests for proposals for all information technology devices, hardware acquisition, information technology services, software development projects, and information technology outsourcing for agencies that exceed the greater of a total cost of fifty thousand dollars or a total involvement of seven hundred fifty agency staff hours. The review and approval of concept papers and documentation as provided in this subparagraph shall occur prior to the issuance of the related request for proposals. Notwithstanding section 21.5, subsection 1, the board, by vote of at least six members, may hold a closed session to review and discuss concept papers and documentation related to a request for proposals if the board determines that the public disclosure of such discussion prior to the issuance of the request for proposals may disadvantage any potential vendors.

The board shall keep detailed minutes of all discussion, persons present, and action occurring at a closed session, and shall also tape record all of the closed session. The minutes and the tape recording of a session closed under this subparagraph shall be made available for public examination when a final decision is made regarding whether to issue the request for proposals. All board actions and decisions regarding this information shall be made in open session and appropriately recorded.

(5) Development of a plan and process to improve service levels and continuity of business operations, and to maximize the value of information

technology investments.

(6) Formation of internal teams to address cost-savings initiatives, including consolidation of information technology and related functions among agencies, as enacted by the technology governance board.

(7) Development of information technology standards.

(8) Development of rules, processes, and procedures for implementation of aggregate purchasing among agencies.

4. *Funding.* Activities of the technology governance board shall be funded by the information technology enterprise of the department, through the IowAccess revolving fund created in section 8A.224, notwithstanding contrary provisions of any other law.

5. *Rules.* The department shall adopt rules as necessary to administer this section, which shall at a minimum, consistent with section 8A.221, establish a process for the submission to the board of proposed fees for value-added services by participating agencies and other governmental entities, as well as the board's submission of recommendations regarding such fees to the department of management.

2007 Acts, ch 115, §4, 5

Confirmation, §2.32

Dissolution of former information technology council; appointment and terms of office of new board members; meetings; 2005 Acts, ch 90, §8; 2005 Acts, ch 179, §142

Subsection 2, paragraph c stricken and former paragraphs d – f redesignated as c – e

Subsection 2, paragraph c amended

#### **8A.224 IowAccess revolving fund.**

1. An IowAccess revolving fund is created in the state treasury. The revolving fund shall be administered by the department and shall consist of moneys collected by the department as fees, moneys appropriated by the general assembly, and any other moneys obtained or accepted by the department for deposit in the revolving fund. The proceeds of the revolving fund are appropriated to and shall be used by the department to maintain, develop, operate, and expand IowAccess consistent with this subchapter, and for the support of activities of the technology governance board pursuant to section 8A.204.

2. The department shall submit an annual report not later than January 31 to the members of the general assembly and the legislative services agency of the activities funded by and expenditures made from the revolving fund during the preceding fiscal year. Section 8.33 does not apply to any moneys in the revolving fund and, notwithstanding section 12C.7, subsection 2, earnings or interest on moneys deposited in the revolving fund shall be credited to the revolving fund.

For the fiscal year beginning July 1, 2007, a portion of the fees collected for furnishing a certified abstract of a vehicle operating record to be transferred to the IowAccess revolving fund; 2007 Acts, ch 217, §3

Section not amended; footnote revised

**8A.311 Competitive bidding — preferences — reciprocal application — direct purchasing.**

The director shall adopt rules establishing competitive bidding procedures.

1. *a.* All equipment, supplies, or services procured by the department shall be purchased by a competitive bidding procedure as established by rule. However, the director may exempt by rule purchases of noncompetitive items and purchases in lots or quantities too small to be effectively purchased by competitive bidding. Preference shall be given to purchasing Iowa products and purchases from Iowa-based businesses if the Iowa-based business bids submitted are comparable in price to bids submitted by out-of-state businesses and otherwise meet the required specifications. If the laws of another state mandate a percentage preference for businesses or products from that state and the effect of the preference is that bids of Iowa businesses or products that are otherwise low and responsive are not selected in the other state, the same percentage preference shall be applied to Iowa businesses and products when businesses or products from that other state are bid to supply Iowa requirements.

*b.* The department and each state agency shall provide notice in an electronic format available to the public of every competitive bidding opportunity offered by the department or the state agency as provided in section 73.2, subsection 2. The department may establish by rule requirements relating to such notice. A competitive bidding opportunity that is not preceded by a notice that satisfies the requirements of this paragraph is void and shall be rebid. A request for proposals for architectural or engineering services may be posted electronically by a department or state agency.

2. Notwithstanding section 72.3, if the competitive bidding procedure used by the department involves the use of a reverse auction or similar competitive bidding procedure requiring the disclosure of bid information submitted by vendors, the department shall disclose the bid information as necessary and appropriate.

3. The director may also exempt the purchase of an item or service from a competitive bidding procedure when the director determines that the best interests of the state will be served by the exemption which shall be based on one of the following:

*a.* An immediate or emergency need existing for the item or service.

*b.* A need to protect the health, safety, or welfare of persons occupying or visiting a public improvement or property located adjacent to the public improvement.

4. *a.* The director may contract for the purchase of items or services by the department. Contracts for the purchase of items or services shall be awarded on the basis of the lowest competent bid.

Contracts not based on competitive bidding shall be awarded on the basis of bidder competence and reasonable price.

*b.* Architectural and engineering services shall be procured in a reasonable manner, as the director by rule may determine, on the basis of competence and qualification for the type of services required and for a fair and reasonable price.

5. The director may enter into a cooperative procurement agreement with another governmental entity relating to the procurement of goods or services, whether the goods or services are for the use of the department or other governmental entities. The cooperative procurement agreement shall clearly specify the purpose of the agreement and the method by which that purpose will be accomplished. Any power exercised under the agreement shall not exceed the power granted to any party to the agreement.

6. The director may refuse all bids on any item or service and request new bids.

7. The director shall establish by rule the amount of security, if any, to accompany a bid or as a condition precedent to the awarding of any contract and the circumstances under which a security will be returned to the bidder or forfeited to the state.

8. The director shall adopt rules providing a method for the various state agencies to file with the department a list of those supplies, equipment, machines, and all items needed to properly perform their governmental duties and functions.

9. The director shall furnish a list of specifications, prices, and discounts of contract items to any governmental subdivision which shall be responsible for payment to the vendor under the terms and conditions outlined in the state contract.

10. The director shall adopt rules providing that any state agency may, upon request, purchase directly from a vendor if the direct purchasing is as economical or more economical than purchasing through the department, or upon a showing that direct purchasing by the state agency would be in the best interests of the state due to an immediate or emergency need. The rules shall include a provision permitting a state agency to purchase directly from a vendor, on the agency's own authority, if the purchase will not exceed ten thousand dollars and the purchase will contribute to the agency complying with or exceeding the targeted small business procurement goals under sections 73.15 through 73.21.

Any member of the executive council may bring before the executive council for review a decision of the director granting a state agency request for direct purchasing. The executive council shall hear and review the director's decision in the same manner as an appeal filed by an aggrieved bidder, except that the three-day period for filing for review shall not apply.

11. *a.* When the estimated total cost of construction, erection, demolition, alteration, or repair of a public improvement exceeds the competitive bid threshold in section 26.3, or as established in section 314.1B, the department shall comply with chapter 26.

*b.* In awarding a contract under this subsection, the department shall let the work to the lowest responsible bidder submitting a sealed proposal. However, if the department considers the bids received not to be acceptable, all bids may be rejected and new bids requested. A bid shall be accompanied by a certified or cashier's check or bid bond in an amount designated in the advertisement for bids as security that the bidder will enter into a contract for the work requested. The department shall establish the bid security in an amount equal to at least five percent, but not more than ten percent of the estimated total cost of the work. The certified or cashier's checks or bid bonds of unsuccessful bidders shall be returned as soon as the successful bidder is determined. The certified or cashier's check or bid bond of the successful bidder shall be returned upon execution of the contract. This subsection does not apply to the construction, erection, demolition, alteration, or repair of a public improvement when the contracting procedure for the work requested is otherwise provided for in law.

12. The state and its political subdivisions shall give preference to purchasing Iowa products and purchasing from Iowa-based businesses if the bids submitted are comparable in price to those submitted by other bidders and meet the required specifications.

13. The director shall adopt rules which require that each bid received for the purchase of items purchased by the department includes a product content statement which provides the percentage of the content of the item which is reclaimed material.

14. The director shall review and, where necessary, revise specifications used by state agencies to procure products in order to ensure all of the following:

*a.* The procurement of products containing recovered materials, including but not limited to lubricating oils, retread tires, building insulation materials, and recovered materials from waste tires. The specifications shall be revised if they restrict the use of alternative materials, exclude recovered materials, or require performance standards which exclude products containing recovered materials unless the agency seeking the product can document that the use of recovered materials will hamper the intended use of the product.

*b.* The procurement by state agencies of bio-based hydraulic fluids, greases, and other industrial lubricants manufactured from soybeans in accordance with the requirements of section 8A.316.

15. A bidder awarded a state construction contract shall disclose the names of all subcontractors, who will work on the project being bid, within forty-eight hours after the award of the contract.

If a subcontractor named by a bidder awarded a state construction contract is replaced, or if the cost of work to be done by a subcontractor is reduced, the bidder shall disclose the name of the new subcontractor or the amount of the reduced cost.

16. A state agency shall make every effort to purchase those products produced for sale by sheltered workshops, work activity centers, and other special programs funded in whole or in part by public moneys that employ persons with mental retardation or other developmental disabilities or mental illness if the products meet the required specifications.

17. A state agency shall make every effort to purchase products produced for sale by employers of persons in supported employment.

18. The department shall not award a contract to a bidder for a construction, reconstruction, demolition, or repair project or improvement with an estimated cost that exceeds twenty-five thousand dollars in which the bid requires the use of inmate labor supplied by the department of corrections, but not employed by private industry pursuant to section 904.809, to perform the project or improvement.

19. Life cycle cost and energy efficiency shall be included in the criteria used by the department, institutions under the control of the state board of regents, the state department of transportation, the department for the blind, and other state agencies in developing standards and specifications for purchasing energy-consuming products. For purposes of this subsection, the life cycle costs of American motor vehicles shall be reduced by five percent in order to determine if the motor vehicle is comparable to foreign-made motor vehicles. "*American motor vehicles*" includes those vehicles manufactured in this state and those vehicles in which at least seventy percent of the value of the motor vehicle was manufactured in the United States or Canada and at least fifty percent of the motor vehicle sales of the manufacturer are in the United States or Canada. In determining the life cycle costs of a motor vehicle, the costs shall be determined on the basis of the bid price, the resale value, and the operating costs based upon a useable life of five years or seventy-five thousand miles, whichever occurs first.

20. Preference shall be given to purchasing American-made products and purchases from American-based businesses if the life cycle costs are comparable to those products of foreign businesses and which most adequately fulfill the department's need.

21. *a.* The director may authorize the procurement of goods and services in which a contractual limitation of vendor liability is provided for

and set forth in the documents initiating the procurement. The director, in consultation with the department of management, shall adopt rules setting forth the circumstances in which such procurement will be permitted and what types of contractual limitations of liability are permitted. Rules adopted by the director shall establish criteria to be considered in making a determination of whether to permit a contractual limitation of vendor liability with regard to any procurement of goods and services. The criteria, at a minimum, shall include all of the following:

(1) Whether authorizing a contractual limitation of vendor liability is necessary to prevent harm to the state from a failure to obtain the goods or services sought, or from obtaining the goods or services at a higher price if the state refuses to allow a contractual limitation of vendor liability.

(2) Whether the contractual limitation of vendor liability is commercially reasonable when taking into account any risk to the state created by the goods or services to be procured and the purpose for which they will be used.

b. Notwithstanding paragraph “a”, a contractual limitation of vendor liability shall not include any limitation on the liability of any vendor for intentional torts, criminal acts, or fraudulent conduct.

c. The rules shall provide for the negotiation of a contractual limitation of vendor liability consistent with the requirements of this section and any other requirements of the department as provided in any related documents associated with a procurement of goods and services.

22. a. The state, through the department, shall give a preference to purchasing equipment, supplies, or services from or awarding public improvement contracts pursuant to subsection 11 to an Iowa-based business as provided under paragraph “b”, as appropriate, if the bid submitted is comparable in price to those submitted by other bidders and meets the required specifications. However, before giving the preference, the department shall confirm with the Iowa employer support of the guard and reserve committee that the requirements of paragraph “b” have been met by the Iowa-based business.

b. To receive a preference as provided by this subsection, the Iowa-based business employer shall have adopted policies beyond those otherwise required by law to support employees who are officers or enlisted persons in the national guard and organized reserves of the armed forces of the United States consistent with standards adopted by the Iowa employer support of the guard and reserve committee. To be eligible for such preference, an employer shall submit to the committee a copy of the applicable policies adopted by the employer and shall sign and submit to the committee a statement of support of persons in the employ of the employer who serve in the national guard and the reserves, recognizing the vital role of the na-

tional guard and the reserves, and pledging all of the following:

(1) To neither deny employment nor limit or reduce job opportunities because of an employee’s service in the national guard or organized reserves of the armed forces of the United States.

(2) To grant leaves of absence during a period of military duty or training.

(3) To ensure that all employees are aware of the employer’s policies and the requirements of section 29A.43.

2007 Acts, ch 115, §6, 18; 2007 Acts, ch 207, §1, 18; 2007 Acts, ch 215, §79 Preferences; see also chapter 73, §73A.21 Subsection 22 takes effect January 1, 2008; 2007 Acts, ch 115, §18 Subsection 10, unnumbered paragraph 1 amended NEW subsections 21 and 22

### **8A.321 Physical resources and facility management — director duties — appropriation.**

In managing the physical resources of government, the director shall perform all of the following duties:

1. Provide for supervision over the custodians and other employees of the department in and about the state laboratories facility in Ankeny and in and about the capitol and other state buildings at the seat of government, except the buildings and grounds referred to in section 216B.3, subsection 6.

2. Institute, in the name of the state, and with the advice and consent of the attorney general, civil and criminal proceedings against any person for injury or threatened injury to any public property, including but not limited to intangible and intellectual property, under the person’s control.

3. Under the direction of the governor, provide, furnish, and pay for public utilities service, heat, maintenance, minor repairs, and equipment in operating and maintaining the official residence of the governor of Iowa.

4. Contract, with the approval of the executive council, for the repair, remodeling, or, if the condition warrants, demolition of all buildings and grounds of the state at the seat of government, at the state laboratories facility in Ankeny, and the institutions of the department of human services and the department of corrections for which no specific appropriation has been made, if the cost of repair, remodeling, or demolition will not exceed one hundred thousand dollars when completed. The cost of repair projects for which no specific appropriation has been made shall be paid from the fund provided in section 7D.29.

5. Dispose of all personal property of the state under the director’s control as provided by section 8A.324 when it becomes unnecessary or unfit for further use by the state. If the director concludes that the personal property is contaminated, contains hazardous waste, or is hazardous waste, the director may charge the state agency responsible for the property for removal and disposal of the personal property. The director shall adopt rules

establishing the procedures for inspecting, selecting, and removing personal property from state agencies or from state storage.

6. *a.* Lease all buildings and office space necessary to carry out the provisions of this subchapter or necessary for the proper functioning of any state agency at the seat of government. For state agencies at the seat of government, the director may lease buildings and office space in Polk county or in a county contiguous to Polk county. If no specific appropriation has been made, the proposed lease shall be submitted to the executive council for approval. The cost of any lease for which no specific appropriation has been made shall be paid from the fund provided in section 7D.29.

*b.* When the general assembly is not in session, the director may request moneys from the executive council for moving state agencies located at the seat of government from one location to another. The request may include moving costs, telecommunications costs, repair costs, or any other costs relating to the move. The executive council may approve and shall pay the costs from funds provided in section 7D.29 if it determines the agency or department has no available funds for these expenses.

*c.* Coordinate the leasing of buildings and office space by state agencies throughout the state and develop cooperative relationships with the state board of regents in order to promote the colocation of state agencies.

7. Unless otherwise provided by law, coordinate the location, design, plans and specifications, construction, and ultimate use of the real or personal property to be purchased by a state agency for whose benefit and use the property is being obtained. If the purchase of real or personal property is to be financed pursuant to section 12.28, the department shall cooperate with the treasurer of state in providing the information necessary to complete the financing of the property.

A contract for acquisition, construction, erection, demolition, alteration, or repair by a private person of real or personal property to be lease-purchased by the treasurer of state pursuant to section 12.28 is exempt from section 8A.311, subsections 1 and 11, unless the lease-purchase contract is funded in advance by a deposit of the lessor's moneys to be administered by the treasurer of state under a lease-purchase contract which requires rent payments to commence upon delivery of the lessor's moneys to the lessee.

8. With the authorization of a constitutional majority of each house of the general assembly and approval by the governor, dispose of real property belonging to the state and its state agencies upon terms, conditions, and consideration as the director may recommend. If real property subject to sale under this subsection has been purchased or acquired from appropriated funds, the proceeds of

the sale shall be deposited with the treasurer of state and credited to the general fund of the state or other fund from which appropriated. There is appropriated from that same fund, with the prior approval of the executive council and in cooperation with the director, a sum equal to the proceeds so deposited and credited to the state agency to which the disposed real property belonged or by which it was used, for purposes of the state agency.

9. With the approval of the executive council pursuant to section 7D.29 or pursuant to other authority granted by law, acquire real property to be held by the department in the name of the state as follows:

*a.* By purchase, lease, option, gift, grant, bequest, devise, or otherwise.

*b.* By exchange of real property belonging to the state for property belonging to another person.

10. Subject to the selection procedures of section 12.30, employ financial consultants, banks, insurers, underwriters, accountants, attorneys, and other advisors or consultants necessary to implement the provisions of subsection 7.

11. Prepare annual status reports for all capital projects in progress of the department, and submit the status reports to the legislative services agency and the department of management on or before January 15 of each year.

12. In carrying out the requirements of section 64.6, purchase an individual or a blanket surety bond insuring the fidelity of state officers. The department may self-assume or self-insure fidelity exposures for state officials and employees. A state official is deemed to have furnished surety if the official has been covered by a program of insurance or self-insurance established by the department. To the extent possible, all bonded state employees shall be covered under one or more blanket bonds or position schedule bonds.

13. Review the management of state property loss exposures and state liability risk exposures for the capitol complex. Insurance coverage may include self-insurance or any type of insurance protection sold by insurers, including, but not limited to, full coverage, partial coverage, coinsurance, reinsurance, and deductible insurance coverage.

14. Establish a monument maintenance account in the state treasury under the control of the department. Funds for the maintenance of a state monument, whether received by gift, devise, bequest, or otherwise, shall be deposited in the account. Funds in the account shall be deposited in an interest-bearing account. Notwithstanding section 12C.7, interest earned on the account shall be deposited in the account and shall be used to maintain the designated monument. Any maintenance funds for a state monument held by the state and interest earned on the funds shall be used to maintain the designated monument. Notwithstanding section 8.33, funds in the monument

maintenance account at the end of a fiscal year shall not revert to the general fund of the state.

2007 Acts, ch 115, §7; 2007 Acts, ch 219, §31  
 Subsection 11 amended  
 Subsection 12 stricken and former subsections 13 – 15 renumbered as 12 – 14

**8A.330 New construction — return on investment.** Repealed by 2007 Acts, ch 219, § 42.

**8A.362 Fleet management — powers and duties — fuel economy requirements.**

1. The director may provide for the assignment to a state officer or employee or to a state agency, of one or more motor vehicles which may be required by the state officer or employee or state agency, after the state officer or employee or state agency has shown the necessity for such transportation. The director may assign a motor vehicle either for part-time or full-time use. The director may revoke the assignment at any time.

2. The director may cause all state-owned motor vehicles to be inspected periodically. Whenever the inspection reveals that repairs have been improperly made on the motor vehicle or that the operator is not giving the motor vehicle the proper care, the director shall report this fact to the head of the state agency to which the motor vehicle has been assigned, together with recommendation for improvement.

3. *a.* The director shall provide for a record system for the keeping of records of the total number of miles state-owned motor vehicles are driven and the per-mile cost of operation of each motor vehicle. Every state officer or employee shall keep a record book to be furnished by the director in which the officer or employee shall enter all purchases of gasoline, lubricating oil, grease, and other incidental expense in the operation of the motor vehicle assigned to the officer or employee, giving the quantity and price of each purchase, including the cost and nature of all repairs on the motor vehicle. Each operator of a state-owned motor vehicle shall promptly prepare a report at the end of each month on forms furnished by the director and forwarded to the director, giving the information the director may request in the report. Each month, the director shall compile the costs and mileage of state-owned motor vehicles from the reports and keep a cost history for each motor vehicle and the costs shall be reduced to a cost-per-mile basis for each motor vehicle. The director shall call to the attention of an elected official or the head of any state agency to which a motor vehicle has been assigned any evidence of the mishandling or misuse of a state-owned motor vehicle which is called to the director's attention.

*b.* A motor vehicle operated under this subsection shall not operate on gasoline other than ethanol blended gasoline as defined in section 214A.1, unless under emergency circumstances. A state-

issued credit card used to purchase gasoline shall not be valid to purchase gasoline other than ethanol blended gasoline, if commercially available. The motor vehicle shall also be affixed with a brightly visible sticker which notifies the traveling public that the motor vehicle is being operated on ethanol blended gasoline. However, the sticker is not required to be affixed to an unmarked vehicle used for purposes of providing law enforcement or security.

4. *a.* The director shall provide for the purchase of all motor vehicles for all branches of the state government, except the state department of transportation, institutions under the control of the state board of regents, the department for the blind, and any other state agency exempted by law. The director shall purchase new vehicles in accordance with competitive bidding procedures for items or services as provided in this subchapter. The director may purchase used or preowned vehicles at governmental or dealer auctions if the purchase is determined to be in the best interests of the state.

*b.* The director, and any other state agency, which for purposes of this subsection includes but is not limited to community colleges and institutions under the control of the state board of regents, or local governmental subdivisions purchasing new motor vehicles, shall purchase new passenger vehicles and light trucks so that the average fuel efficiency for the fleet of new passenger vehicles and light trucks purchased in that year equals or exceeds the average fuel economy standard for the vehicles' model year as established by the United States secretary of transportation under 15 U.S.C. § 2002. This paragraph does not apply to vehicles purchased for law enforcement purposes or used for off-road maintenance work, or work vehicles used to pull loaded trailers.

*c.* Not later than June 15 of each year, the director shall report compliance with the corporate average fuel economy standards published by the United States secretary of transportation for new motor vehicles, other than motor vehicles purchased by the state department of transportation, institutions under the control of the state board of regents, the department for the blind, and any other state agency exempted from the requirements of this subsection. The report of compliance shall classify the vehicles purchased for the current vehicle model year using the following categories: passenger automobiles, enforcement automobiles, vans, and light trucks. The director shall deliver a copy of the report to the department of natural resources. As used in this paragraph, "corporate average fuel economy" means the corporate average fuel economy as defined in 49 C.F.R. § 533.5.

*d.* The director shall assign motor vehicles available for use to maximize the average passenger miles per gallon of motor fuel consumed. In as-



signing motor vehicles, the director shall consider standards established by the director, which may include but are not limited to the number of passengers traveling to a destination, the fuel economy of and passenger capacity of vehicles available for assignment, and any other relevant information, to assure assignment of the most energy-efficient vehicle or combination of vehicles for a trip from those vehicles available for assignment. The standards shall not apply to special work vehicles and law enforcement vehicles. The standards shall apply to the following agencies:

- (1) State department of transportation.
- (2) Institutions under the control of the state board of regents.
- (3) Department for the blind.
- (4) Any other state agency exempted from obtaining vehicles for use through the department.

*e.* As used in paragraph “d”, “*fuel economy*” means the average number of miles traveled by an automobile per gallon of gasoline consumed as determined by the United States environmental protection agency administrator in accordance with 26 U.S.C. § 4064(c).

5. *a.* Of all new passenger vehicles and light pickup trucks purchased by the director, a minimum of ten percent of all such vehicles and trucks purchased shall be equipped with engines which utilize alternative methods of propulsion including but not limited to any of the following:

- (1) A flexible fuel, which is any of the following:
  - (a) E-85 gasoline as provided in section 214A.2.
  - (b) B-20 biodiesel blended fuel as provided in section 214A.2.
  - (c) A renewable fuel approved by the office of renewable fuels and coproducts pursuant to section 159A.3.
- (2) Compressed or liquefied natural gas.
- (3) Propane gas.
- (4) Solar energy.
- (5) Electricity.

*b.* This subsection does not apply to vehicles and trucks purchased and directly used for law enforcement or purchased and used for off-road maintenance work or to pull loaded trailers.

6. All used motor vehicles turned in to the director shall be disposed of by public auction, and the sales shall be advertised in a newspaper of general circulation one week in advance of sale, and the receipts from the sale shall be deposited in the depreciation fund to the credit of the state agency turning in the vehicle; except that, in the case of a used motor vehicle of special design, the director may, instead of selling it at public auction, authorize the motor vehicle to be traded for another vehicle of similar design. If a vehicle sustains damage and the cost to repair exceeds the wholesale value of the vehicle, the director may dispose

of the motor vehicle by obtaining two or more written salvage bids and the vehicle shall be sold to the highest responsible bidder.

7. The director may authorize the establishment of motor pools consisting of a number of state-owned motor vehicles under the director’s supervision. The director may store the motor vehicles in a public or private garage. If the director establishes a motor pool, any state officer or employee desiring the use of a state-owned motor vehicle on state business shall notify the director of the need for a vehicle within a reasonable time prior to actual use of the motor vehicle. The director may assign a motor vehicle from the motor pool to the state officer or employee. If two or more state officers or employees desire the use of a state-owned motor vehicle for a trip to the same destination for the same length of time, the director may assign one vehicle to make the trip.

8. The director shall require that a sign be placed on each state-owned motor vehicle in a conspicuous place which indicates its ownership by the state. This requirement shall not apply to motor vehicles requested to be exempt by the director or by the commissioner of public safety. All state-owned motor vehicles shall display registration plates bearing the word “official” except motor vehicles requested to be furnished with ordinary plates by the director or by the commissioner of public safety pursuant to section 321.19. The director shall keep an accurate record of the registration plates used on all state-owned motor vehicles.

9. All fuel used in state-owned automobiles shall be purchased at cost from the various installations or garages of the state department of transportation, state board of regents, department of human services, or state motor pools throughout the state, unless the state-owned sources for the purchase of fuel are not reasonably accessible. If the director determines that state-owned sources for the purchase of fuel are not reasonably accessible, the director shall authorize the purchase of fuel from other sources. The director may prescribe a manner, other than the use of the revolving fund, in which the purchase of fuel from state-owned sources is charged to the state agency responsible for the use of the motor vehicle. The director shall prescribe the manner in which oil and other normal motor vehicle maintenance for state-owned motor vehicles may be purchased from private sources, if they cannot be reasonably obtained from a state motor pool. The director may advertise for bids and award contracts in accordance with competitive bidding procedures for items and services as provided in this subchapter for furnishing fuel, oil, grease, and vehicle replacement parts for all state-owned motor vehicles. The director and other state agencies, when advertising for bids for gasoline, shall also seek bids for

ethanol blended gasoline.

2007 Acts, ch 115, §8  
 Marking vehicles generally, §721.8  
 “Official” plates, §321.19, 321.170  
 Subsection 4, paragraph c amended  
 Subsection 5, unnumbered paragraph 1 editorially redesignated as paragraph a  
 Subsection 5, former paragraph a and subparagraphs (1)–(3) editorially redesignated as subparagraph (1) and subparagraph subdivisions (a)–(c) of paragraph a  
 Subsection 5, former paragraphs b–e editorially redesignated as subparagraphs (2)–(5) of paragraph a  
 Subsection 5, former unnumbered paragraph 2 editorially redesignated as paragraph b

### **8A.367 through 8A.370** Reserved.

## PART 7

### CAPITOL PLANNING

#### **8A.371 Commission created.**

The capitol planning commission is created, composed of eleven members as follows:

1. Four members of the general assembly serving as ex officio nonvoting members, two to be appointed by the speaker of the house from the membership of the house, and two to be appointed by the president of the senate, after consultation with the majority leader and the minority leader of the senate, from the membership of the senate.
2. Six residents of the state of Iowa to be appointed by the governor.
3. The director of the department of administrative services or the director’s designee.

2007 Acts, ch 115, §10  
 Section transferred from §18A.1 in Code Supplement 2007 pursuant to directive in 2007 Acts, ch 115, §10

#### **8A.372 Terms of office.**

1. The members of the commission who are appointed by the governor shall be appointed to four-year terms of office and until their successors are appointed, three terms of which shall expire every two years. Vacancies shall be filled by appointment of the governor for the unexpired term of the original appointee.

2. The legislative members of the commission shall be appointed to four-year terms of office, two of which shall expire every two years unless sooner terminated by a commission member ceasing to be a member of the general assembly. Vacancies shall be filled by appointment of the speaker of the house or the president of the senate, after consultation with the majority leader and the minority leader of the senate, as the case may be, for the unexpired term of their predecessors.

3. The term of office of each appointive member of the commission shall begin on the first of May of the odd-numbered year in which the member is appointed.

2007 Acts, ch 115, §11  
 Section transferred from §18A.2 in Code Supplement 2007 pursuant to directive in 2007 Acts, ch 115, §11

#### **8A.373 Duties — report to legislature.**

It shall be the duty of the commission to advise upon the location of statues, fountains and monuments and the placing of any additional buildings on the capitol grounds, the type of architecture and the type of construction of any new buildings to be erected on the state capitol grounds as now encompassed or as subsequently enlarged, and repairs and restoration thereof, and it shall be the duty of the officers, commissions, and councils charged by law with the duty of determining such questions to call upon the commission for such advice.

The commission shall, in cooperation with the director of the department of administrative services, develop and implement within the limits of its appropriation, a five-year modernization program for the capitol complex.

The commission shall annually report to the general assembly its recommendations relating to its duties under this section. The report shall be submitted to the chief clerk of the house and the secretary of the senate during the month of January.

2007 Acts, ch 115, §12  
 Section transferred from §18A.3 in Code Supplement 2007 pursuant to directive in 2007 Acts, ch 115, §12

#### **8A.374 Organization.**

The commission shall organize biennially by election of a chairperson from its membership. The director of the department of administrative services or the designee of the director shall serve as secretary to the commission.

2007 Acts, ch 115, §13  
 Section transferred from §18A.4 in Code Supplement 2007 pursuant to directive in 2007 Acts, ch 115, §13

#### **8A.375 Compensation and expenses.**

The members of the commission shall be reimbursed for their actual and necessary expenses while in attendance at any meeting of the commission held at the seat of government and shall be reimbursed for their expenses for going to and from the seat of government to attend a meeting. Members may also be eligible for compensation as provided in section 7E.6. All expense moneys paid to the nonlegislative commissioners shall be paid from funds appropriated to the commission. Service of the director of the department of administrative services upon this commission is an additional duty conferred by statute. Legislative members of the commission shall receive payment pursuant to section 2.10 and section 2.12.

2007 Acts, ch 115, §14  
 Section transferred from §18A.5 in Code Supplement 2007 pursuant to directive in 2007 Acts, ch 115, §14

#### **8A.376 Capitol complex projects.**

All capital projects on the capitol complex shall be planned, approved, and funded only after considering the guiding principles enunciated in any capitol complex master plan adopted by the commission on or after January 1, 2000. At a mini-

mum, the extent to which the proposed capital project does all of the following shall be considered:

1. Preserves and enhances the dignity, beauty, and architectural integrity of the capitol building, other state office buildings, and the capitol grounds.
2. Protects and enhances the public open spaces on the capitol complex when deemed necessary for public use and enjoyment.
3. Protects the most scenic public views to and from the capitol building.
4. Recognizes the diversity of adjacent neighborhoods and reinforces the connection of the capitol complex to its neighbors and the city of Des Moines.
5. Accommodates pedestrian and motorized traffic that achieves appropriate public accessibility.

This section applies only to projects for which a construction site was not determined prior to May 11, 2000.

2007 Acts, ch 115, §15  
Section transferred from §18A.6 in Code Supplement 2007 pursuant to directive in 2007 Acts, ch 115, §15

#### **8A.377 Capitol — preservation of architectural and historic integrity.**

1. A state agency, branch of government, or any other entity responsible for a construction, remodeling, restoration, maintenance, or other project in, on, or on the grounds surrounding the capitol shall ensure that the project preserves and enhances the dignity, beauty, and architectural and historic integrity of the capitol.

2. A project described in subsection 1 may vary from the architectural or historic integrity of the capitol if such variance is necessary to comply with state or federal laws relating to building accessibility or occupational safety or health, to address life safety issues, or for other compelling reasons. However, the state agency, branch of government, or other entity responsible for a project involving a variance from the architectural or historic integrity shall submit the plans for such project to the capitol planning commission and the capital projects committee of the legislative council for review.

Section transferred from §18A.6A in Code Supplement 2007

#### **8A.378 State capitol view preservation.**

The department of administrative services shall develop a state capitol view preservation plan. The purpose of the plan shall be to ensure that the most scenic views of the state capitol remain unobstructed by the erection of structures, including but not limited to buildings, towers, and monuments.

The plan shall include proposals for height and setback limitations of structures erected within the state capitol view, and shall include appropriate drawings, schematics, and aerial photographs necessary to establish the plan with sufficient

clarity and definition.

The department shall negotiate implementation of the plan with the city of Des Moines with the goal of entering into a memorandum of understanding in relation to the plan. The department shall provide the governor and the capitol planning commission with quarterly reports regarding progress made on the capitol view preservation plan and execution of the memorandum of understanding.

2007 Acts, ch 115, §16  
Section transferred from §18A.7 in Code Supplement 2007 pursuant to directive in 2007 Acts, ch 115, §16

**8A.379 through 8A.400** Reserved.

#### **8A.415 Grievances and discipline resolution.**

1. *Grievances.* An employee, except an employee covered by a collective bargaining agreement which provides otherwise, who has exhausted the available agency steps in the uniform grievance procedure provided for in the department rules may, within seven calendar days following the date a decision was received or should have been received at the second step of the grievance procedure, file the grievance at the third step with the director. The director shall respond within thirty calendar days following receipt of the third step grievance.

If not satisfied, the employee may, within thirty calendar days following the director's response, file an appeal with the public employment relations board. The hearing shall be conducted in accordance with the rules of the public employment relations board and the Iowa administrative procedure Act, chapter 17A. Decisions rendered shall be based upon a standard of substantial compliance with this subchapter and the rules of the department. Decisions by the public employment relations board constitute final agency action.

For purposes of this subsection, "*uniform grievance procedure*" does not include procedures for discipline and discharge.

2. *Discipline resolution.* A merit system employee, except an employee covered by a collective bargaining agreement, who is discharged, suspended, demoted, or otherwise receives a reduction in pay, except during the employee's probationary period, may bypass steps one and two of the grievance procedure and appeal the disciplinary action to the director within seven calendar days following the effective date of the action. The director shall respond within thirty calendar days following receipt of the appeal.

If not satisfied, the employee may, within thirty calendar days following the director's response, file an appeal with the public employment relations board. The employee has the right to a hearing closed to the public, unless a public hearing is requested by the employee. The hearing shall otherwise be conducted in accordance with the rules

of the public employment relations board and the Iowa administrative procedure Act, chapter 17A. If the public employment relations board finds that the action taken by the appointing authority was for political, religious, racial, national origin, sex, age, or other reasons not constituting just cause, the employee may be reinstated without loss of pay or benefits for the elapsed period, or the public employment relations board may provide other appropriate remedies. Decisions by the public employment relations board constitute final agency action.

2007 Acts, ch 22, §3  
Subsection 2, unnumbered paragraph 1 amended

#### **8A.454 Health insurance administration fund.**

1. A separate, special Iowa state health insurance administration fund is created in the state treasury under the control of the department. The fund shall consist of all moneys deposited in the fund from proceeds of a monthly per contract administrative charge assessed and collected by the department. Moneys deposited in the fund shall be expended by the department for health insurance program administration costs. Notwithstanding section 12C.7, subsection 2, interest or earnings on moneys deposited in the fund shall be credited to the fund.

2. A monthly per contract administrative charge shall be assessed by the department on all

health insurance plans administered by the department in which the contract holder has a state employer to pay the charge. The amount of the administrative charge shall be established by the general assembly. The department shall collect the administrative charge from each department utilizing the centralized payroll system and shall deposit the proceeds in the fund. In addition, the state board of regents, all library service areas, the state fair board, the state department of transportation, and each judicial district department of correctional services shall remit the administrative charge on a monthly basis to the department and shall submit a report to the department containing the number and type of health insurance contracts held by each of its employees whose health insurance is administered by the department.

3. The expenditure of moneys from the fund in any fiscal year shall not exceed the amount of the monthly charge established by the general assembly multiplied by the number of health insurance contracts in effect at the beginning of the same fiscal year in which the expenditures shall be made. Any unencumbered or unobligated moneys in the fund at the end of the fiscal year shall not revert but shall be transferred to the health insurance premium reserve fund established pursuant to section 509A.5.

4. This section is repealed July 1, 2009.

2007 Acts, ch 115, §9, 18  
Subsection 4 amended

## CHAPTER 8D

### IOWA COMMUNICATIONS NETWORK

#### **8D.3 Iowa telecommunications and technology commission — members — duties.**

1. *Commission established.* A telecommunications and technology commission is established with the sole authority to supervise the management, development, and operation of the network and ensure that all components of the network are technically compatible. The management, development, and operation of the network shall not be subject to the jurisdiction or control of any other state agency. However, the commission is subject to the general operations practices and procedures which are generally applicable to other state agencies.

The commission shall ensure that the network operates in an efficient and responsible manner consistent with the provisions of this chapter for the purpose of providing the best economic service attainable to the network users consistent with the state's financial capacity. The commission shall ensure that educational users and the use, design, and implementation for educational applications be given the highest priority concerning

use of the network. The commission shall provide for the centralized, coordinated use and control of the network.

2. *Members.* The commission is composed of five members appointed by the governor and subject to confirmation by the senate. Members of the commission shall not serve in any manner or be employed by an authorized user of the network or by an entity seeking to do or doing business with the network. The governor shall appoint a member as the chairperson of the commission from the five members appointed by the governor, subject to confirmation by the senate. Members of the commission shall serve six-year staggered terms as designated by the governor and appointments to the commission are subject to the requirements of sections 69.16, 69.16A, and 69.19. Vacancies shall be filled by the governor for the duration of the unexpired term. The salary of the members of the commission shall be twelve thousand dollars per year, except that the salary of the chairperson shall be seventeen thousand dollars per year. Members of the commission shall also be reim-

bursed for all actual and necessary expenses incurred in the performance of duties as members. Meetings of the commission shall be held at the call of the chairperson of the commission. In addition to the members appointed by the governor, the auditor of state or the auditor's designee shall serve as a nonvoting, ex officio member of the commission.

The benefits and salary paid to the members of the commission shall be adjusted annually equal to the average of the annual pay adjustments, expense reimbursements, and related benefits provided under collective bargaining agreements negotiated pursuant to chapter 20.

3. *Duties.* The commission shall do all of the following:

*a.* Enter into agreements pursuant to chapter 28E as necessary and appropriate for the purposes of the commission. However, the commission shall not enter into an agreement with an unauthorized user or any other person pursuant to chapter 28E for the purpose of providing such user or person access to the network.

*b.* Adopt rules pursuant to chapter 17A as deemed appropriate and necessary, and directly related to the implementation and administration of the duties of the commission. The commission, in consultation with the department of administrative services, shall also adopt and provide for standard communications procedures and policies relating to the use of the network which recognize, at a minimum, the need for reliable communications services.

*c.* Establish an appeal process for review by the commission of a scheduling conflict decision, including a scheduling conflict involving an educational user, or the establishment of a fee associated with the network upon the request of a person affected by such decision or fee. A determination made by the commission pursuant to this paragraph shall be final.

*d.* Review and approve for adoption, rules as proposed and submitted by an authorized user group necessary for the authorized user group's access and use of the network. The commission may refuse to approve and adopt a proposed rule, and upon such refusal, shall return the proposed rule to the respective authorized user group proposing the rule with a statement indicating the commission's reason for refusing to approve and adopt the rule.

*e.* (1) Develop and issue for response all requests for proposals for any construction, installation, repair, maintenance, or equipment and parts necessary for the network. In preparing the request for proposals, the commission shall do all of the following:

(a) Review existing requests for proposals related to the network.

(b) Consider and evaluate all competing technologies which could be used in any construction, installation, repair, or maintenance project.

(c) Allow flexibility for proposals to be submitted in response to a request for proposals issued by the commission such that any qualified provider may submit a bid on a site-by-site basis, or on a merged area or defined geographic area basis, or both, and by permitting proposals to be submitted for use of competing or alternative technologies in each defined area.

(d) Ensure that rural communities have access to comparable services to the services provided in urban areas resulting from any plans to construct, install, repair, or maintain any part of the network.

(2) In determining which proposal to recommend to the general assembly to accept, consider what is in the long-term best interests of the citizens of the state and the network, and utilize, if possible, the provision of services with existing service providers consistent with those best interests. In determining what is in the long-term best interests of the citizens of the state and the network, the commission, at a minimum, shall consider the cost to taxpayers of the state.

(3) Deliver a written report and all proposals submitted in response to the request for proposals for Part III to the general assembly no later than January 1, 1995. The commission shall not enter into any agreement related to such proposals without prior authorization by a constitutional majority of each house of the general assembly and approval by the governor.

*f.* Include in the commission's annual report related to the network the actual income and expenses for the network for the preceding fiscal year and estimates for income and expenses for the network for the two-year fiscal period that includes the fiscal year during which the report is submitted. The report shall include the amount of any general fund appropriations to be requested, any recommendations of the commission related to changes in the system, and other items as deemed appropriate by the commission. The report shall also include a list of contracts in excess of one million dollars entered into by the commission during the preceding fiscal year, including any contract entered into pursuant to section 8D.11 or 8D.13 or any other authority of the commission.

*g.* Review existing maintenance contracts and past contracts to determine vendor capability to perform the obligations under such contracts. The commission shall report to the general assembly prior to January 1 of each year as to the performance of all vendors under each contract and shall make recommendations concerning continued funding for the contracts.

*h.* Pursue available opportunities to cooperate and coordinate with the federal government for the use and potential expansion of the network and for the financing of any such expansion.

*i.* Evaluate existing and projected rates for use of the system and ensure that rates are sufficient

to pay for the operation of the system excluding the cost of construction and lease costs for Parts I, II, and III. The commission shall establish all hourly rates to be charged to all authorized users for the use of the network and shall consider all costs of the network in establishing the rates. A fee established by the commission to be charged to a hospital licensed pursuant to chapter 135B, a physician clinic, or the federal government shall be at an appropriate rate so that, at a minimum, there is no state subsidy related to the costs of the connection or use of the network related to such user.

*j.* Make recommendations to the general assembly, as deemed appropriate by the commission, concerning the operation of the network.

*k.* Provide necessary telecommunications cabling to provide state communications.

2007 Acts, ch 116, §1  
Subsection 3, paragraph f amended

#### **8D.11 Powers — facilities — leases.**

1. *a.* The commission may purchase, lease, and improve property, equipment, and services for telecommunications for public and private agencies and may dispose of property and equipment when not necessary for its purposes. The commission may enter into a contract for the purchase, lease, or improvement of property, equipment, or services for telecommunications pursuant to this subsection in an amount not greater than the contract limitation amount without prior authorization by a constitutional majority of each house of the general assembly, approval by the legislative council if the general assembly is not in session, or the approval of the executive council as provided pursuant to paragraph “*b*”. A contract entered into under this subsection for an amount exceeding the contract limitation amount shall require prior authorization or approval by the general assembly, the legislative council, or the executive council as provided in this subsection. The commission shall not issue any bonding or other long-term financing arrangements as defined in section 12.30, subsection 1, paragraph “*b*”. Real or personal property to be purchased by the commission through the use of a financing agreement shall be done in accordance with the provisions of section 12.28, provided, however, that the commission may purchase property, equipment, or services for telecommunications pursuant to a financing agreement in an amount not greater than the contract limitation amount without prior authorization by a constitutional majority of each house of the general assembly, approval by the legislative council if the general assembly is not in session, or the approval of the executive council as provided pursuant to paragraph “*b*”. A contract entered into under this subsection for an amount exceeding the contract limitation amount shall require prior authorization or approval by the general assembly, the legislative council, or the executive

council as provided in this subsection.

*b.* Approval by the executive council as provided under paragraph “*a*” shall only be permitted if the contract for which the commission is seeking approval is necessary as the result of circumstances constituting a natural disaster or a threat to homeland security.

*c.* For purposes of this subsection, “*contract limitation amount*” means two million dollars. However, beginning July 1, 2008, and on each succeeding July 1, the director shall adjust the contract limitation amount to be applicable for the twelve-month period commencing on September 1 of the year in which the adjustment is made. The new contract limitation amount shall be published annually as a notice in the Iowa administrative bulletin prior to September 1. The adjusted contract limitation amount shall be calculated by applying the percentage change in the consumer price index for all urban consumers for the most recent available twelve-month period published in the federal register by the United States department of labor, bureau of labor statistics, to the existing contract limitation amount as an increase or decrease, rounded to the nearest dollar. The calculation and publication of the contract limitation amount by the director are exempt from the provisions of chapter 17A.

2. The commission also shall not provide or resell communications services to entities other than public and private agencies. The public or private agency shall not provide communication services of the network to another entity unless otherwise authorized pursuant to this chapter. The commission may arrange for joint use of available services and facilities, and may enter into leases and agreements with private and public agencies with respect to the Iowa communications network, and public agencies are authorized to enter into leases and agreements with respect to the network for their use and operation. Rentals and other amounts due under the agreements or leases entered into pursuant to this section by a state agency are payable from funds annually appropriated by the general assembly or from other funds legally available. Other public agencies may pay the rental costs and other amounts due under an agreement or lease from their annual budgeted funds or other funds legally available or to become available.

3. This section comprises a complete and independent authorization and procedure for a public agency, with the approval of the commission, to enter into a lease or agreement and this section is not a qualification of any other powers which a public agency may possess and the authorizations and powers granted under this section are not subject to the terms, requirements, or limitations of any other provisions of law, except that the commission must comply with the provisions of section 12.28 when entering into financing agreements for the purchase of real or personal property. All

moneys received by the commission from agreements and leases entered into pursuant to this section with private and public agencies shall be deposited in the Iowa communications network fund.

4. A political subdivision receiving communications services from the state as of April 1, 1986, may continue to do so but communications services shall not be provided or resold to additional

political subdivisions other than a school corporation, a city library, a library service area as provided in chapter 256, and a county library as provided in chapter 336. The rates charged to the political subdivision shall be the same as the rates charged to state agencies.

2007 Acts, ch 116, §2  
Subsection 1 amended

## CHAPTER 8F

### GOVERNMENT ACCOUNTABILITY — SERVICE CONTRACTS

#### 8F.2 Definitions.

As used in this chapter, unless the context otherwise requires:

1. “Agency” means a unit of state government, which is an authority, board, commission, committee, council, department, examining or licensing board, or independent agency as defined in section 7E.4, including but not limited to each principal central department enumerated in section 7E.5. However, “agency” does not mean the Iowa public employees’ retirement system created under chapter 97B, the public broadcasting division of the department of education created under section 256.81, the statewide fire and police retirement system created under chapter 411, or an agricultural commodity promotion board subject to a producer referendum.

2. “Compensation” means payment of, or agreement to pay, any money, thing of value, or financial benefit conferred in return for labor or services rendered by an officer, employee, or other person plus the value of benefits including but not limited to casualty, disability, life, or health insurance, other health or wellness benefits, vacations, holidays, and sick leave, severance payments, retirement benefits, and deferred compensation.

3. “Intergovernmental entity” means any separate organization established in accordance with chapter 28E or established by any other agreement between an agency and any other governmental entity, whether federal, state, or local, and any department, division, unit, or subdivision thereof. “Intergovernmental entity” does not include an organization established or agreement made in accordance with chapter 28E between state agencies.

4. “Oversight agency” means an agency that contracts with and disburses state or federal moneys to a recipient entity.

5. “Private agency” means an individual or any form of business organization, including a non-profit organization, authorized under the laws of this state or any other state or under the laws of any foreign jurisdiction.

6. “Recipient entity” means an intergovern-

mental entity or a private agency that enters into a service contract with an oversight agency to provide services which will be paid for with local governmental, state, or federal moneys.

7. “Service” or “services” means work performed for an oversight agency or for its client.

8. a. “Service contract” means a contract for a service or services when the predominant factor, thrust, and purpose of the contract as reasonably stated is for the provision of services. When there is a contract for goods and services and the predominant factor, thrust, and purpose of the contract as reasonably stated is for the provision or rendering of services with goods incidentally involved, a service contract exists. “Service contract” includes grants when the predominant factor, thrust, and purpose of the contract formalizing the grant is for the provision of services. For purposes of this chapter, a service contract only exists when an individual service contract or a series of service contracts entered into between an oversight agency and a recipient entity exceeds five hundred thousand dollars or when the grant or contract together with other grants or contracts awarded to the recipient entity by the oversight agency during the oversight agency’s fiscal year exceeds five hundred thousand dollars in the aggregate.

b. “Service contract” does not mean any of the following:

(1) A contract that involves services related to transportation or the construction, reconstruction, improvement, repair, or maintenance of the transportation system.

(2) A contract that is subject to competitive bidding for the construction, reconstruction, improvement, or repair of a public building or public improvement.

(3) A contract concerning an entity that has contracted with the state and is licensed and regulated by the insurance division of the department of commerce.

(4) A contract with a federally insured financial institution that is subject to mandatory periodic examinations by a state or federal regulator.

(5) Any allocation of state or federal moneys by the department of education to subrecipients on a formula or noncompetitive basis.

(6) A contract for vendor services.

(7) A contract for a court-appointed attorney.

(8) A contract for services provided from resources made available under Title XVIII, XIX, or XXI of the federal Social Security Act.

(9) A contract with outside counsel or special counsel executed by the executive council pursuant to section 13.3 or 13.7.

(10) A contract concerning the public safety peace officers' retirement system created under chapter 97A, the judicial retirement system governed by chapter 602, article 9, or the deferred compensation plan established by the executive council pursuant to section 509A.12.

(11) A contract for services provided for the operation, construction, or maintenance of a public or city utility, combined public or city utility, or a city enterprise as defined by section 384.24.

(12) A contract for dual party relay service required by section 477C.3 or for the equipment distribution program established under the authority of section 477C.4.

(13) A contract for services provided by a person subject to regulation under Title XIII of the Code.

9. "Vendor services" means services or goods provided by a vendor that are required for the conduct of a state or federal program for an organization's own use or for the use of beneficiaries of the state or federal program and which are ancillary to the operation of the state or federal program under a service contract and not otherwise subject to compliance requirements of the state or federal program. For purposes of this subsection, "vendor" means a dealer, distributor, merchant, or other seller which provides goods and services within normal business operations, provides similar goods or services to many different purchasers, and operates in a competitive environment.

2007 Acts, ch 10, §5

Section applies to service contracts entered into or renewed by an oversight agency on or after October 1, 2006; 2006 Acts, ch 1153, §9

Subsection 1 amended

### 8F.3 Contractual requirements.

1. As a condition of entering into a service contract with an oversight agency, a recipient entity shall certify that the recipient has the following information available for inspection by the oversight agency and the legislative services agency:

a. Information documenting the legal status of the recipient entity, such as agreements establishing the entity pursuant to chapter 28E or other intergovernmental agreements, articles of incorporation, bylaws, or any other information related to the establishment or status of the entity. In addition, the information shall indicate whether the

recipient entity is exempt from federal income taxes under section 501(c), of the Internal Revenue Code.

b. Information regarding the training and education received by the members of the governing body of the recipient entity relating to the duties and legal responsibilities of the governing body.

c. Information regarding the procedures used by the governing body of the recipient entity to do all of the following:

(1) Review the performance of management employees and establish the compensation of those employees.

(2) Review the recipient entity's internal controls relating to accounting processes and procedures.

(3) Review the recipient entity's compliance with the laws, rules, regulations, and contractual agreements applicable to its operations.

(4) Information regarding adopted ethical and professional standards of operation for the governing body and employees of the recipient entity and information concerning the implementation of these standards and the training of employees and members of the governing body on the standards. The standards shall include but not be limited to a nepotism policy which shall provide, at a minimum, for disclosure of familial relationships among employees and between employees and members of the governing body, and policies regarding conflicts of interest, standards of responsibility and obedience to law, fairness, and honesty.

d. Information regarding any policies adopted by the governing body of the recipient entity that prohibit taking adverse employment action against employees of the recipient entity who disclose information about a service contract to the oversight agency, the auditor of state, the office of the attorney general, or the office of citizens' aide and that state whether those policies are substantially similar to the protection provided to state employees under section 70A.28. The information provided shall state whether employees of the recipient entity are informed on a regular basis of their rights to disclose information to the oversight agency, the office of citizens' aide, the auditor of state, or the office of the attorney general and the telephone numbers of those organizations.

2. The certification required by this section shall be signed by an officer and director of the recipient entity, two directors of the recipient entity, or the sole proprietor of the recipient entity, whichever is applicable, and shall state that the recipient entity is in full compliance with all laws, rules, regulations, and contractual agreements applicable to the recipient entity and the requirements of this chapter.

3. Prior to entering into a service contract with a recipient entity, the oversight agency shall de-



termine whether the recipient entity can reasonably be expected to comply with the requirements of the service contract. If the oversight entity is unable to determine whether the recipient entity can reasonably be expected to comply with the requirements of the service contract, the oversight entity shall request such information from the recipient entity as described in subsection 1 to make a determination. If the oversight agency deter-

mines from the information provided that the recipient entity cannot reasonably be expected to comply with the requirements of the service contract, the oversight agency shall not enter into the service contract.

2007 Acts, ch 22, §113, 116; 2007 Acts, ch 126, §2  
Section applies to service contracts entered into or renewed by an oversight agency on or after October 1, 2006; 2006 Acts, ch 1153, §9; 2007 Acts, ch 22, §116

Subsection 1, paragraph d amended

## CHAPTER 10A

### DEPARTMENT OF INSPECTIONS AND APPEALS

#### 10A.402 Responsibilities.

The administrator shall coordinate the division's conduct of various audits and investigations as provided by law including but not limited to the following:

1. Investigations relative to the practice of regulated professions and occupations, except those within the jurisdiction of the board of medicine, the board of pharmacy, the dental board, and the board of nursing.
2. Audits relative to the administration of hospitals and health care facilities.
3. Audits relative to administration and disbursement of funding under the state supplementary assistance program and the medical assistance program.
4. Investigations and collections relative to the liquidation of overpayment debts owed to the department of human services. Collection meth-

ods include but are not limited to small claims filings, debt setoff, distress warrants, and repayment agreements, and are subject to approval by the department of human services.

5. Investigations relative to the operations of the department of elder affairs.

6. Investigations relative to the administration of the state supplementary assistance program, the state medical assistance program, the food stamp program, the family investment program, and any other state or federal benefit assistance program.

7. Investigations relative to the internal affairs and operations of agencies and departments within the executive branch of state government, except for institutions governed by the state board of regents.

2007 Acts, ch 10, §6; 2007 Acts, ch 218, §191  
Subsection 1 amended

## CHAPTER 10B

### AGRICULTURAL LANDHOLDING REPORTING

#### 10B.7 Lessees conducting research or experiments — reports.

Lessees of agricultural land under section 9H.4, subsection 2, paragraph "c", for research or experimental purposes, shall file a biennial report with the secretary of state on or before March 31 of each odd-numbered year on forms adopted pursuant to chapter 17A and supplied by the secretary of state. However, a lessee required to file a biennial report pursuant to chapter 490, 490A, 496C, 497, 498, 499, 501, 501A, or 504 shall file the report required by this section in the same year as required by that chapter. The lessee may file the report required by this section together with the biennial report required to be filed by one of the other chapters referred to in this paragraph. The report shall con-

tain the following information for the reporting period:

1. The name and principal place of business of the lessee.
2. The location of the agricultural land used for research or experimental purposes.
3. The date that the lease became effective.
4. The name and address of each person purchasing breeding stock produced on the agricultural land.
5. The number or volume of breeding stock purchased by each person purchasing breeding stock produced on the agricultural land.

2007 Acts, ch 126, §3  
Unnumbered paragraph 1 amended

## CHAPTER 11

### AUDITOR OF STATE

#### 11.2 Annual settlements.

1. The auditor of state shall annually, and more often if deemed necessary, make a full settlement between the state and all state officers and departments and all persons receiving or expending state funds, and shall annually make a complete audit of the books and accounts of every department of the state.

Provided, that the accounts, records, and documents of the treasurer of state shall be audited daily.

Provided further, that a preliminary audit of the educational institutions and the state fair board shall be made periodically, at least quarterly, to check the monthly reports submitted to the director of the department of administrative services as required by section 8A.502, subsection 9, and that a final audit of such state agencies shall be made at the close of each fiscal year.

2. In conjunction with the audit of the state board of regents required under this section, the auditor of state, in accordance with generally accepted auditing standards, shall perform audit testing on the state board of regents' investments. The auditor shall report to the state board of regents concerning compliance with state law and state board of regents' investment policies. The state board of regents is responsible for remedying any reported noncompliance with its own policy or practices.

The state board of regents shall make available to the auditor of state and treasurer of state the most recent annual report of any investment entity or investment professional employed by an institution governed by the board.

All contracts or agreements with an investment entity or investment professional employed by an institution governed by the state board of regents shall require the investment entity or investment professional employed by an institution governed by the state board of regents to notify in writing the state board of regents within thirty days of receipt of all communication from an independent auditor or the auditor of state or any regulatory authority of the existence of a material weakness in internal control structure, or regulatory orders or sanctions against the investment entity or investment professional, with regard to the type of services being performed under the contracts or agreements. This provision shall not be limited or avoided by another contractual provision.

The audit under this section shall not be certified until the most recent annual reports of any investment entity or investment professional employed by an institution governed by the state

board of regents are reviewed by the auditor of state.

The review of the most recent annual report to shareholders of an open-end management investment company or an unincorporated investment company or investment trust registered with the federal securities and exchange commission under the federal Investment Company Act of 1940, 15 U.S.C. § 80(a), pursuant to 17 C.F.R. § 270.30d-1 or the review, by the person performing the audit, of the most recent annual report to shareholders, call reports, or the findings pursuant to a regular examination under state or federal law, to the extent the findings are not confidential, of a bank, savings and loan association, or credit union shall satisfy the review requirements of this paragraph.

As used in this subsection, "*investment entity*" and "*investment professional*" exclude a bank, savings and loan association, or credit union when acting as an approved depository pursuant to chapter 12C.

2007 Acts, ch 126, §4

Subsection 1, unnumbered paragraph 2 amended

#### 11.36 Review of entities receiving public moneys.

1. The auditor of state may, at the request of a department, review, during normal business hours upon reasonable notice of at least twenty-four hours, the audit working papers prepared by a certified public accountant covering the receipt and expenditure of state or federal funds provided by the department to any other entity to determine if the receipt and expenditure of those funds by the entity is consistent with the laws, rules, regulations, and contractual agreements governing those funds. Upon completion of the review, the auditor of state shall report whether, in the auditor of state's judgment, the auditor of state believes the certified public accountant's working papers adequately demonstrate that the laws, rules, regulations, and contractual agreements governing those funds have been substantially complied with. If the auditor of state does not believe the certified public accountant's working papers adequately demonstrate that the laws, rules, regulations, and contractual agreements have been substantially complied with or believes a complete or partial reaudit is necessary based on the provisions of section 11.6, subsection 4, paragraph "a" or "b", the auditor of state shall notify the certified public accountant and the department of the actions the auditor of state believes are necessary to determine whether the entity is in substantial compliance with those laws, rules, regulations,

and contractual agreements. The auditor of state may assist departments with actions to determine whether the entity is in substantial compliance. Departments requesting the review shall reimburse the auditor of state for the cost of the review and any subsequent assistance provided by the auditor of state.

2. The auditor of state may, at the request of a department, review the records covering the receipt and expenditure of state or federal funds provided by the department to any other entity which has not been audited by a certified public accountant to determine if the receipt and expenditure of those funds by the entity is consistent with the laws, rules, regulations, and contractual agreements governing those funds. Upon completion of the review, the auditor of state shall report whether, in the auditor of state's judgment, the auditor of state believes the entity adequately demonstrated that the laws, rules, regulations, and contractual agreements governing the funds have been substantially complied with. If the auditor of state does not believe the entity adequately demonstrated that the laws, rules, regulations, and contractual agreements have been substantially complied with, the auditor of state shall notify the department of the actions the auditor of state believes are necessary to determine whether the entity is in substantial compliance with those laws, rules, regulations, and contractual agreements. The auditor of state may assist a department with actions to determine whether the entity is in substantial compliance. Departments requesting the review shall reimburse the auditor of state for the cost of the review and any subsequent assistance provided by the auditor of state.

3. When, in the auditor of state's judgment, the auditor of state finds that sufficient information is available to demonstrate that an entity receiving state or federal funds from a department may not have substantially complied with the laws, rules, regulations, and contractual agreements governing those funds, the auditor of state shall notify the department providing those funds to the entity of the auditor of state's finding. The

department shall cooperate with the auditor of state to establish actions to be taken to determine whether substantial compliance with those laws, rules, regulations, and contractual agreements has been achieved by the entity receiving the state or federal funds from the department. Departments providing the state or federal funds shall reimburse the auditor of state for any actions taken by the auditor of state to determine whether the entity has substantially complied with the laws, rules, regulations, and contractual agreements governing the funds provided by the department for costs expended after the date the auditor of state notifies the department of an issue involving substantial compliance pursuant to the requirements of this subsection.

2007 Acts, ch 22, §4  
See also §216A.98  
Section amended

**11.42 through 11.45** Reserved.

#### REVIEW OF TARGETED SMALL BUSINESS PROCUREMENT ACTIVITIES

##### **11.46 Targeted small business.**

After the conclusion of each fiscal year, the auditor of state shall annually conduct a review of whether state agencies are meeting their goal for procurement activities conducted pursuant to sections 73.15 through 73.21, and compliance with the forty-eight hour notice provision in section 73.16, subsection 2. By December 31 of each year, the auditor of state shall file a written report with the governor and the general assembly which shall include the findings of the review. The auditor of state may charge a fee to cover the costs of conducting activities under this section. The first report filed pursuant to this section shall be for the fiscal year beginning July 1, 2007. However, the auditor of state shall file a report pursuant to this section by March 1, 2008, for the time period beginning July 1, 2007, and ending September 30, 2007.

2007 Acts, ch 207, §2, 18  
NEW section

## CHAPTER 12

### TREASURER OF STATE

#### **12.8 Investment or deposit of surplus — appropriation — investment income — lending securities.**

The treasurer of state shall invest or deposit, subject to chapter 12F and as provided by law, any of the public funds not currently needed for operating expenses and shall do so upon receipt of monthly notice from the director of the department of administrative services of the amount not

so needed. In the event of loss on redemption or sale of securities invested as prescribed by law, and if the transaction is reported to the executive council, neither the treasurer nor director of the department of administrative services is personally liable but the loss shall be charged against the funds which would have received the profits or interest of the investment and there is appropriated from the funds the amount so required.

Investment income may be used to maintain compensating balances, pay transaction costs for investments made by the treasurer of state, and pay administrative and related overhead costs incurred by the treasurer of state in the management of money. The treasurer of state shall coordinate with the affected departments to determine how compensating balances, transaction costs, or money management and related costs will be established. All charges against a retirement system must be documented and notification of the charges shall be made to the appropriate administration of the retirement system affected.

The treasurer of state, with the approval of the investment board of the Iowa public employees' retirement system, may conduct a program of lending securities in the Iowa public employees' retirement system portfolio. When securities are loaned as provided by this paragraph, the treasurer shall act in the manner provided for investment of moneys in the Iowa public employees' retirement fund under section 97B.7A. The treasurer of state shall report at least annually to the investment board of the Iowa public employees' retirement system on the program and shall provide additional information on the program upon the request of the investment board or the employees of the Iowa public employees' retirement system.

2007 Acts, ch 39, §8  
Investment or deposit, §12B.10  
Unnumbered paragraph 1 amended

#### 12.61 State-sponsored credit card.

1. For purposes of this section, unless the context otherwise requires:

*a.* "Financial institution" means a state bank as defined in section 524.103, subsection 39, a federally chartered state bank having its principal office within this state, a federally chartered credit union having its principal office within this state, a federally chartered savings and loan association having its principal office within the state, a credit union organized under chapter 533, an association incorporated or authorized to do business under chapter 534, or a trust company organized or incorporated under the laws of this state.

*b.* "Financial institution credit card" means a credit card that entitles the holder to make open-account purchases up to an approved amount and is issued through the agency of a financial institution.

*c.* "Sponsoring entity" means an entity that allows its name or logo to be used on a particular financial institution credit card in exchange for a fee from the credit card issuer.

2. The treasurer is authorized to participate in a financial institution credit card program for the benefit of the state. Within six months of May 27, 1989, the treasurer shall contact each financial institution to determine if:

*a.* The financial institution or its Iowa holding company or Iowa affiliate currently administers a

credit card program.

*b.* The credit card program provides a fee or commission on retail sales to the sponsoring entity for the issuance and use of the credit card.

*c.* The credit card program would accept the state as a sponsoring entity.

3. If the treasurer determines that the state may be a sponsoring entity for a financial institution credit card, the treasurer shall negotiate the most favorable rate for the state's fee by a credit card issuer.

*a.* The state shall not offer a more favorable rate to any other credit card issuer.

*b.* The rate must be expressed as a percentage of the gross sales from the use of the credit card.

*c.* The proceeds of the fee shall be deposited in the Iowa resources enhancement and protection fund created under section 455A.18.

*d.* The treasurer shall recommend a logo or design for the state-sponsored credit card indicating the use for which the revenues will be used.

4. In selecting a credit card issuer, the treasurer shall consider the issuer's record of investments in the state, shall take into consideration credit card features which will enhance the promotion of the state-sponsored credit card including, but not limited to, favorable interest rates, annual fees, and other fees for using the card, and shall require that the card be available to any person who qualifies for a credit card.

5. Upon entering into an agreement with the financial institution, the treasurer shall notify all state agencies then possessing a credit card to obtain the new state-sponsored credit card.

Section not amended; internal reference change applied  
Subsection 2, former unnumbered paragraph 2 editorially divided and redesignated as subsection 3, unnumbered paragraph 1 and paragraphs a - d

Subsection 2, former unnumbered paragraph 3 editorially divided and numbered as subsections 4 and 5

#### 12.76 Limitations.

Bonds or notes issued pursuant to section 12.71 are not debts of the state, nor of any political subdivision of the state, and do not constitute a pledge of the faith and credit of the state or a charge against the general credit or general fund of the state. The issuance of any bonds or notes pursuant to section 12.71 by the treasurer of state does not directly, indirectly, or contingently obligate the state or a political subdivision of the state to apply moneys from, or to levy or pledge any form of taxation whatever to, the payment of the bonds or notes. Bonds and notes issued under section 12.71 are payable solely and only from the sources and special fund provided in section 12.72.

2007 Acts, ch 22, §5  
Section amended

#### 12.91 Utilities board and consumer advocate building project — bond issue.

1. For purposes of this section:

*a.* "Bonds" means bonds, notes, or other evidences of indebtedness issued under this section.

b. “Chargeable expenses” means expenses charged by the utilities board and the consumer advocate division of the department of justice under section 476.10.

c. “Chargeable expenses fund” means the fund created in the state treasury under this section.

d. “Project” means a building and related improvements and furnishings authorized under section 476.10B.

2. The treasurer of state may issue bonds and do all things necessary in order to finance the costs of the project. The treasurer of state shall have all of the powers which are necessary to issue and secure bonds to provide the financing for the project. The treasurer of state may issue bonds in principal amounts which, in the opinion of the treasurer, are necessary to provide sufficient funds for the costs of the project, the payment of interest on the bonds, the establishment of reserves to secure the bonds, the costs of issuance of the bonds, other expenditures of the treasurer of state incident to and necessary or convenient to carry out the bond issue, and all other expenditures of the utilities board and the department of administrative services in connection with the construction of the project. The bonds are investment securities and negotiable instruments within the meaning of and for purposes of the Iowa uniform commercial code, chapter 554.

3. Bonds issued under this section are payable solely and only out of the moneys, assets, or revenues of the chargeable expenses fund and any bond reserve funds established pursuant to this section, all of which may be held by the treasurer of state or deposited with trustees or depositories in accordance with bond or security documents and pledged by the treasurer of state to the payment thereof. Bonds issued under this section shall contain a statement that the bonds do not constitute an indebtedness of the state. The treasurer of state shall not pledge the credit or taxing power of this state or any political subdivision of this state or make bonds issued pursuant to this section payable out of any moneys except those in the chargeable expenses fund and any bond reserve funds established pursuant to this section.

4. The proceeds of bonds issued by the treasurer of state and not required for immediate disbursement may be deposited with a trustee or depository as provided in the bond documents and invested or reinvested in any investment as directed by the treasurer of state and specified in the trust indenture, resolution, or other instrument pursuant to which the bonds are issued without regard to any limitation otherwise provided by law.

5. The bonds shall be:

a. In a form, issued in denominations, executed in a manner, and payable over terms and with rights of redemption, and be subject to such other

terms and conditions as prescribed in the trust indenture, resolution, or other instrument authorizing their issuance.

b. Negotiable instruments under the laws of the state and may be sold at prices, at public or private sale, and in a manner, as prescribed by the treasurer of state. Chapters 73A, 74, 74A, and 75 do not apply to the sale or issuance of the bonds.

c. Subject to the terms, conditions, and covenants providing for the payment of the principal, redemption premiums, if any, interest, and other terms, conditions, covenants, and protective provisions safeguarding payment, not inconsistent with this section and as determined by the trust indenture, resolution, or other instrument authorizing their issuance.

6. The bonds are securities in which public officers and bodies of this state; political subdivisions of this state; insurance companies and associations and other persons carrying on an insurance business; banks, trust companies, savings associations, savings and loan associations, and investment companies; administrators, guardians, executors, trustees, and other fiduciaries; and other persons authorized to invest in bonds or other obligations of the state may properly and legally invest funds, including capital, in their control or belonging to them.

7. Bonds must be authorized by a trust indenture, resolution, or other instrument of the treasurer of state.

8. Neither the resolution, trust agreement, nor any other instrument by which a pledge is created needs to be recorded or filed under the Iowa uniform commercial code, chapter 554, to be valid, binding, or effective.

9. Bonds issued under the provisions of this section are declared to be issued for a general public and governmental purpose and all bonds issued under this section shall be exempt from taxation by the state of Iowa and the interest on the bonds shall be exempt from the state income tax and the state inheritance and estate tax.

10. Subject to the terms of any bond documents, moneys in the chargeable expenses fund may be expended for administration expenses of the treasurer of state in connection with the bonds.

11. The treasurer of state may issue bonds for the purpose of refunding any bonds issued pursuant to this section then outstanding, including the payment of any redemption premiums thereon and any interest accrued or to accrue to the date of redemption of the outstanding bonds. Until the proceeds of bonds issued for the purpose of refunding outstanding bonds are applied to the purchase or retirement of outstanding bonds or the redemption of outstanding bonds, the proceeds may be placed in escrow and be invested and reinvested in accordance with the provisions of this section. The

interest, income, and profits earned or realized on an investment may also be applied to the payment of the outstanding bonds to be refunded by purchase, retirement, or redemption. After the terms of the escrow have been fully satisfied and carried out, any balance of proceeds and interest earned or realized on the investments may be returned to the treasurer of state for deposit in the chargeable expenses fund unless all bonds issued under the provisions of this section have been retired, in which case the proceeds shall be deposited in the general fund of the state. All refunding bonds shall be issued and secured and subject to the provisions of this chapter in the same manner and to the same extent as other bonds issued pursuant to this section.

12. A chargeable expenses fund is created and established as a separate and distinct fund in the state treasury. The moneys in the fund are appropriated for payment of the principal of, premium, and interest on any bonds issued under this section. Moneys in the fund shall not be subject to appropriation for any other purpose by the general assembly, but shall be used only for the purposes of the chargeable expenses fund. The treasurer of state shall act as custodian of the fund and disburse moneys contained in the fund for payment of the principal of, premium, and interest on any bonds issued under this section. Notwithstanding section 476.10, there shall in each fiscal year be deposited in the chargeable expenses fund from amounts collected by the utilities board as chargeable expenses an amount equal to the principal of, premium, if any, and interest on any bonds issued under this section to become due, whether at maturity, by call for optional redemption or by sinking fund redemption, in such fiscal year. The treasurer of state is authorized to pledge any amounts in the chargeable expenses fund as security for the payment of the principal of, premium, and interest on any bonds issued under this section. The treasurer of state may provide in the trust indenture, resolution, or other instrument authorizing the issuance of bonds for the transfer to the general fund of the state of any amounts on deposit in the chargeable expenses fund that are not necessary for the payment of the principal of, premium, and interest on any bonds issued under this section.

13. Moneys in the chargeable expenses fund are not subject to section 8.33. Notwithstanding section 12C.7, subsection 2, interest or earnings on moneys in the fund shall be credited to the fund.

14. *a.* The treasurer of state may create and establish one or more special funds, to be known as “*bond reserve funds*”, to secure one or more issues of bonds issued pursuant to this section. The treasurer of state shall pay into each bond reserve fund any moneys appropriated and made available by the state or the treasurer of state for the purpose of the fund, any proceeds of sale of bonds to the extent provided in the resolutions authorizing their issuance, and any other moneys which

may be available to the treasurer of state for the purpose of the fund from any other sources. All moneys held in a bond reserve fund, except as otherwise provided in this chapter, shall be used as required solely for the payment of the principal of bonds secured in whole or in part by the fund or of the sinking fund payments with respect to the bonds, the purchase or redemption of the bonds, the payment of interest on the bonds, or the payments of any redemption premium required to be paid when the bonds are redeemed prior to maturity.

*b.* Moneys in a bond reserve fund shall not be withdrawn from it at any time in an amount that will reduce the amount of the fund to less than the bond reserve fund requirement established for the fund, as provided in this subsection, except for the purpose of making, with respect to bonds secured in whole or in part by the fund, payment when due of principal, interest, redemption premiums, and the sinking fund payments with respect to the bonds for the payment of which other moneys of the treasurer of state are not available. Any income or interest earned by, or incremental to, a bond reserve fund due to the investment of it may be transferred by the treasurer of state to other funds or accounts to the extent the transfer does not reduce the amount of that bond reserve fund below the bond reserve fund requirement for that bond reserve fund. For the purposes of this subsection, the term “*bond reserve fund requirement*” means, as of any particular date of computation, an amount of money, as provided in the resolutions authorizing the bonds with respect to which the fund is established.

*c.* The treasurer of state shall comply with the provisions of section 476.10B in order to assure the maintenance of any bond reserve funds established under this section.

15. It is the intent of the general assembly that a pledge made in respect of bonds issued under this section shall be valid and binding from the time the pledge is made, that the money or property so pledged and received after the pledge by the treasurer of state shall immediately be subject to the lien of the pledge without physical delivery or further act, and that the lien of the pledge shall be valid and binding as against all parties having claims of any kind in tort, contract, or otherwise against the treasurer of state whether or not the parties have notice of the lien.

16. Bonds issued pursuant to this section are not debts of the state, nor of any political subdivision of the state, and do not constitute a pledge of the faith and credit of the state or a charge against the general credit or general fund of the state. The issuance of any bonds pursuant to this section by the treasurer of state does not directly, indirectly, or contingently obligate the state or a political subdivision of the state to apply moneys from, or to levy or pledge any form of taxation whatever to, the payment of the bonds. Bonds issued under this

section are payable solely and only from the sources and special fund provided in this section.

17. This section, being necessary for the welfare of this state and its inhabitants, shall be liber-

ally construed to effect its purposes.

2007 Acts, ch 22, §6  
Subsection 16 amended

## CHAPTER 12A

### UNIFORM FINANCE PROCEDURES FOR STATE-ISSUED OBLIGATIONS

#### 12A.1 Definitions.

As used in this chapter, unless the context otherwise requires:

1. “*Authorizing document*” means the resolution of the issuer, indenture of trust, or other instrument setting forth the terms and conditions of obligations issued in accordance with the provisions of this chapter.

2. “*Enabling legislation*” means legislation enabling the issuance by an issuer of obligations in accordance with the provisions of this chapter.

3. “*Issuer*” means the state, a department or public or quasi-public agency or instrumentality of the state, or an authority of the state authorized to issue obligations and enabled to issue the obligations in accordance with the provisions of this chapter.

4. “*Obligations*” means notes, bonds, including refunding bonds, and other evidences of indebtedness of an issuer.

2007 Acts, ch 133, §1  
NEW section

#### 12A.2 Provisions applicable.

An issuer may issue obligations in accordance with the provisions of this chapter if enabling legislation enacted on or after July 1, 2007, provides that the obligations shall or may be issued in accordance with the provisions of this chapter. This chapter establishes the terms, conditions, and procedures applicable to the issuance of obligations by an issuer enabled to issue obligations under this chapter.

2007 Acts, ch 133, §2  
NEW section

#### 12A.3 Limited obligations.

Obligations issued under this chapter are payable solely out of the moneys, assets, or revenues pledged to the payment of the obligations pursuant to the enabling legislation and any bond reserve funds established in accordance with this chapter, all of which may be deposited with trustees or depositories in accordance with the authorizing documents and pledged by the issuer to the payment thereof. Obligations issued under this chapter shall contain a statement that the obligations are issued pursuant to this chapter; are payable solely from the moneys, assets, and revenues pledged for their payment and any bond reserve

funds established; and that such obligations do not constitute an indebtedness of the state. The issuer shall not pledge the credit or taxing power of this state or any political subdivision of this state or make obligations issued pursuant to this chapter payable out of any moneys except those pledged in the enabling legislation and any bond reserve funds established by the issuer.

2007 Acts, ch 133, §3  
NEW section

#### 12A.4 General powers.

1. An issuer may issue obligations under this chapter and do all things necessary with respect to the issuance of the obligations. An issuer shall have all of the powers necessary to issue and secure obligations and carry out the purposes for which the obligations are to be issued, including the power to secure credit enhancement or support and to enter into agreements providing interest rate protection, as deemed appropriate by the issuer. The issuer may issue obligations in principal amounts consistent with the enabling legislation and which the issuer determines are necessary to provide sufficient funds for the purposes for which the obligations are issued, and to provide for the payment of capitalized interest on the obligations, the establishment of reserves to secure the obligations, the payment of the costs of issuance of the obligations, the payment of other expenditures of the issuer incident to and necessary or convenient to carry out the issue, and the payment of all other expenditures necessary or convenient to the purposes for which the obligations are issued.

2. The proceeds of obligations issued by the issuer and not required for immediate disbursement may be deposited with a trustee or depository or the treasurer of state as provided in the authorizing documents. Proceeds shall be invested or reinvested as directed by the treasurer of state and specified in the authorizing documents without regard to any limitation otherwise provided by law.

3. Obligations shall be issued as follows:

a. In a form, issued in denominations, executed in a manner, and payable over terms and with rights of redemption, and subject to such other terms and conditions as prescribed in the authorizing documents.

b. Sold at prices, at public or private sale, and in a manner, as prescribed by the issuer. Chapters 73A, 74, 74A, 75, and 76 do not apply to the sale, issuance, or retirement of the obligations if this chapter is utilized.

c. Subject to the terms, conditions, and covenants providing for the payment of the principal, redemption premiums, if any, interest, and other terms, conditions, covenants, and protective provisions safeguarding payment, not inconsistent with this chapter and as determined by the authorizing documents.

4. Obligations issued under this chapter are investment securities and negotiable instruments within the meaning of and for purposes of the uniform commercial code, chapter 554. Obligations are securities in which public officers and bodies of this state; political subdivisions of this state; insurance companies and associations and other persons carrying on an insurance business; banks, trust companies, savings associations, savings and loan associations, and investment companies; administrators, guardians, executors, trustees, and other fiduciaries; and other persons authorized to invest in obligations of the state, may properly and legally invest funds, including capital, in their control or belonging to them.

5. Obligations must be authorized by a trust indenture, resolution, or other instrument of the issuer. A trust indenture, resolution, or other instrument authorizing the issuance of obligations may, however, delegate to an officer of a board or of a governing body of an issuer the power to negotiate and fix the details of an issue of obligations.

6. A resolution, trust agreement, or any other instrument by which a pledge is created shall not be required to be recorded or filed under the uniform commercial code, chapter 554, to be valid, binding, or effective.

7. Subject to the terms of the authorizing documents, the proceeds of obligations may be expended for administrative expenses.

8. An issuer may issue obligations for the purpose of refunding any obligations then outstanding, including the payment of any redemption premiums thereon and any interest accrued or to accrue to the date of redemption of the outstanding obligations. Until the proceeds of obligations issued for the purpose of refunding outstanding obligations are applied to the purchase or retirement of outstanding obligations or the redemption of outstanding obligations, the proceeds may be placed in escrow and be invested and reinvested in accordance with the provisions of this chapter, the authorizing documents, and any applicable escrow agreement. The interest, income, and profits earned or realized on an investment may also be applied to the payment of the outstanding obligations to be refunded by purchase, retirement, or redemption. After the terms of the escrow have been fully satisfied and carried out, any balance of

proceeds and interest earned or realized on the investments may be returned to the issuer. All refunding obligations shall be issued and secured and subject to the provisions of this chapter in the same manner and to the same extent as other obligations issued pursuant to this chapter.

2007 Acts, ch 133, §4  
NEW section

#### 12A.5 Reserve funds.

1. An issuer may create and establish one or more special funds, to be known as bond reserve funds, to secure one or more issues of obligations. The issuer shall pay into each bond reserve fund any moneys appropriated and made available by the state for the purpose of that reserve fund, any proceeds of the sale of obligations to the extent provided in the authorizing documents, and any other moneys which may be available from any other sources and which the issuer determines to deposit in the reserve fund. All moneys held in a bond reserve fund, except as otherwise provided in this chapter, shall be used as required solely for the payment of the principal of obligations secured in whole or in part by the fund or of the sinking fund or other payments with respect to the obligations, the purchase or redemption of the obligations, the payment of interest on the obligations, or the payments of any redemption premium required to be paid when the obligations are redeemed prior to maturity.

2. Moneys in a bond reserve fund shall not be withdrawn at any time in an amount that will reduce the amount of the fund to less than the bond reserve fund requirement established for the fund, except for the purpose of making, with respect to obligations secured in whole or in part by the fund, payment when due of principal, interest, redemption premiums, and the sinking fund and other payments with respect to the obligations for which other moneys are not available, all in accordance with the authorizing documents. For the purposes of this chapter, “*bond reserve fund requirement*” means, as of any particular date of computation, the amount of moneys, provided in the authorizing documents with respect to which the fund is established. Any income or interest earned by, or incremental to, a bond reserve fund due to its investment may be transferred to other funds or accounts as provided in the authorizing documents to the extent the transfer does not reduce the amount of that bond reserve fund below its bond reserve fund requirement.

3. The issuer shall not at any time issue obligations, secured in whole or in part by a bond reserve fund if, upon the issuance of the obligations, the amount in the bond reserve fund for the obligations will be less than the bond reserve fund requirement for the fund, unless the issuer at the time of issuance of the obligations deposits in the fund from the proceeds of the obligations issued or from other sources an amount which, together



with the amount then in the fund, will not be less than the bond reserve fund requirement for the fund.

4. In order to assure maintenance of bond reserve funds, an issuer shall, on or before January 1 of each calendar year, make and deliver to the governor the issuer's certificate stating the sum, if any, required to restore each bond reserve fund to the bond reserve fund requirement for that fund. Within thirty days after the beginning of the session of the general assembly next following the delivery of the certificate, the governor shall submit to both houses printed copies of a budget including the sum, if any, required to restore each bond reserve fund to the bond reserve fund requirement for that fund. Any sums appropriated by the general assembly and paid to the issuer pursuant to this subsection shall be deposited by the issuer in the applicable bond reserve fund.

2007 Acts, ch 133, §5  
NEW section

#### 12A.6 Pledge of funds.

1. Amounts authorized to be pledged as security for obligations shall be held in separate and distinct funds in the state treasury. Moneys in a fund shall not be subject to appropriation for any other purpose by the general assembly, but shall be used only for debt service on the obligations and other amounts as set forth in the authorizing documents. The treasurer of state shall act as custodian of the funds and disburse moneys contained in the funds as directed by the authorizing documents.

2. Moneys in any fund pledged as security for obligations are not subject to section 8.33. Notwithstanding section 12C.7, subsection 2, interest or earnings on moneys in the funds shall be credited to the applicable fund.

2007 Acts, ch 133, §6  
NEW section

#### 12A.7 Resolution provisions.

Authorizing document provisions, which shall be a part of the contract with the holders of the obligations to be issued, may contain the following:

1. Pledging or assigning the revenue of a project with respect to which the obligations are to be issued or the revenue of other property or facilities.

2. Setting aside reserves or sinking funds, and their regulation, investment, and disposition.

3. Limitations on the use of a project.

4. Limitations on the purpose to which or the investments in which the proceeds of sale of an issue of obligations then or thereafter to be issued may be applied and pledging the proceeds to secure the payment of the obligations or an issue of the obligations.

5. Limitations on the issuance of additional obligations, the terms upon which additional obli-

gations may be issued and secured, and the re-funding of outstanding obligations.

6. The procedure, if any, by which the terms of any contract with the holder of an obligation may be amended or abrogated, the amount of obligations may be specified for which the holders must consent to amendment or abrogation, and the manner in which the consent may be given.

7. Defining the acts or omissions to act which constitute a default in the duties of the issuer to holders of obligations and providing the rights and remedies of the holders in the event of a default.

8. Other matters relating to the obligations as may be provided by the issuer.

2007 Acts, ch 133, §7  
NEW section

#### 12A.8 Obligations secured by trust agreement.

Obligations issued under this chapter may be secured by a trust agreement by and between the issuer and an incorporated trustee, which may be a trust company or bank having the powers of a trust company in this state or another state. The trust agreement or the resolution providing for the issuance of the obligations may pledge or assign the revenue to be received for payment of the obligations or the proceeds of any contract pledged. A pledge or assignment made by the issuer pursuant to this chapter is valid and binding from the time that the pledge or assignment is made, and the revenue pledged and thereafter received by the issuer is immediately subject to the lien of the pledge or assignment without physical delivery or any further act. The lien of the pledge or assignment is valid and binding against all parties having claims of any kind in tort, contract, or otherwise against the issuer irrespective of whether the parties have notice of the lien. The trust agreement or resolution by which a pledge is created or an assignment made shall be filed in the records of the issuer. The trust agreement or resolution providing for the issuance of the obligations may contain provisions for protecting and enforcing the rights and remedies of the holders of an obligation as are reasonable and proper, not in violation of law, or provided for in this chapter. A bank or trust company incorporated under the laws of this state or another state which acts as depository of proceeds of the obligations, revenue, or other moneys shall furnish the indemnifying obligations or pledge securities as and to the extent required by the issuer. The trust agreement or resolution may set forth the rights and remedies of the holders of an obligation and of the trustee, and may restrict the individual right of action by holders of an obligation. The trust agreement or resolution may contain other provisions the issuer deems reasonable and proper for the security of the obligation holders.

2007 Acts, ch 133, §8  
NEW section

**12A.9 State tax.**

Obligations issued under the provisions of this chapter are declared to be issued for a general public and governmental purpose and the obligations and interest on the obligations shall be exempt from state income and inheritance tax.

2007 Acts, ch 133, §9  
NEW section

**12A.10 Agreement of the state.**

The state pledges to and agrees with the holders of any obligations issued under this chapter, and with those parties who enter into contracts with an issuer pursuant to this chapter, that the state will not limit or alter the rights vested in the issuer until the obligations, together with the interest on the obligations, are fully met and discharged and the contracts are fully performed on the part of the issuer, except that this chapter does not preclude a limitation or alteration if adequate provision is made by law for the protection of the rights of the

holders of the obligations of the issuer or those entering into contracts with the issuer.

2007 Acts, ch 133, §10  
NEW section

**12A.11 Provisions controlling.**

The powers granted issuers under this chapter are in addition to the powers of each issuer contained elsewhere in the Code. Nothing in this chapter limits the powers of an issuer to issue obligations under any other applicable provisions of the Code or to otherwise carry out its responsibilities as otherwise set forth in the Code.

2007 Acts, ch 133, §11  
NEW section

**12A.12 Construction.**

This chapter, being necessary for the welfare of this state and its inhabitants, shall be liberally construed to effect its purpose.

2007 Acts, ch 133, §12  
NEW section

## CHAPTER 12C

### DEPOSIT OF PUBLIC FUNDS

**12C.13 Deposit not membership.**

Notwithstanding chapter 534, the deposit of public funds in a credit union defined in section 533.102 or an association defined in section 534.102 does not constitute being a shareholder, stockholder, or owner of a corporation in violation of Article VIII of the Constitution of the State of Iowa or any other provision of law.

2007 Acts, ch 174, §77  
Section amended

**12C.16 Security for deposit of public funds.**

1. Before a deposit of public funds is made by a public officer with a credit union in excess of the amount federally insured, the public officer shall obtain security for the deposit by one or more of the following:

*a.* The credit union may give to the public officer a corporate surety bond of a surety corporation approved by the treasury department of the United States and authorized to do business in this state, which bond shall be in an amount equal to the public funds on deposit at any time. The bond shall be conditioned that the deposit shall be paid promptly on the order of the public officer making the deposit and shall be approved by the officer making the deposit.

*b.* The credit union may deposit, maintain, pledge and assign for the benefit of the public officer in the manner provided in this chapter, securities approved by the public officer, the market val-

ue of which is not less than one hundred ten percent of the total deposits of public funds placed by that public officer in the credit union. The securities shall consist of any of the following:

(1) Direct obligations of, or obligations that are insured or fully guaranteed as to principal and interest by, the United States of America or an agency or instrumentality of the United States of America.

(2) Public bonds or obligations of this state or a political subdivision of this state.

(3) Public bonds or obligations of another state or a political subdivision of another state whose bonds are rated within the two highest classifications of prime as established by at least one of the standard rating services approved by the superintendent of banking pursuant to chapter 17A.

(4) To the extent of the guarantee, loans, obligations, or nontransferable letters of credit upon which the payment of principal and interest is fully secured or guaranteed by the United States of America or an agency or instrumentality of the United States of America or the United States central credit union, a corporate central credit union organized under section 533.213, or a corporate credit union organized under 12 C.F.R. § 704, and the rating of any one of such credit unions remains within the two highest classifications of prime established by at least one of the standard rating services approved by the superintendent of banking by rule pursuant to chapter 17A. The treasurer of state shall adopt rules pursuant to chapter 17A to implement this section.

(5) First lien mortgages which are valued according to practices acceptable to the treasurer of state.

(6) Investments in an open-end management investment company registered with the federal securities and exchange commission under the federal Investment Company Act of 1940, 15 U.S.C. § 80(a), which is operated in accordance with 17 C.F.R. § 270.2a-7.

Direct obligations of, or obligations that are insured or fully guaranteed as to principal and interest by, the United States of America, which may be used to secure the deposit of public funds under subparagraph (1), include investments in an investment company or investment trust registered under the federal Investment Company Act of 1940, 15 U.S.C. § 80a, the portfolio of which is limited to the United States government obligations described in subparagraph (1) and to repurchase agreements fully collateralized by the United States government obligations described in subparagraph (1), if the investment company or investment trust takes delivery of the collateral either directly or through an authorized custodian.

2. If public funds are secured by both the assets of a credit union and a bond of a surety company, the assets and bond shall be held as security for a rateable proportion of the deposit on the basis of the market value of the assets and of the total amount of the surety bonds.

2007 Acts, ch 174, §78

Subsection 1, paragraph b, subparagraph (4) amended

#### **12C.17 Deposit of securities.**

1. A credit union which receives public funds shall pledge securities owned by it as required by this chapter in one of the following methods:

*a.* The securities shall be deposited with the county, city, or other public officers at the option of the officers.

*b.* The securities shall be deposited pursuant to a bailment agreement with a financial institution having facilities for the safekeeping of securities and doing business in the state. A financial institution which receives securities for safekeeping is liable to the public officer to whom the securities are pledged for any loss suffered by the public officer if the financial institution relinquishes custody of the securities contrary to the provisions of this chapter or the instrument governing the pledge of the securities.

*c.* The securities shall be deposited with the federal reserve bank, the federal home loan bank of Des Moines, Iowa, or the United States central credit union, a corporate central credit union organized under section 533.213, or a corporate credit union organized under 12 C.F.R. § 704 pursuant to a bailment agreement or a pledge custody agreement.

*d.* The securities may be deposited by any combination of methods specified in paragraphs “a”, “b”, and “c”.

2. A deposit of securities shall not be made in a facility owned or controlled directly or indirectly by the financial institution which deposits the securities.

3. All deposits of securities, other than deposits of securities with the appropriate public officer, shall have a joint custody receipt taken for the securities with one copy delivered to the public officer and one copy delivered to the credit union. A credit union pledging securities with a public officer may cause the securities to be examined in the officer’s office to show the securities are placed with the officer as collateral security and are not transferable except upon the conditions provided in this chapter.

4. Upon written request from the appropriate public officer but not less than monthly, the federal reserve bank, the federal home loan bank of Des Moines, Iowa, the United States central credit union, a corporate central credit union organized under section 533.213, or a corporate credit union organized under 12 C.F.R. § 704 shall report a description, the par value, and the market value of any pledged collateral by a credit union.

2007 Acts, ch 174, §79, 80

Subsection 1, paragraph c amended

Subsection 4 amended

#### **12C.23 Payment of losses in a credit union.**

1. The pledging of securities by a credit union pursuant to this chapter constitutes consent by the credit union to the disposition of the securities in accordance with this section.

The acceptance of public funds by a credit union pursuant to this chapter constitutes consent by the credit union to assessments by the treasurer of state in accordance with this chapter.

2. The credit union and the security given for the public funds in its hands are liable for payment if the credit union fails to pay a check, draft, or warrant drawn by the public officer or to account for a check, draft, warrant, order, or certificates of deposit, or any public funds entrusted to it if, in failing to pay, the credit union acts contrary to the terms of an agreement between the credit union and the public body treasurer. The credit union and the security given for the public funds in its hands are also liable for payment if the credit union fails to pay an assessment by the treasurer of state when the assessment is due.

3. If a credit union is closed by its primary regulatory officials, the public body with deposits in the credit union may sell the collateral to pay for any loss of principal and accrued interest.

*a.* In cooperation with the responsible regulatory officials for the credit union, the public body shall validate the amount of public funds on deposit at the defaulting credit union and the amount of deposit insurance applicable to the deposits.

*b.* The loss to public depositors shall be satisfied, first through any applicable deposit insur-

ance and then through the sale of securities pledged by the defaulting credit union, and then the assets of the defaulting credit union. The priority of claims are those established pursuant to section 533.404, subsection 1, paragraph “b”. To the extent permitted by federal law, in the distribution of an insolvent federally chartered credit union’s assets, the order of payment of liabilities if its assets are insufficient to pay in full all its liabilities for which claims are made shall be in the same order as for the equivalent type of state chartered credit union as provided in section 533.404, subsection 1, paragraph “b”.

c. The claim of a public depositor for purposes of this section shall be the amount of the depositor’s deposits plus interest to the date the funds are distributed to the public depositor at the rate the credit union agreed to pay on the funds reduced by the portion of the funds which is insured by federal deposit insurance.

d. If the loss to public funds is not covered by insurance and the proceeds of the failed credit union’s assets which are liquidated within thirty days of the closing of the credit union and pledged collateral, the treasurer shall provide coverage of the remaining loss from the state sinking fund for public deposits in credit unions. If the funds are inadequate to cover the entire loss, then the treasurer shall make an assessment against other credit unions who hold public funds. The assessment shall be determined by multiplying the total amount of the remaining loss to public depositors by a percentage that represents the average of

public funds deposits held by all credit unions during the preceding twelve-month period ending on the last day of the month immediately preceding the month the credit union was closed. Each credit union shall pay its assessment to the treasurer within three business days after it receives notice of assessment. If a credit union fails to pay its assessment when due, the treasurer of state shall initiate a lawsuit to collect the assessment. If a credit union is found to have failed to pay the assessment as required by this paragraph, the court shall order it to pay the assessment, court costs, reasonable attorney’s fees based upon the amount of time the attorney general’s office spent preparing and bringing the action, and reasonable expenses incurred by the treasurer of state’s office. Idle balances in the fund are to be invested by the treasurer with earnings credited to the fund. Fees paid by credit unions for administration of this chapter will be credited to the fund and the treasurer may deduct actual costs of administration from the fund.

e. Any amount realized from the sale of collateral pursuant to paragraph “d”, in excess of the amount of a credit union’s assessment, shall continue to be held by the treasurer, in the same interest-bearing investments available for public funds, as collateral until that credit union provides substitute collateral or is otherwise entitled to its release.

2007 Acts, ch 174, §81  
Subsection 3, paragraph b amended

## CHAPTER 12F

### RESTRICTIONS ON SUDAN-RELATED INVESTMENTS

#### 12F.1 Legislative findings and intent.

The general assembly is deeply concerned over the human rights situation in Sudan which calls for stepped-up international efforts to end the crisis in Sudan’s Darfur region, and concurs with United States policy which has officially declared that genocide is ongoing in the Sudan, and demands that the government of Sudan bring an end to these atrocities. Therefore, the general assembly intends that state funds and funds administered by the state, including public employee retirement funds, should not be invested in companies that provide power production-related services, mineral extraction activities, oil-related activities, or military equipment to the government of Sudan, or are complicit in the genocide in Darfur, given the ongoing genocide in that country, the previous atrocities perpetrated by the government of Sudan, and the abysmal human rights situation in that country.

2007 Acts, ch 39, §1  
NEW section

#### 12F.2 Definitions.

As used in this chapter, unless the context otherwise requires:

1. “*Active business operations*” means all business operations that are not inactive business operations.

2. “*Business operations*” means engaging in commerce in any form in Sudan, including by acquiring, developing, maintaining, owning, selling, possessing, leasing, or operating equipment, facilities, personnel, products, services, personal property, real property, or any other apparatus of business or commerce.

3. “*Company*” means any sole proprietorship, organization, association, corporation, partnership, joint venture, limited partnership, limited liability partnership, limited liability company, or other entity or business association, including all wholly-owned subsidiaries, majority-owned subsidiaries, parent companies, or affiliates of such entities or business associations, that exists for

profit-making purposes.

4. “*Complicit*” means taking actions during any preceding twenty-month period which have directly supported or promoted the genocidal campaign in Darfur, including but not limited to preventing Darfur’s victimized population from communicating with each other; encouraging Sudanese citizens to speak out against an internationally approved security force for Darfur; actively working to deny, cover up, or alter the record on human rights abuses in Darfur; or other similar actions.

5. “*Direct holdings*” in a company means all securities of that company held directly by the public fund or in an account or fund in which the public fund owns all shares or interests.

6. “*Government of Sudan*” means the government in Khartoum, Sudan, which is led by the National Congress Party or any successor government formed on or after October 13, 2006, including the coalition National Unity Government agreed upon in the Comprehensive Peace Agreement for Sudan and does not include the regional government of southern Sudan.

7. “*Inactive business operations*” means the mere continued holding or renewal of rights to property previously operated for the purpose of generating revenues but not presently deployed for such purpose.

8. “*Indirect holdings*” in a company means all securities of that company held in an account or fund managed by one or more persons not employed by the public fund, in which the public fund owns shares or interests together with other investors not subject to the provisions of this chapter. Indirect holdings include but are not limited to mutual funds, fund of funds, private equity funds, hedge funds, and real estate funds.

9. “*Marginalized populations of Sudan*” include but are not limited to the portion of the population in the Darfur region that has been genocidally victimized; the portion of the population of southern Sudan victimized by Sudan’s north-south civil war; the Beja, Rashidiya, and other similarly underserved groups of eastern Sudan; the Nubian and other similarly underserved groups in Sudan’s Abyei, Southern Blue Nile, and Nuba Mountain regions; and the Amri, Hamadab, Manasir, and other similarly underserved groups of northern Sudan.

10. “*Military equipment*” means weapons, arms, military supplies, and equipment that readily may be used for military purposes including but not limited to radar systems or military-grade transport vehicles, or supplies or services sold or provided directly or indirectly to any force actively participating in armed conflict in Sudan.

11. “*Mineral extraction activities*” include exploring, extracting, processing, transporting, or wholesale selling or trading of elemental minerals or associated metal alloys or oxides, including gold, copper, chromium, chromite, diamonds, iron,

iron ore, silver, tungsten, uranium, and zinc, as well as facilitating such activities, including by providing supplies or services in support of such activities.

12. “*Oil-related activities*” include but are not limited to owning rights to oil blocks; exporting, extracting, producing, refining, processing, exploring for, transporting, selling, or trading of oil; constructing, maintaining, or operating a pipeline, refinery, or other oil field infrastructure; and facilitating such activities, including by providing supplies or services in support of such activities, provided that the mere retail sale of gasoline and related consumer products shall not be considered oil-related activities.

13. “*Power production activities*” means any business operation that involves a project commissioned by the National Electricity Corporation of Sudan or other similar government of Sudan entity whose purpose is to facilitate power generation and delivery including but not limited to establishing power generating plants or hydroelectric dams, selling or installing components for the project, providing service contracts related to the installation or maintenance of the project, as well as facilitating such activities, including by providing supplies or services in support of such activities.

14. “*Public fund*” means the treasurer of state, the state board of regents, the public safety peace officers’ retirement system created in chapter 97A, the Iowa public employees’ retirement system created in chapter 97B, the statewide fire and police retirement system created in chapter 411, or the judicial retirement system created in chapter 602.

15. “*Scrutinized company*” means any company that is not a social development company that meets any of the following criteria:

a. The company has business operations that involve contracts with or provision of supplies or services to the government of Sudan, companies in which the government of Sudan has any direct or indirect equity share, government of Sudan-commissioned consortiums or projects, or companies involved in government of Sudan-commissioned consortiums or projects; and meets any of the additional following criteria:

(1) More than ten percent of the company’s revenues or assets linked to Sudan involve oil-related activities or mineral extraction activities, less than seventy-five percent of the company’s revenues or assets linked to Sudan involve contracts with or provision of oil-related or mineral extracting products or services to the regional government of southern Sudan or a project or consortium created exclusively by that regional government, and the company has failed to take substantial action.

(2) More than ten percent of the company’s revenues or assets linked to Sudan involve power production activities, less than seventy-five per-

cent of the company's power production activities include projects whose intent is to provide power or electricity to the marginalized populations of Sudan, and the company has failed to take substantial action.

*b.* The company is complicit in the Darfur genocide.

*c.* The company supplies military equipment within Sudan, unless it clearly shows that the military equipment cannot be used to facilitate offensive military actions in Sudan or the company implements rigorous and verifiable safeguards to prevent use of that equipment by forces actively participating in armed conflict, for example, through post-sale tracking of such equipment by the company, certification from a reputable and objective third party that such equipment is not being used by a party participating in armed conflict in Sudan, or sale of such equipment solely to the regional government of southern Sudan or any internationally recognized peacekeeping force or humanitarian organization.

16. "*Social development company*" means a company that is not complicit in the Darfur genocide whose primary purpose in Sudan is to provide humanitarian goods or services, including medicine or medical equipment, agricultural supplies or infrastructure, educational opportunities, journalism-related activities, information or information materials, spiritual-related activities, services of a purely clerical or reporting nature, food, clothing, or general consumer goods that are unrelated to oil-related activities, mineral extraction activities, or power production activities.

17. "*Substantial action*" means adopting, publicizing, and implementing a formal plan to cease scrutinized business operations within one year and to refrain from any such new business operations; undertaking significant humanitarian efforts on behalf of one or more marginalized populations of Sudan; or, through engagement with the government of Sudan, materially improving conditions for the genocidally victimized population in Darfur.

2007 Acts, ch 39, §2  
NEW section

### **12F.3 Identification of companies — notice.**

1. *a.* By July 1, 2007, the public fund shall make its best efforts to identify all scrutinized companies in which the public fund has direct or indirect holdings or could possibly have such holdings in the future and shall create and make available to the public a scrutinized companies list for that public fund. The list shall further identify whether the company has inactive business operations or active business operations. The public fund shall review and update, if necessary, the scrutinized companies list and the determination of whether a company has inactive or active business operations on a quarterly basis thereafter.

*b.* In making its best efforts to identify scrutinized companies and companies with inactive business operations or active business operations, the public fund may review and rely, in the best judgment of the public fund, on publicly available information regarding companies with business operations in Sudan, such as information provided by the Sudan divestment task force, and including other information that may be provided by non-profit organizations, research firms, international organizations, and government entities. The public fund may also contact asset managers and institutional investors for the public fund to identify scrutinized companies based upon industry-recognized lists of such companies that the public fund may have indirect holdings in.

2. *a.* For each company on the scrutinized companies list with only inactive business operations in which the public fund has direct or indirect holdings, the public fund shall send a written notice informing the company of the requirements of this chapter and encouraging it to continue to refrain from initiating active business operations in Sudan until it is able to avoid scrutinized business operations. The public fund shall continue to provide such written notice on an annual basis if the company remains a scrutinized company with inactive business operations.

*b.* For each company on the scrutinized companies list with active business operations in which the public fund has direct or indirect holdings, the public fund shall send a written notice informing the company of its status as a scrutinized company with active business operations and that it may become subject to divestment and restrictions on investing in the company by the public fund. The notice shall offer the company the opportunity to clarify its Sudan-related activities and shall encourage the company to either cease its scrutinized business operations or convert such operations to inactive business operations in order to avoid becoming subject to divestment and restrictions on investment in the company by the public fund. The public fund shall continue to provide such written notice on an annual basis if the company remains a scrutinized company with active business operations.

2007 Acts, ch 39, §3  
NEW section

### **12F.4 Prohibited investments — divestment.**

1. The public fund shall not acquire publicly traded securities of a company on the public fund's most recent scrutinized companies list with active business operations so long as such company remains on the public fund's scrutinized companies list as a company with active business operations as provided in this section.

2. *a.* The public fund shall sell, redeem, divest, or withdraw all publicly traded securities of a company on the public fund's list of scrutinized

companies with active business operations, so long as the company remains on that list, no sooner than ninety days, but no later than eighteen months, following the first written notice sent to the scrutinized company with active business operations as required by section 12F.3.

*b.* This subsection shall not be construed to require the premature or otherwise imprudent sale, redemption, divestment, or withdrawal of an investment, but such sale, redemption, divestment, or withdrawal shall be completed as provided by this subsection.

3. The requirements of this section shall not apply to the following:

*a.* A company which the United States government affirmatively declares to be excluded from its present or any future federal sanctions regime relating to Sudan.

*b.* Indirect holdings of a scrutinized company with active business operations. The public fund shall, however, submit letters to the managers of such investment funds containing companies with scrutinized active business operations requesting that they consider removing such companies from the fund or create a similar fund with indirect holdings devoid of such companies. If the manager creates a similar fund, the public fund is encouraged to replace all applicable investments with investments in the similar fund consistent with prudent investing standards.

2007 Acts, ch 39, §4  
NEW section

#### 12F.5 Reports.

1. *Scrutinized companies list.* Each public fund shall, within thirty days after the scrutinized companies list is created or updated as required by section 12F.3, make the list available to the public.

2. *Annual report.* On October 1, 2008, and each October 1 thereafter, each public fund shall make available to the public, and file with the general assembly, an annual report covering the prior fiscal year that includes the following:

*a.* The scrutinized companies list as of the end of the fiscal year.

*b.* A summary of all written notices sent as required by section 12F.3 during the fiscal year.

*c.* All investments sold, redeemed, divested, or withdrawn as provided in section 12F.4 during the fiscal year.

2007 Acts, ch 39, §5  
NEW section

#### 12F.6 Legal obligations.

With respect to actions taken in compliance with this chapter, including all good faith determinations regarding companies as required by this chapter, the public fund shall be exempt from any conflicting statutory or common law obligations, including any such obligations in respect to choice of asset managers, investment funds, or investments for the public fund's securities portfolios.

2007 Acts, ch 39, §6  
NEW section

#### 12F.7 Applicability.

The requirements of sections 12F.3, 12F.4, and 12F.5 of this chapter shall not apply upon the occurrence of any of the following:

1. The Congress or president of the United States declares that the Darfur genocide has been halted for at least twelve months.

2. The United States revokes all sanctions imposed against the government of Sudan.

3. The Congress or president of the United States, through legislation or executive order, declares that mandatory divestment of the type provided for in this chapter interferes with the conduct of United States foreign policy.

4. A controlling circuit or district court of the United States issues an opinion that declares the mandatory divestment of the type provided for in this chapter or similar statutes of other states is preempted by the federal law of the United States.

2007 Acts, ch 39, §7  
NEW section

## CHAPTER 13

### ATTORNEY GENERAL

#### 13.31 Victim assistance program.

A victim assistance program is established in the department of justice, which shall do all of the following:

1. Administer grants received under the federal Victims of Crime Act pursuant to Pub. L. No. 98-473, title 2, ch. 14, 42 U.S.C. § 10601, as amended by the federal Children's Justice and Assistance Act, Pub. L. No. 99-401, 100 Stat. 903 (1986).

2. Administer the state crime victim compensation program as provided in chapter 915.

3. Administer the domestic abuse program provided in chapter 236.

4. Administer the family violence prevention and services grants pursuant to the federal Child Abuse Amendments of 1984, Pub. L. No. 98-457, 42 U.S.C. § 10401.

5. Administer payment for sexual abuse medical examinations pursuant to section 915.41.

6. Administer the violence against women program and grants received pursuant to the federal Violence Against Women Act, Title IV of the Violent Crime Control and Law Enforcement Act of 1994, Pub. L. No. 103-322, 42 U.S.C. § 13701.

7. Administer an automated victim notification system as authorized pursuant to section 915.10A.

2007 Acts, ch 27, §1  
NEW subsection 7

## CHAPTER 13B

### PUBLIC DEFENDERS

#### 13B.4 Duties and powers of state public defender.

1. The state public defender shall coordinate the provision of legal representation of all indigents under arrest or charged with a crime, seeking postconviction relief, against whom a contempt action is pending, in proceedings under section 811.1A or chapter 229A or 812, in juvenile proceedings, on appeal in criminal cases, and on appeal in proceedings to obtain postconviction relief when ordered to do so by the district court in which the judgment or order was issued, and may provide for the representation of indigents in proceedings instituted pursuant to chapter 908. The state public defender shall not engage in the private practice of law.

2. The state public defender shall file a notice with the clerk of the district court in each county served by a public defender designating which public defender office shall receive notice of appointment of cases. The state public defender may also designate a nonprofit organization which has a contract with the state public defender to provide legal services to eligible indigent persons prior to July 1, 2004. Except as otherwise provided, in each county in which the state public defender files a designation, the state public defender's designee shall be appointed by the court to represent all eligible indigents in all of the cases and proceedings specified in the designation. The appointment shall not be made if the state public defender notifies the court that the public defender designee will not provide legal representation in certain cases as identified in the designation by the state public defender.

3. The state public defender may contract with persons admitted to practice law in this state and nonprofit organizations employing persons admitted to practice law in this state for the provision of legal services to indigent persons.

4. *a.* The state public defender shall establish fee limitations for particular categories of cases. The fee limitations shall be reviewed at least every three years. In establishing and reviewing the fee limitations, the state public defender shall consider public input during the establishment and review process, and any available information regarding ordinary and customary charges for like services; the number of cases in which legal serv-

es to indigents are anticipated; the seriousness of the charge; an appropriate allocation of resources among the types of cases; experience with existing hourly rates, claims, and fee limitations; and any other factors determined to be relevant.

*b.* The state public defender shall establish a procedure for the submission of all claims for payment of indigent defense costs, including the submission of interim claims in appropriate cases.

*c.* The state public defender may review any claim for payment of indigent defense costs and may take any of the following actions:

(1) If the charges are appropriate and reasonable, approve the claim for payment.

(2) Deny the claim under any of the following circumstances:

(a) If it is not timely.

(b) If it is not payable as an indigent defense claim under chapter 815.

(c) If it is not payable under the contract between the claimant and the state public defender.

(d) If the claimant was appointed contrary to section 814.11, or the claimant failed to comply with section 815.10, subsection 5.

(3) Request additional information or return the claim to the claimant, if the claim is incomplete.

(4) If any portion of the claim is excessive, notify the claimant that the claim is excessive and will be reduced to an amount which is not excessive, and reduce and approve the balance of the claim.

(5) If any portion of the claim is not payable within the scope of appointment of the claimant, notify the claimant that a portion of the claim is not within the scope of appointment and is not payable, deny those portions of the claim that are not payable, and approve the balance of the claim.

*d.* Notwithstanding chapter 17A, the claimant may seek review of any action or intended action denying or reducing any claim by filing a motion with the court with jurisdiction over the original appointment for review.

(1) The motion must be filed within twenty days of any action taken by the state public defender.

(2) The motion shall be set for hearing by the court and the state public defender shall be provided with at least ten days' notice of the hearing. The state public defender shall not be required to file



a resistance to the motion filed under this paragraph “d”.

(3) The state public defender or the claimant may participate by telephone. If the state public defender participates by telephone, the state public defender shall be responsible for initiating and paying for all telephone charges.

(4) The filing of a motion shall not delay the payment of the amount approved by the state public defender.

(5) If a claim or portion of the claim is denied, the action of the state public defender shall be affirmed unless the action conflicts with a statute or an administrative rule.

(6) If the claim is reduced for being excessive, the claimant shall have the burden to establish by a preponderance of the evidence that the amount of compensation and expenses is reasonable and necessary.

(7) The decision of the court following a hearing on the motion is a final judgment appealable by the state public defender or the claimant.

(8) If the state public defender is not first notified and given an opportunity to be heard, any court order entered after the state public defender has taken action on a claim, which affects that claim, is void.

5. In reviewing a claim for compensation submitted by an attorney who had been retained or agreed to represent an indigent person prior to appointment, the state public defender may consider any moneys earned or paid to the attorney prior to

the appointment in determining whether the claim is reasonable and necessary or excessive. The attorney shall provide the state public defender with a copy of any representation agreement, and information on any moneys earned or paid to the attorney prior to the appointment.

6. The state public defender is authorized to contract with county attorneys to provide collection services related to court-ordered indigent defense restitution.

7. The state public defender shall not revise the allocations to the office of the state public defender and the allocations for indigent defense of adults and juveniles, unless prior notice of the revisions is given to the legislative services agency, the co-chairpersons and ranking members of the joint appropriations subcommittee on the justice system, and the co-chairpersons and ranking members of the house and senate committees on appropriations.

8. The state public defender shall adopt rules, as necessary, pursuant to chapter 17A to administer this chapter and chapter 815.

9. Executing the duties of this section shall not be deemed a violation of section 68B.6.

2007 Acts, ch 22, §7

Intent that state public defender provide for defense of major felony case defendants by public defenders on regional basis; 91 Acts, ch 268, §440

Authority of state public defender in termination of parental rights proceedings under chapter 600A, see §600A.6B

Subsection 4, paragraph d, subparagraph (8) amended

**13B.8A Public defender property.** Repealed by 2007 Acts, ch 126, § 113.

## CHAPTER 15

### DEPARTMENT OF ECONOMIC DEVELOPMENT

Department includes Iowa economic protective and investment authority; §7E.7  
Department to recognize the value of health insurance  
benefit packages provided by employers in evaluating  
grant and loan requests; 89 Acts, ch 304, §409

#### 15.102 Definitions.

As used in this chapter, unless the context otherwise requires:

1. “*Board*” means the Iowa economic development board.

2. “*Department*” means the Iowa department of economic development.

3. “*Director*” means the director of the department or the director’s designee.

4. “*Small business*” means any enterprise which is located in this state, which is operated for profit and under a single management, and which has either fewer than twenty employees or an annual gross income of less than four million dollars computed as the average of the three preceding fiscal years. This definition does not apply to any program or activity for which a definition for small business is provided for the program or activity by federal law or regulation or other state law.

5. *a. “Targeted small business”* means a small business which is fifty-one percent or more owned, operated, and actively managed by one or more women, minority persons, or persons with a disability provided the business meets all of the following requirements:

(1) Is located in this state.

(2) Is operated for profit.

(3) Has an annual gross income of less than four million dollars computed as an average of the three preceding fiscal years.

*b. As used in this subsection:*

(1) “*Disability*” means, with respect to an individual, a physical or mental impairment that substantially limits one or more of the major life activities of the individual, a record of physical or mental impairment that substantially limits one or more of the major life activities of the individual, or being regarded as an individual with a physical

or mental impairment that substantially limits one or more of the major life activities of the individual. “Disability” does not include any of the following:

- (a) Homosexuality or bisexuality.
- (b) Transvestism, transsexualism, pedophilia, exhibitionism, voyeurism, gender identity disorders not resulting from physical impairments, or other sexual behavior disorders.
- (c) Compulsive gambling, kleptomania, or pyromania.
- (d) Psychoactive substance abuse disorders resulting from current illegal use of drugs.

(2) “Major life activity” includes functions such as caring for one’s self, performing manual tasks, walking, seeing, hearing, speaking, breathing, learning, or working.

(3) “Minority person” means an individual who is a Black, Latino, Asian or Pacific Islander, American Indian, or Alaskan native American.

2007 Acts, ch 207, §3 – 5, 18

Subsection 4 amended

Subsection 5, paragraph a, subparagraph (3) amended

Subsection 5, paragraph b, subparagraph (3) amended

#### 15.104 Duties of the board.

The board shall:

1. Prepare a three-year comprehensive strategic plan of specific goals, objectives, policies, performance measures, and benchmarks for state economic growth. All other state agencies shall include economic growth in their mission statements and shall annually submit to the board for its review and potential inclusion in the strategic plan their specific strategic plans and programs for economic growth. The three-year strategic plan for state economic growth shall be updated annually.

2. Develop a method of evaluation of the attainment of goals and objectives from pursuing the policies of the three-year plan which shall include performance measures and benchmarks. The method of evaluation shall provide for a review of the organizational structure of the state’s economic growth efforts.

3. Implement the requirements of chapter 73.

4. Review and approve or disapprove a life science enterprise plan or amendments to that plan as provided in chapter 10C and according to rules adopted by the board. A life science plan shall make a reasonable effort to provide for participation by persons who are individuals or family farm entities actively engaged in farming as defined in section 10.1. The persons may participate in the life science enterprise by holding an equity position in the life science enterprise or providing goods or service to the enterprise under contract. The plan must be filed with the board not later than June 30, 2005. The life science enterprise may file an amendment to a plan at any time. A life science enterprise is not eligible to file a plan, unless the life science enterprise files a notice with

the board. The notice shall be a simple statement indicating that the life science enterprise may file a plan as provided in this section. The notice must be filed with the board not later than June 1, 2005. The notice, plan, or amendments shall be submitted by a life science enterprise as provided by the board. The board shall consult with the department of agriculture and land stewardship during its review of a life science plan or amendments to that plan. The plan shall include information regarding the life science enterprise as required by rules adopted by the board, including but not limited to all of the following:

a. A description of life science products to be developed by the enterprise.

b. The time frame required by the enterprise to develop the life science products.

c. The amount of capital investment required by the enterprise to develop the life science products.

d. The number of acres of land required to produce the life science products.

e. The type and extent of participation in the life science enterprise by persons who are individuals or family farm entities. If the plan does not provide for participation or minimal participation, the plan shall include a detailed explanation of the reasonable effort made by the life science enterprise to provide for participation.

5. Approve the budget of the department as prepared by the director.

6. Establish guidelines, procedures, and policies for the awarding of grants or contracts administered by the department.

7. Review grants or contracts awarded by the department, with respect to the department’s adherence to the guidelines and procedures and the impact on the three-year strategic plan for economic growth.

8. Adopt all necessary rules recommended by the director or administrators of divisions prior to their adoption pursuant to chapter 17A.

9. By January 15 of each year, submit a report to the general assembly and the governor that delineates expenditures made under each component of the grow Iowa values fund.\* In addition, the department shall provide in the report the following information regarding each business finance project and in the aggregate for projects funded during the previous fiscal year:

a. The number of net new jobs created as of the time of reporting. For purposes of this paragraph, “net new jobs” means the number of jobs that have been created pursuant to the new or retained positions identified in the contract.

b. The average wage of the jobs created as of the time of reporting.

c. The amount of capital investment invested as of the time of reporting.

d. The location.

e. The amount, if any, of private and local gov-

ernment moneys expended as of the time of reporting.

*f.* The amount of moneys expended on research and development activities that were not included in the jobs created and wages paid criteria.

*g.* The number of jobs retained as of the time of reporting.

\*Approval of reports relating to expenditures for renewable fuel infrastructure programs, see §15G.206

Subsections 10 and 11 stricken pursuant to own terms effective June 30, 2007

### 15.108 Primary responsibilities.

The department has the following areas of primary responsibility:

1. *Finance.* To provide for financial assistance to businesses, local governments, and educational institutions through loans and grants of state and federal funds to enable them to promote and achieve economic development within the state. To carry out this responsibility, the department shall:

*a.* Expend federal funds received as community development block grants as provided in section 8.41.

*b.* Provide staff assistance to the corporation formed under authority of sections 15E.11 to 15E.16 to receive and disburse funds to further the overall development and well-being of the state.

2. *Marketing.* To coordinate, develop, and make available technical services on the state and local levels in order to aid businesses in their start-up or expansion in the state. To carry out this responsibility, the department shall:

*a.* Establish within the department a federal procurement office staffed with individuals experienced in marketing to federal agencies.

*b.* Aid in the marketing and promotion of Iowa products and services. The department may adopt, subject to the approval of the board, a label or trademark identifying Iowa products and services together with any other appropriate design or inscription and this label or trademark shall be registered in the office of the secretary of state. In authorizing the use of a marketing label or trademark to an applicant, the state, and any state agency, official, or employee involved in the authorization, is immune from a civil suit for damages, including but not limited to a suit based on contract, breach of warranty, negligence, strict liability, or tort. Authorization of the use of a marketing label or trademark by the state, or any state agency, official, or employee, is not an express or implied guarantee or warranty concerning the safety, fitness, merchantability, or use of the applicant's product or service. This paragraph does not create a duty of care to the applicant or any other person.

(1) The department may register or file the label or trademark under the laws of the United States or any foreign country which permits registration, making the registration as an association

or through an individual for the use and benefit of the department.

(2) The department shall establish guidelines for granting authority to use the label or trademark to persons or firms who make a satisfactory showing to the department that the product or service meets the guidelines as manufactured, processed, or originating in Iowa. The trademark or label use shall be registered with the department.

(3) A person shall not use the label or trademark or advertise it, or attach it on any promotional literature, manufactured article or agricultural product without the approval of the department.

(4) The department may deny permission to use the label or trademark if the department believes that the planned use would adversely affect the use of the label or trademark as a marketing tool for Iowa products or its use would be inconsistent with the marketing objectives of the department. Notwithstanding chapter 17A, the Iowa administrative procedure Act, the department may suspend permission to use the label or trademark prior to an evidentiary hearing which shall be held within a reasonable period of time following the denial.

*c.* Promote an import substitution program to encourage the purchase of domestically produced Iowa goods by identifying and inventorying potential purchasers and the firms that can supply them, contacting the suppliers to determine their interest and ability in meeting the potential demand, and making the buyers aware of the potential suppliers.

*d.* Aid in the promotion and development of the agricultural processing industry in the state.

3. *Local government and service coordination.* To coordinate the development of state and local government economic development-related programs in order to promote efficient and economic use of federal, state, local, and private resources.

*a.* To carry out this responsibility, the department shall:

(1) Provide the mechanisms to promote and facilitate the coordination of management and technical assistance services to Iowa businesses and industries and to communities by the department, by the community colleges, and by the state board of regents institutions, including the small business development centers, the center for industrial research and service, and extension activities. In order to achieve this goal, the department may establish periodic meetings with representatives from the community colleges and the state board of regents institutions to develop this coordination. The community colleges and the state board of regents institutions shall cooperate with the department in seeking to avoid duplication of economic development services through greater coordinating efforts in the utilization of space, personnel, and materials and in the development of referral and outreach networks. The department shall annually report on the degree to which eco-

economic development activities have been coordinated and the degree to which there are future coordination needs, and the community colleges and the state board of regents institutions shall be given an opportunity to review and comment on this report prior to its printing or release. The department shall also establish a registry of applications for federal funds related to management and technical assistance programs.

(2) Provide office space and staff assistance to the city development board as provided in section 368.9.

(3) Provide technical and financial assistance to local and regional government organizations in Iowa, analyze intergovernmental relations in Iowa, and recommend policies to state agencies, local governments, the governor, and the general assembly as these pertain to economic development.

(4) Train field experts in local development and through them provide continuing support to small local organizations.

(5) Encourage cities, counties, local and regional government organizations, and local and regional economic development organizations to develop and implement comprehensive community and economic development plans. In evaluating financial assistance applications, the department shall award supplementary credit to applications submitted by cities, counties, local and regional government organizations, and local and regional economic development organizations that have developed a comprehensive community and economic development plan.

b. In addition to the duties specified in paragraph "a", the department may:

(1) Perform state and interstate comprehensive planning and related activities.

(2) Perform planning for metropolitan or regional areas or areas of rapid urbanization including interstate areas.

(3) Provide planning assistance to cities, counties, local and regional government organizations, and local and regional economic development organizations. Subject to the availability of funds for this purpose, the department may provide financial assistance to cities, counties, local and regional government organizations, and local and regional economic development organizations for the purpose of developing community and economic development plans.

(4) Assist public or private universities and colleges and urban centers to:

(a) Organize, initiate, develop, and expand programs which will provide special training in skills needed for economic and efficient community development.

(b) Support state and local research that is needed in connection with community development.

4. *Exporting.* To promote and aid in the marketing and sale of Iowa industrial and agricultural

products and services outside of the state. To carry out this responsibility, the department shall:

a. Prepare a report for the governor and the general assembly indicating the areas of export development in which this state could be more actively involved and how this involvement could occur. The initial report shall be available to the governor and members of the general assembly by December 1, 1986. Subsequent reports may be submitted as deemed necessary. The report shall include, but is not limited to:

(1) Information on the financial requirements of export trade activity and the potential roles for state involvement in export trade financing.

(2) Information on financing of export trade activity undertaken by other states and the results of this activity.

(3) Recommendations for a long-term export trade policy for the state.

(4) Recommendations regarding state involvement in export trade financing requirements.

(5) Other findings and recommendations deemed relevant to the understanding of export trade development.

b. Perform the duties and activities specified for the agricultural marketing program under sections 15.201 and 15.202.

c. To the extent deemed feasible and in coordination with the board of regents and the area community colleges, work to establish a conversational foreign language training program.

d. To the extent deemed feasible, promote and assist in the creation of one or more international currency and barter exchanges.

e. Seek assistance and advice from the export advisory board appointed by the governor and the Iowa district export council which advises the United States department of commerce. The governor is authorized to appoint an export advisory board.

f. To the extent deemed feasible, develop a program in which graduates of Iowa institutions of higher education or former residents of the state who are residing in foreign countries and who are familiar with the language and customs of those countries are utilized as cultural advisors for the department and for Iowa businesses participating in trade missions and other foreign trade activities, and in which foreign students studying at Iowa institutions of higher education are provided means to establish contact with Iowa businesses engaged in export activities, and in which foreign students returning to their home countries are used as contacts for trading purposes.

5. *Tourism.* To promote Iowa's public and private recreation and tourism opportunities to Iowans and out-of-state visitors and aid promotional and development efforts by local governments and the private sector. To carry out this responsibility, the department shall:

a. Build general public consensus and support for Iowa's public and private recreation, tourism,

and leisure opportunities and needs.

b. Recommend high quality site management and maintenance standards for all public and private recreation and tourism opportunities.

c. Coordinate and develop with the state department of transportation, the state department of natural resources, the state department of cultural affairs, and other state agencies public interpretation and education programs which encourage Iowans and out-of-state visitors to participate in recreation and leisure opportunities available in Iowa.

d. Coordinate with other divisions of the department to add Iowa's recreation, tourism, and leisure resources to the agricultural and other images which characterize the state on a national level.

e. Consolidate and coordinate the many existing sources of information about local, regional, statewide, and national opportunities into a comprehensive, state-of-the-art information delivery system for Iowans and out-of-state visitors.

f. Formulate and direct marketing and promotion programs to specific out-of-state market populations exhibiting the highest potential for consuming Iowa's public and private tourism products.

g. Provide ongoing long-range planning on a statewide basis for improvements in Iowa's public and private tourism opportunities.

h. Provide the private sector and local communities with advisory services including analysis of existing resources and deficiencies, general development and financial planning, marketing guidance, hospitality training, and others.

i. Measure the change in public opinion of Iowans regarding the importance of recreation, tourism, and leisure.

j. Provide annual monitoring of tourism visitation by Iowans and out-of-state visitors to Iowa attractions, public and private employment levels, and other economic indicators of the recreation and tourism industry and report predictable trends.

k. Identify new business investment opportunities for private enterprise in the recreation and tourism industry.

l. Cooperate with and seek assistance from the state department of cultural affairs.

m. Seek coordination with and assistance from the state department of natural resources in regard to the Mississippi river parkway under chapter 308 for the purposes of furthering tourism efforts.

n. Collect, assemble, and publish a list of farmers who have agreed to host overnight guests, for purposes of promoting agriculture in the state and farm tourism, to the extent that funds are available.

o. Establish a revolving fund to receive contributions to be used for cooperative advertising efforts. Fees and royalties obtained as a result of li-

censing the use of logos and other creative materials for sale by private vendors on selected products may be deposited in the fund. The department shall adopt by rule a schedule for fees and royalties to be charged.

p. Establish, if the department deems necessary, a revolving fund to receive contributions and funds from the product sales center to be used for start-up or expansion of tourism special events, fairs, and festivals as established by department rule.

6. *Employee training and retraining.* To develop employee training and retraining strategies in coordination with the department of education and department of workforce development as tools for business development, business expansion, and enhanced competitiveness of Iowa industry, which will promote economic growth and the creation of new job opportunities and to administer related programs. To carry out this responsibility, the department shall:

a. Coordinate and perform the duties specified under the Iowa industrial new jobs training Act in chapter 260E, the Iowa jobs training Act in chapter 260F, and the workforce development fund in section 15.341.

b. In performing the duties set out in paragraph "a", the department shall:

(1) Work closely with representatives of business and industry, labor organizations, the department of education, the department of workforce development, and educational institutions to determine the employee training needs of Iowa employers, and where possible, provide for the development of industry-specific training programs.

(2) Promote Iowa employee training programs to potential and existing Iowa employers and to employer associations.

(3) Develop annual goals and objectives which will identify both short-term and long-term methods to improve program performance, create employment opportunities for residents, and enhance the delivery of services.

(4) Stimulate the creation of innovative employee training and skills development activities, including business consortium and supplier network training programs, and new employee development training models.

(5) Coordinate employee training activities with other economic development finance programs to stimulate job growth.

(6) Review workforce development initiatives as they relate to the state's economic development agenda, recommending action as necessary to meet the needs of Iowa's communities and businesses.

(7) Incorporate workforce development as a component of community-based economic development activities.

7. *Small business.* To provide assistance to small business, targeted small business, and entrepreneurs creating small businesses to ensure

continued viability and growth. To carry out this responsibility, the department shall:

*a.* Receive and review complaints from individual small businesses that relate to rules or decisions of state agencies, and refer questions and complaints to a governmental agency where appropriate.

*b.* Establish and administer the regulatory information service provided for in section 15E.17.

*c.* Aid for the development and implementation of the Iowa targeted small business procurement Act established in sections 73.15 through 73.21 and the targeted small business financial assistance program established in section 15.247.

(1) *(a)* By December 1 of each year, the department of administrative services shall file a written report with the department of economic development regarding the Iowa targeted small business procurement Act activities during the previous fiscal year. At a minimum, the report shall include a summary of all activities undertaken by the department of administrative services in an effort to maximize the utilization of the targeted small business procurement Act.

*(b)* By December 1 of each year, the department of inspections and appeals shall file a written report with the department of economic development regarding certifications of targeted small businesses. At a minimum, the report shall include the number of certified targeted small businesses for the previous year and the increase or decrease in that number during the previous fiscal year compared to the prior fiscal year, the number of targeted small businesses that have been decertified over the previous fiscal year, and a summary of all activities undertaken by the department of inspections and appeals regarding targeted small business certification.

*(c)* By December 1 of each year, the department of economic development shall compile an internal report regarding the targeted small business financial assistance program. At a minimum, the report shall contain the number of loans, loan guarantees, and grants distributed during the previous fiscal year, the individual amounts provided to targeted small businesses during the previous fiscal year, and how many financial assistance awards to targeted small businesses were the subject of repayment or collection activity during the previous fiscal year.

*(d)* By December 1 of each year, the targeted small business marketing and compliance manager of the department of economic development shall compile a list of the procurement goals established pursuant to section 73.16, subsection 2, and the performance of each agency in meeting the goals. The compilation of the performance of each agency shall be based upon the reports required to be filed under section 73.16, subsection 2.

*(e)* By January 15 of each year, the department of economic development shall submit to the governor and the general assembly a compilation of

reports required under this subparagraph.

(2) The director, with cooperation from the other state agencies, shall publicize the procurement goal program established in sections 73.15 through 73.21 to targeted small businesses and to agencies of state government, attempt to locate targeted small businesses able to perform contracts, and encourage program participation. The director may request the cooperation of the department of administrative services, the state department of transportation, the state board of regents, or any other agency of state government in publicizing this program.

(3) The director, in conjunction with other state agencies, shall publicize the financial assistance program established in section 15.247 to targeted small businesses.

(4) When the director determines, or is notified by the head of another agency of state government, that a targeted small business is unable to perform a procurement contract, the director shall assist the small business in attempting to remedy the causes of the inability to perform. In assisting the small business, the director may use any management or financial assistance programs available through state or governmental agencies or private sources.

(5) The department of economic development shall establish targeted small business advocate service providers for purposes of providing mentoring, outreach, and professional development services to targeted small businesses certified pursuant to section 10A.104. Targeted small business advocate service providers shall be established through a request for proposals process. Entities eligible to bid under the request for proposals process shall include but not be limited to a business accelerator, a small business development center, or any organization that provides mentoring, outreach, and professional development services to businesses. A person serving on or staffing a governor's task force on targeted small businesses during calendar year 2006 shall not be eligible to be part of a bid under the request for proposals process until after July 1, 2009. A person serving on or staffing a governor's targeted small business advisory council shall not be eligible to be part of a bid under the request for proposals process until three years following the termination of service or staffing the advisory council. The advice and services provided by providers shall extend to all areas of business management in its practical application, including but not limited to accounting, engineering, drafting, grant writing, obtaining financing, locating bond markets, market analysis, and projections of profit and loss.

*d.* If determined necessary by the board, provide training for bank loan officers to increase their level of expertise in regard to business loans.

*e.* To the extent feasible, cooperate with the department of workforce development to establish a

program to educate existing employers and new or potential employers on the rates and workings of the state unemployment compensation program and the state workers' compensation program.

*f.* Study the feasibility of reducing the total number of state licenses, permits, and certificates required to conduct small businesses.

*g.* Encourage and assist small businesses to obtain state contracts and subcontracts by cooperating with the directors of purchasing in the department of administrative services, the state board of regents, and the state department of transportation in performing the following functions:

(1) Developing a uniform small business vendor application form which can be adopted by all agencies and departments of state government to identify small businesses and targeted small businesses which desire to sell goods and services to the state. This form shall also contain information which can be used to determine certification as a targeted small business pursuant to section 10A.104, subsection 8.

(2) Compiling and maintaining a comprehensive source list of small businesses.

(3) Assuring that responsible small businesses are solicited on each suitable purchase.

(4) Assisting small businesses in complying with the procedures for bidding and negotiating for contracts.

(5) Simplifying procurement specifications and terms in order to increase the opportunities for small business participation.

(6) When economically feasible, dividing total purchases into tasks or quantities to permit maximum small business participation.

(7) Preparing timely forecasts of repetitive contracting requirements by dollar volume and types of contracts to enhance the participation of responsible small businesses in the public purchasing process.

(8) Developing a mechanism to measure and monitor the amount of participation by small businesses in state procurement.

*h.* In addition, the department shall provide assistance to a small business advisory council which shall consist of nine members appointed as follows:

(1) Not more than five of the members shall be from the same political party. The governor shall appoint the members of the advisory council to four-year terms beginning and ending as provided by section 69.19, subject to confirmation by the senate. Two-thirds of the membership of the advisory council shall consist of individuals who own and operate a small business or individuals employed in the management of a small business.

(2) A vacancy on the advisory council shall be filled in the same manner as regular appointments are made for the unexpired portion of the regular term.

(3) The advisory council shall meet in May of

each year for the purpose of electing one of its members as chairperson and one of its members as vice chairperson. However, the chairperson and vice chairperson shall not be from the same political party. The advisory council shall meet at least quarterly.

(4) Members of the advisory council shall be allowed their actual and necessary expenses incurred in the performance of their duties. All expenses shall be paid from appropriations to the department for those purposes.

(5) The duties of the advisory council may include but shall not be limited to the following:

(a) Advise and consult with the board with respect to matters which are of concern to small business.

(b) Submit recommendations to the board relating to actual or proposed activities concerning small business.

(c) Submit recommendations for legislative or administrative action.

(d) Review and monitor small business programs and agencies in order to determine their effectiveness and whether they complement or compete with each other, and to coordinate the delivery of programs and services aimed at small businesses.

(e) Initiate small business studies as deemed necessary.

(f) Provide other information or perform other duties which would be of assistance to small business.

8. *Case management.* To provide case management assistance to low-income persons for the purpose of establishing or expanding small business ventures as provided in section 15.246.

9. *Miscellaneous.* To provide other necessary services, the department shall:

*a.* Collect and assemble, or cause to have collected and assembled, all pertinent information available regarding the industrial, agricultural, and public and private recreation and tourism opportunities and possibilities of the state of Iowa, including raw materials and products that may be produced from them; power and water resources; transportation facilities; available markets; the banking and financing facilities; the availability of industrial sites; the advantages of the state as a whole, and the particular sections of the state, as industrial locations; the development of a grain alcohol motor fuel industry and its related products; and other fields of research and study as the board deems necessary. This information, as far as possible, shall consider both the encouragement of new industrial enterprises in the state and the expansion of industries now existing within the state, and allied fields to those industries. The information shall also consider the changing composition of the Iowa family and the level of poverty among different age groups and different family structures in Iowa society and their impact on Iowa families.

b. Apply for, receive, contract for, and expend federal funds and grants and funds and grants from other sources.

c. Except as otherwise provided in sections 8A.110, 260C.14, and 262.9, provide that an inventor whose research is funded in whole or in part by the state shall assign to the state a proportionate part of the inventor's rights to a letter patent resulting from that research. Royalties or earnings derived from a letter patent shall be paid to the treasurer of state and credited by the treasurer to the general fund of the state. However, the department in conjunction with other state agencies, including the board of regents, shall provide incentives to inventors whose research is funded in whole or in part by the state for having their products produced in the state. These incentives may include taking a smaller portion of the inventor's royalties or earnings than would otherwise occur under this paragraph or other provisions of the law.

d. Administer or oversee federal rural economic development programs in the state.

e. At the director's discretion, accept payment by credit card of any fees, interest, penalties, subscriptions, registrations, purchases, or other payments, or any portion of such payments, which are due or collected by the department. The department may adjust the amount of the payment to reflect the costs of processing the payment as determined by the treasurer of state and the payment by credit card shall include, in addition to all other charges, any discount charged by the credit card issuer.

f. Provide technical assistance to individuals who are pursuing the purchase and operation of employee-owned businesses.

10. *Economic development planning and research activities.* To provide leadership and support for economic and community development activities statewide. To carry out this responsibility, the department may establish a research center for economic development programs and services whose duties may include but are not limited to the following:

a. Implementation of a comprehensive statewide economic development planning process and provision of leadership, coordination, and support to regional and local economic and community planning efforts.

b. Coordination of the delivery of economic and community development programs with other local, regional, state, federal, and private sector programs and activities.

c. Collection and analysis of data and information, development of databases and performing research to keep abreast of Iowa's present economic base, changing market demands, and emerging trends, including identification of targeted markets and development of marketing strategies.

d. Provision of access to databases to facilitate sales and exports by Iowa businesses.

e. Establishment of a database of community and economic information to aid local, regional, and statewide economic development and service delivery efforts.

11. *Housing development.*

a. To provide assistance to local governments, housing organizations, economic development groups, and other local entities to increase the development of housing in the state and to improve the quality of existing housing in order to maximize the effects of other economic development efforts.

b. To carry out this responsibility, the department shall:

(1) Provide housing needs assessments.

(2) Provide a one-stop source, in coordination with other agencies of the state, for housing development assistance.

(3) Establish programs which assist communities or local entities in developing housing to meet a range of community needs, including programs to assist homeless shelter operations and programs to assist in the development of housing to enhance economic development opportunities in the community.

2007 Acts, ch 126, §5; 2007 Acts, ch 207, §6, 18

Confirmation, see §2.32

Subsection 5, unnumbered paragraph 2 amended and designated as paragraph p

Subsection 7, paragraph c amended

**15.247 Targeted small business financial assistance program.**

1. As used in this section, "*small business*" and "*targeted small business*" mean the same as defined in section 15.102, subsections 4 and 5.

2. A "targeted small business financial assistance program account" is established within the strategic investment fund created in section 15.313, to provide for loans, loan guarantees, or grants to targeted small businesses. A targeted small business in any year shall receive under this program not more than fifty thousand dollars in a loan, grant, or guarantee, or a combination of loans, grants, or guarantees. A grant shall only be awarded when additional financing is secured by the applicant. In order to receive a grant, the applicant must demonstrate a minimum of ten percent cash investment in the project. A targeted small business shall not receive a grant, loan, or guarantee, or a combination of grants, loans, or guarantees under the program that provide more than ninety percent funding of a project. The program shall provide guarantees not to exceed eighty percent for loans of up to seven years made by qualified lenders. The department shall establish a financial assistance reserve account from funds allocated to the program account, from which any default on a guaranteed loan under this section shall be paid. In administering the program the department shall not guarantee loan values in excess of the amount credited to the reserve account and only moneys set aside in the loan re-



serve account may be used for the payment of a default. The department shall maintain records of all financial assistance approved pursuant to this section and information regarding the effectiveness of the financial assistance in establishing or expanding small business ventures.

3. All moneys designated for the targeted small business financial assistance program shall be credited to the program account. The department shall determine the actuarially sound reserve requirement for the amount of guaranteed loans outstanding.

4. The department shall adopt rules as necessary for the administration of the financial assistance program under this section.

5. The general assembly is not obligated to appropriate moneys to pay for any defaults or to appropriate moneys to be credited to the loan reserve account. The loan guarantee program does not obligate the state except to the extent provided in this section, and the department in administering the program shall not give or lend the credit of the state of Iowa.

6. Payments of interest, recaptures of awards, and repayments of moneys loaned under this program shall be deposited into the strategic investment fund.

7. In order to receive financial assistance under this section a targeted small business shall participate in mentoring services from a targeted small business advocate service provider.

8. *a.* In order to receive financial assistance under this section, an application for financial assistance submitted on or after July 1, 2007, must be approved by the targeted small business financial assistance board created in this subsection.

*b.* The targeted small business financial assistance board shall consist of seven members appointed by the director representing backgrounds in the areas of finance, insurance, or banking. The members shall be successful business owners in the private, for-profit sector. At least one member shall be a member of the economic development board appointed by the economic development board. All of the following populations shall be represented separately by at least one member:

- (1) Latino.
- (2) Black.
- (3) Asian or Pacific Islander.
- (4) Caucasian woman.
- (5) Native American.
- (6) A person with a disability as defined in section 15.102.

*c.* A person within the third degree of consanguinity of an employee of the department, a person within the third degree of consanguinity of a member of the targeted small business financial assistance board or member's relative, or a business with any financial ties to a member shall not be eligible for financial assistance under the program during the employee's employment or the mem-

ber's tenure on the board, as applicable. Members shall serve two year terms and may be reappointed. A member shall not serve more than two terms.

*d.* The targeted small business financial assistance board shall consider all applications for financial assistance under the program submitted on or after July 1, 2007.

2007 Acts, ch 207, §7, 8, 18  
Application and review process for applications for financial assistance received on or before June 30, 2007; 2007 Acts, ch 207, §12, 18  
Subsection 2 amended  
NEW subsections 7 and 8

**15.269 Cogeneration pilot program.** Repealed by its own terms; 2003 Acts, ch 159, § 1.

Section repeal is effective July 1, 2007; utilities board proceedings pending on that date and conducted pursuant to §476.53 are to be completed notwithstanding this section repeal; 2003 Acts, ch 159, §1

### 15.318 Rating factors and criteria.

In ranking applications for funds, the department shall consider a variety of factors including, but not limited to, the following:

1. The proportion of local match to be provided.
2. The proportion of private contributions to be provided, including the involvement of financial institutions.
3. The total number of jobs to be created or retained.
4. The size of the business receiving assistance. The department shall award more points to small businesses as defined by the United States small business administration than to other businesses.
5. The potential for future growth in the industry represented by the business being considered for assistance.
6. The need of the business for financial assistance from governmental sources. The department shall award more points to a business for which the department determines that governmental assistance is most necessary to the success of a project, than to other businesses.
7. The quality of the jobs to be created. In rating the quality of the jobs the department shall award more points to those jobs that have a higher wage scale, have a lower turnover rate, are full-time or career-type positions, provide comprehensive health benefits, or have other related factors which could be considered to be higher in quality, than to other jobs. Businesses that have wage scales substantially below that of existing Iowa businesses in that area should be rated as providing the lowest quality of jobs and should therefore be given the lowest ranking for providing such assistance.
8. The level of need of the political subdivision.
9. The impact of the proposed project on the economy of the political subdivision.
10. The impact of the proposed project on other businesses in competition with the business being

considered for assistance. The department shall make a good faith effort to identify existing Iowa businesses within an industry in competition with the business being considered for assistance. The department shall make a good faith effort to determine the probability that the proposed financial assistance will displace employees of the existing businesses. In determining the impact on businesses in competition with the business being considered for assistance, jobs created as a result of other jobs being displaced elsewhere in the state shall not be considered direct jobs created.

11. The impact to the state of the proposed project. In measuring the economic impact the department shall award more points for projects which have greater consistency with the state strategic plan than other projects. Greater consistency may include any or all of the following:

- a. A business with a greater percentage of sales out-of-state or of import substitution.
- b. A business with a higher proportion of in-state suppliers.
- c. A project which would provide greater diversification of the state economy.
- d. A business with fewer in-state competitors.
- e. A potential for future job growth.
- f. A project which is not a retail operation.

12. If a business has a record of violations of the law over a period of time that tends to show a consistent pattern, the business shall be given the lowest ranking for providing assistance. The department shall make a good faith effort to compile this information.

13. If a business has, within three years of application for assistance, acquired or merged with an Iowa corporation or company, whether the business has made a good faith effort to hire the workers of the acquired or merged company.

14. Whether a business provides for a preference for hiring residents of the state or of the economic development area, except for out-of-state employees offered a transfer to Iowa or to the economic development area.

15. Whether all known required environmental permits have been issued and regulations met before moneys are released.

16. In cases where projects being reviewed at the same time are given equivalent ratings under subsections 1 through 15, preference in funding shall be given to the project which is located in the county which has the highest percentage of low-income and moderate-income individuals. If the projects are located in the same county, preference in funding shall be given to the project which is located in the city which has the highest percentage of low-income and moderate-income individuals.

17. The capacity of the proposed project to create products by adding value to agricultural commodities.

18. The degree to which the proposed project relies upon agricultural or value-added research conducted at a college or university, including a re-

gents institution, community college, or a private university or college.

2007 Acts, ch 22, §8  
Subsection 16 amended

### 15.333 Investment tax credit.

1. An eligible business may claim a tax credit equal to a percentage of the new investment directly related to new jobs created by the location or expansion of an eligible business under the program. The tax credit shall be amortized equally over five calendar years. The tax credit shall be allowed against taxes imposed under chapter 422, division II, III, or V, and against the moneys and credits tax imposed in section 533.329. If the business is a partnership, S corporation, limited liability company, cooperative organized under chapter 501 and filing as a partnership for federal tax purposes, or estate or trust electing to have the income taxed directly to the individual, an individual may claim the tax credit allowed. The amount claimed by the individual shall be based upon the pro rata share of the individual's earnings of the partnership, S corporation, limited liability company, cooperative organized under chapter 501 and filing as a partnership for federal tax purposes, or estate or trust. The percentage shall be determined as provided in section 15.335A. Any tax credit in excess of the tax liability for the tax year may be credited to the tax liability for the following seven years or until depleted, whichever occurs first.

Subject to prior approval by the department of economic development, in consultation with the department of revenue, an eligible business whose project primarily involves the production of value-added agricultural products or uses biotechnology-related processes may elect to receive a refund of all or a portion of an unused tax credit. For purposes of this subsection, such an eligible business includes a cooperative described in section 521 of the Internal Revenue Code which is not required to file an Iowa corporate income tax return, and whose project primarily involves the production of ethanol. The refund may be applied against a tax liability imposed under chapter 422, division II, III, or V, and against the moneys and credits tax imposed in section 533.329. If the business is a partnership, S corporation, limited liability company, cooperative organized under chapter 501 and filing as a partnership for federal tax purposes, or estate or trust electing to have the income taxed directly to the individual, an individual may claim the tax credit allowed. The amount claimed by the individual shall be based upon the pro rata share of the individual's earnings of the partnership, S corporation, limited liability company, cooperative organized under chapter 501 and filing as a partnership for federal tax purposes, or estate or trust.

2. For purposes of this subsection, "*new investment directly related to new jobs created by the*

*location or expansion of an eligible business under the program*” means the cost of machinery and equipment, as defined in section 427A.1, subsection 1, paragraphs “e” and “j”, purchased for use in the operation of the eligible business, the purchase price of which has been depreciated in accordance with generally accepted accounting principles, the purchase price of real property and any buildings and structures located on the real property, and the cost of improvements made to real property which is used in the operation of the eligible business. “*New investment directly related to new jobs created by the location or expansion of an eligible business under the program*” also means the annual base rent paid to a third-party developer by an eligible business for a period not to exceed ten years, provided the cumulative cost of the base rent payments for that period does not exceed the cost of the land and the third-party developer’s costs to build or renovate the building for the eligible business. The eligible business shall enter into a lease agreement with the third-party developer for a minimum of five years. If, however, within five years of purchase, the eligible business sells, disposes of, razes, or otherwise renders unusable all or a part of the land, buildings, or other existing structures for which tax credit was claimed under this section, the tax liability of the eligible business for the year in which all or part of the property is sold, disposed of, razed, or otherwise rendered unusable shall be increased by one of the following amounts:

a. One hundred percent of the tax credit claimed under this section if the property ceases to be eligible for the tax credit within one full year after being placed in service.

b. Eighty percent of the tax credit claimed under this section if the property ceases to be eligible for the tax credit within two full years after being placed in service.

c. Sixty percent of the tax credit claimed under this section if the property ceases to be eligible for the tax credit within three full years after being placed in service.

d. Forty percent of the tax credit claimed under this section if the property ceases to be eligible for the tax credit within four full years after being placed in service.

e. Twenty percent of the tax credit claimed under this section if the property ceases to be eligible for the tax credit within five full years after being placed in service.

3. a. An eligible business whose project primarily involves the production of value-added agricultural products or uses biotechnology-related processes, which elects to receive a refund of all or a portion of an unused tax credit, shall apply to the department of economic development for tax credit certificates. Such an eligible business shall not claim a tax credit refund under this subsection unless a tax credit certificate issued by the department of economic development is attached to the

taxpayer’s tax return for the tax year for which the tax credit refund is claimed. For purposes of this subsection, an eligible business includes a cooperative described in section 521 of the Internal Revenue Code which is not required to file an Iowa corporate income tax return, and whose project primarily involves the production of ethanol. For purposes of this subsection, an eligible business also includes a cooperative described in section 521 of the Internal Revenue Code which is required to file an Iowa corporate income tax return and whose project primarily involves the production of ethanol. Such cooperative may elect to transfer all or a portion of its tax credit to its members. The amount of tax credit transferred and claimed by a member shall be based upon the pro rata share of the member’s earnings of the cooperative.

b. A tax credit certificate issued under this subsection shall not be valid until the tax year following the date of the capital investment project completion. A tax credit certificate shall contain the taxpayer’s name, address, tax identification number, the date of project completion, the amount of the tax credit, and other information required by the department of revenue. The department of economic development shall not issue tax credit certificates under this subsection which total more than four million dollars during a fiscal year. If the department receives and approves applications for tax credit certificates under this subsection in excess of four million dollars, the applicants shall receive certificates for a prorated amount. The tax credit certificates shall not be transferred except as provided in this subsection for a cooperative described in section 521 of the Internal Revenue Code which is required to file an Iowa corporate income tax return and whose project primarily involves the production of ethanol. For a cooperative described in section 521 of the Internal Revenue Code, the department of economic development shall require that the cooperative submit a list of its members and the share of each member’s interest in the cooperative. The department shall issue a tax credit certificate to each member contained on the submitted list.

2007 Acts, ch 174, §82  
Subsection 1 amended

### 15.335 Research activities credit.

1. An eligible business may claim a corporate tax credit for increasing research activities in this state during the period the eligible business is participating in the program. For purposes of this section, “*research activities*” includes the development and deployment of innovative renewable energy generation components manufactured or assembled in this state. For purposes of this section, “*innovative renewable energy generation components*” does not include a component with more than two hundred megawatts of installed effective nameplate capacity. The tax credits for innovative

renewable energy generation components shall not exceed one million dollars.

*a.* The credit equals the sum of the following:

(1) Six and one-half percent of the excess of qualified research expenses during the tax year over the base amount for the tax year based upon the state's apportioned share of the qualifying expenditures for increasing research activities.

(2) Six and one-half percent of the basic research payments determined under section 41(e)(1)(A) of the Internal Revenue Code during the tax year based upon the state's apportioned share of the qualifying expenditures for increasing research activities.

The state's apportioned share of the qualifying expenditures for increasing research activities is a percent equal to the ratio of qualified research expenditures in this state to total qualified research expenditures.

*b.* In lieu of the credit amount computed in paragraph "a", subparagraph (1), an eligible business may elect to compute the credit amount for qualified research expenses incurred in this state in a manner consistent with the alternative incremental credit described in section 41(c)(4) of the Internal Revenue Code. The taxpayer may make this election regardless of the method used for the taxpayer's federal income tax. The election made under this paragraph is for the tax year and the taxpayer may use another or the same method for any subsequent year.

*c.* For purposes of the alternate credit computation method in paragraph "b", the credit percentages applicable to qualified research expenses described in clauses (i), (ii), and (iii) of section 41(c)(4)(A) of the Internal Revenue Code are one and sixty-five hundredths percent, two and twenty hundredths percent, and two and seventy-five hundredths percent, respectively.

2. The credit allowed in this section is in addition to the credit authorized in section 422.10 and section 422.33, subsection 5. However, if the alternative credit computation method is used in section 422.10 or section 422.33, subsection 5, the credit allowed in this section shall also be computed using that method.

3. If the eligible business is a partnership, S corporation, limited liability company, or estate or trust electing to have the income taxed directly to the individual, an individual may claim the tax credit allowed. The amount claimed by the individual shall be based upon the pro rata share of the individual's earnings of the partnership, S corporation, limited liability company, or estate or trust.

4. For purposes of this section, "base amount", "basic research payment", and "qualified research expense" mean the same as defined for the federal credit for increasing research activities under section 41 of the Internal Revenue Code, except that for the alternative incremental credit such

amounts are for research conducted within this state.

For purposes of this section, "Internal Revenue Code" means the Internal Revenue Code in effect on January 1, 2007.

5. Any credit in excess of the tax liability for the taxable year shall be refunded with interest computed under section 422.25. In lieu of claiming a refund, a taxpayer may elect to have the overpayment shown on its final, completed return credited to the tax liability for the following year.

2007 Acts, ch 12, §1, 7, 8

Internal Revenue Code definition is updated regularly; for applicable definition in a prior tax year, refer to Iowa Acts and Code for that year

2007 amendment to subsection 4 takes effect March 9, 2007, and applies retroactively to January 1, 2006, for tax years beginning on or after that date; 2007 Acts, ch 12, §7, 8

Subsection 4, unnumbered paragraph 2 amended

**15.388 through 15.390** Reserved.

## PART 21

### **15.391 Short title.**

This part shall be known as the "Film, Television, and Video Project Promotion Program".

2007 Acts, ch 162, §1, 13

Section takes effect May 17, 2007, and applies retroactively to tax years beginning on or after January 1, 2007; 2007 Acts, ch 162, §13

NEW section

### **15.392 Purpose.**

The purpose of the film, television, and video project promotion program is to assist legitimate film, television, and video producers in the production of film, television, and video projects in the state and to increase the fiscal impact on the state's economy of film, television, and video projects produced in the state. The program includes assistance in the production of advertising projects in a film, television, or video medium.

2007 Acts, ch 162, §2, 13

Section takes effect May 17, 2007, and applies retroactively to tax years beginning on or after January 1, 2007; 2007 Acts, ch 162, §13

NEW section

### **15.393 Film, television, and video project promotion program — tax credits and income exclusion.**

1. The department shall establish and administer a film, television, and video project promotion program that provides for the registration of projects to be shot on location in the state. A project that is registered under the program is entitled to the assistance provided in subsection 2. A fee shall not be charged for registering. The department shall not register a project unless the department determines that all of the following are met:

*a.* The project is a legitimate effort to produce an entire film, television, or video episode or a film, television, or video segment in the state.

*b.* The project will include expenditures of at least one hundred thousand dollars in the state and have an economic impact on the economy of

the state or locality sufficient to justify assistance under the program.

c. The project will further tourism, economic development, and population retention or growth in the state or locality.

d. Other criteria established by rule relating to the economic impact and promotional aspects of the project on the state or locality.

2. A project registered with the department under the program is eligible for the following assistance:

a. (1) For tax years beginning on or after January 1, 2007, a qualified expenditure tax credit shall be allowed against the taxes imposed in chapter 422, divisions II, III, and V, and in chapter 432, and against the moneys and credits tax imposed in section 533.329, for a portion of a taxpayer's qualified expenditures in a project registered under the program. The tax credit shall equal twenty-five percent of the qualified expenditures on a project. An individual may claim a tax credit under this paragraph "a" of a partnership, limited liability company, S corporation, estate, or trust electing to have income taxed directly to the individual. The amount claimed by the individual shall be based upon the pro rata share of the individual's earnings from the partnership, limited liability company, S corporation, estate, or trust. Any tax credit in excess of the taxpayer's liability for the tax year may be credited to the tax liability for the following five years or until depleted, whichever is earlier. A tax credit shall not be carried back to a tax year prior to the tax year in which the taxpayer claims the tax credit.

(2) A qualified expenditure by a taxpayer is a payment to an Iowa resident or an Iowa-based business for the sale, rental, or furnishing of tangible personal property or for services directly related to the registered project including but not limited to aircraft, vehicles, equipment, materials, supplies, accounting, animals and animal care, artistic and design services, graphics, construction, data and information services, delivery and pickup services, graphics, labor and personnel, lighting, makeup and hairdressing, film, music, photography, sound, video and related services, printing, research, site fees and rental, travel related to Iowa distant locations, trash removal and clean-up, and wardrobe. For the purposes of this subparagraph, "labor and personnel" does not include the director, producers, or cast members other than extras and stand-ins. The department of revenue, in consultation with the department of economic development, shall by rule establish a list of eligible expenditures.

(3) After verifying the eligibility for a tax credit under this paragraph "a", the department of economic development shall issue a film, television, and video project promotion program tax credit certificate to be attached to the person's tax return. The tax credit certificate shall contain the taxpayer's name, address, tax identification num-

ber, the date of project completion, the amount of credit, other information required by the department of revenue, and a place for the name and tax identification number of a transferee and the amount of the tax credit being transferred. Tax credit certificates issued under this paragraph "a" may be transferred to any person or entity. Within ninety days of transfer, the transferee shall submit the transferred tax credit certificate to the department of revenue along with a statement containing the transferee's name, tax identification number, and address, and the denomination that each replacement tax credit certificate is to carry and any other information required by the department of revenue. Within thirty days of receiving the transferred tax credit certificate and the transferee's statement, the department of revenue shall issue one or more replacement tax credit certificates to the transferee. Each replacement tax credit certificate must contain the information required for the original tax credit certificate and must have the same expiration date that appeared in the transferred tax credit certificate. Tax credit certificate amounts of less than the minimum amount established by rule of the department of economic development shall not be transferable. A tax credit shall not be claimed by a transferee under this paragraph "a" until a replacement tax credit certificate identifying the transferee as the proper holder has been issued. The transferee may use the amount of the tax credit transferred against the taxes imposed in chapter 422, divisions II, III, and V, and in chapter 432, and against the moneys and credits tax imposed in section 533.329, for any tax year the original transferor could have claimed the tax credit. Any consideration received for the transfer of the tax credit shall not be included as income under chapter 422, divisions II, III, and V, under chapter 432, or against the moneys and credits tax imposed in section 533.329. Any consideration paid for the transfer of the tax credit shall not be deducted from income under chapter 422, divisions II, III, and V, under chapter 432, or against the moneys and credits tax imposed in section 533.329.

(4) A taxpayer claiming a tax credit under this paragraph "a", a business in which such taxpayer has an equity interest, and a business in which such taxpayer participates in its management is not eligible to receive the adjusted gross income reduction under paragraph "c".

b. (1) For tax years beginning on or after January 1, 2007, an investment tax credit shall be allowed against the taxes imposed in chapter 422, divisions II, III, and V, and in chapter 432, and against the moneys and credits tax imposed in section 533.329, for a portion of a taxpayer's investment in a project registered under the program. The tax credit shall equal twenty-five percent of the investment in the project. An individual may claim a tax credit under this paragraph of a partnership, limited liability company, S corporation,

estate, or trust electing to have income taxed directly to the individual. The amount claimed by the individual shall be based upon the pro rata share of the individual's earnings from the partnership, limited liability company, S corporation, estate, or trust. Any tax credit in excess of the taxpayer's liability for the tax year may be credited to the tax liability for the following five years or until depleted, whichever is earlier. A tax credit shall not be carried back to a tax year prior to the tax year in which the taxpayer claims the tax credit. A taxpayer shall not claim a tax credit under this paragraph "b" for qualified expenditures for which a tax credit is claimed under paragraph "a".

(2) After verifying the eligibility for a tax credit under this paragraph "b", the department of economic development shall issue a film, television, and video project promotion program tax credit certificate to be attached to the person's tax return. The tax credit certificate shall contain the taxpayer's name, address, tax identification number, the date of project completion, the amount of credit, other information required by the department of revenue, and a place for the name and tax identification number of a transferee and the amount of the tax credit being transferred. Tax credit certificates issued under this paragraph "b" may be transferred to any person or entity. Within ninety days of transfer, the transferee shall submit the transferred tax credit certificate to the department of revenue along with a statement containing the transferee's name, tax identification number, and address, and the denomination that each replacement tax credit certificate is to carry and any other information required by the department of revenue. Within thirty days of receiving the transferred tax credit certificate and the transferee's statement, the department of revenue shall issue one or more replacement tax credit certificates to the transferee. Each replacement tax credit certificate must contain the information required for the original tax credit certificate and must have the same expiration date that appeared in the transferred tax credit certificate. Tax credit certificate amounts of less than the minimum amount established by rule of the department of economic development shall not be transferable. A tax credit shall not be claimed by a transferee under this paragraph "b" until a replacement tax credit certificate identifying the transferee as the proper holder has been issued. The transferee may use the amount of the tax credit transferred against the taxes imposed in chapter 422, divisions II, III, and V, and in chapter 432, and against the moneys and credits tax imposed in section 533.329, for any tax year the original transferor could have claimed the tax credit. Any consideration received for the transfer of the tax credit shall not be included as income under chapter 422, divisions II, III, and V, under chapter 432, or against the moneys and credits tax imposed in section 533.329. Any consideration paid for the trans-

fer of the tax credit shall not be deducted from income under chapter 422, divisions II, III, and V, under chapter 432, or against the moneys and credits tax imposed in section 533.329.

c. For tax years beginning on or after January 1, 2007, a reduction in adjusted gross income for purposes of taxes imposed in chapter 422, divisions II and III, for payments received from the sale, rental, or furnishing of tangible personal property or services directly related to the production of a project registered under this section which meets the criteria of a qualified expenditure under paragraph "a", subparagraph (2).

3. The department shall promote the program and the assistance available under the program on an internet website.

4. A project that depicts or describes any obscene material, as defined in section 728.1, shall not be eligible to receive assistance under this section.

2007 Acts, ch 162, §3, 13; 2007 Acts, ch 174, §99  
Section takes effect May 17, 2007, and applies retroactively to tax years beginning on or after January 1, 2007; 2007 Acts, ch 162, §13  
Code editor directive applied  
NEW section

**15.394 through 15.400** Reserved.

PART 22

**15.402 through 15.410** Reserved.

PART 23

**15.411 Targeted industries development — financial assistance.**

1. As used in this section, unless the context otherwise requires:

a. "*Internship*" means temporary employment of a student that focuses on providing the student with work experience in the student's field of study.

b. "*Targeted industries*" means the industries of advanced manufacturing, biosciences, and information technology.

2. The department shall, upon board approval, contract with a provider through a request for proposals process for services related to statewide commercialization development in the targeted industries. Services provided shall include all of the following:

a. Assistance provided directly to businesses by experienced serial entrepreneurs for all of the following activities:

- (1) Business plan development.
- (2) Due diligence.
- (3) Market assessments.
- (4) Technology assessments.
- (5) Other planning activities.

b. Operation and coordination of various available competitive seed and prototype development funds.

c. Connecting businesses to private angel investors and the venture capital community.

d. Assistance in obtaining access to an experienced pool of managers and operations talent that can staff, mentor, or advise start-up enterprises.

e. Support and advice for accessing sources of early stage financing.

3. The department shall establish and administer a program to provide financial and technical assistance to encourage prototype and concept development activities that have a clear potential to lead to commercially viable products or services within a reasonable period of time in the targeted industries. Financial assistance shall be awarded on a per project basis upon board approval. The amount of financial assistance available for a single project shall not exceed one hundred fifty thousand dollars. In order to receive financial assistance, an applicant must demonstrate the ability to secure one dollar of nonstate moneys for every two dollars received from the department.

4. The department shall, upon board approval, establish and administer a program to provide financial assistance for projects designed to encourage collaboration between commercial users and developers of information technology in the state for the purpose of commercializing existing software and applications technologies. Financial assistance shall not exceed one hundred thousand dollars per project. In order to receive financial assistance, an applicant must demonstrate the ability to secure two dollars of nonstate moneys for every one dollar received from the department. Financial assistance shall be awarded to projects that will result in technologies being developed as commercial products for sale by Iowa companies rather than as custom applications for proprietary use by a participating firm.

5. The department shall, upon board approval, establish and administer a program to provide financial assistance to businesses or departments of businesses engaged in the delivery of information technology services in the state for the purpose of upgrading the high-level technical skills of existing employees. The amount of financial assistance shall not exceed twenty-five thousand dollars for any business site. In order to receive financial assistance, an applicant must demonstrate the ability to secure two dollars of nonstate moneys for every one dollar received from the department.

6. The department shall, upon board approval, establish and administer a targeted industries internship program for students of Iowa community colleges, private colleges, or institutions of higher learning under the control of the state board of regents. The purpose of the program is to link Iowa students to small and medium sized firms in the targeted industries through internship opportunities. An employer may receive financial assistance in an amount of one dollar for every two dollars paid by the employer to an intern. The amount of financial assistance shall not exceed

three thousand one hundred dollars for any single internship, or nine thousand three hundred dollars for any single employer. In order to be eligible to receive financial assistance under this subsection, the employer must have five hundred or fewer employees and must be engaged in a targeted industry. The department shall encourage youth who reside in economically distressed areas, youth adjudicated to have committed a delinquent act, and youth transitioning out of foster care to participate in the targeted industries internship program.

7. The department of economic development shall work with the department of workforce development to create a statewide supplier capacity and product database to assist the department of economic development in linking suppliers to Iowa-based companies. The department of economic development may procure technical assistance for the creation of the database from a third party through a request for proposals process.

8. The technology commercialization committee created pursuant to section 15.116 shall review all applications for financial assistance and requests for proposals pursuant to this section and make recommendations to the board.

9. The board shall adopt rules pursuant to chapter 17A necessary for the administration of this section.

2007 Acts, ch 122, §1  
NEW section

**15.412 through 15.420** Reserved.

#### PART 24

#### **15.421 Generation Iowa commission.**

1. The generation Iowa commission is established within the department for purposes of advising and assisting in the retention and attraction of the young adult population in the state in both urban and rural areas.

2. *a.* The commission shall consist of fifteen voting members appointed by the governor, subject to confirmation by the senate. At the time of appointment or reappointment, a member shall be at least eighteen years of age, but less than thirty-five years of age. The voting membership shall reflect diversity within all of the following areas:

(1) Geographic location within the state.

(2) Public, private, and nonprofit sector employment.

(3) Location of secondary and higher education within and outside Iowa.

(4) Urban and rural residents.

(5) Multicultural diversity.

*b.* Four members of the general assembly shall serve as nonvoting, ex officio members of the commission with two from the senate and two from the house of representatives and not more than one member from each chamber being from the same political party. The two senators shall be designat-

ed by the president of the senate after consultation with the majority and minority leaders of the senate. The two representatives shall be designated by the speaker of the house of representatives after consultation with the majority and minority leaders of the house of representatives.

3. The voting members shall be appointed in compliance with the requirements of sections 69.16, 69.16A, and 69.19, and shall serve staggered, three-year terms as designated by the governor. Members may be reappointed by the governor provided the requirements of subsection 2 are met.

4. The commission shall annually elect a chairperson and a vice chairperson from the voting members of the commission.

5. The commission shall do all of the following:

a. (1) By January 15, 2008, the commission shall submit a written report to the governor and the general assembly. The report shall include findings and recommendations of the commission regarding the status of efforts to attract and retain the young adult population in the state, career op-

portunities and educational needs of young adults, and the movement of the young adult population between rural areas and urban areas and between Iowa and other states. The commission shall submit an updated report to the governor and the general assembly by January 15, 2009, and by January 15 in every odd-numbered year thereafter.

(2) By January 15 in years when the report required in subparagraph (1) is not updated, the commission shall submit to the governor and the general assembly a written status report which shall include an analysis of progress made during the previous calendar year on any recommendations in the report and any available updates on data included in the report.

b. Advise and assist the department in activities designed to retain and attract the young adult population.

c. Develop and make available best practices guidelines for employers to attract and retain young adult employees.

2007 Acts, ch 45, §1  
NEW section

## CHAPTER 15A

### USE OF PUBLIC FUNDS TO AID ECONOMIC DEVELOPMENT

#### 15A.9 Quality jobs enterprise zone — state assistance.

##### 1. *Findings — zone designation.*

a. The general assembly finds and declares that the designation of a quality jobs enterprise zone or zones and the provision of economic development assistance within the zone or zones are necessary to diversify the Iowa economy, enhance opportunities for Iowans to obtain quality industrial jobs, and provide significant economic benefits to the state through the expansion of Iowa's economy. Establishment of the quality jobs enterprise zone or zones and the economic development assistance provided by the state or a local community will be for the well-being and benefit of the residents of the state and will be for a public purpose.

b. In order to assist a community or communities located within the state to secure new industrial manufacturing jobs, the state of Iowa makes economic development assistance available within the zone or zones, and the department of economic development shall designate a site or sites, which shall not be larger than two thousand five hundred acres, within thirty days of March 4, 1994, as a quality jobs enterprise zone or zones for the purpose of attracting a primary business and supporting businesses to locate facilities within the state.

The primary business or a supporting business

shall not be prohibited from participating in or receiving other economic development programs or services or electing to utilize other tax provisions to the extent authorized elsewhere by law.

##### 2. *Definitions.* As used in this section:

a. “*Contractor or subcontractor*” means a person who contracts with the primary business or a supporting business or subcontracts with a contractor for the provision of property, materials, or services for the construction or equipping of a facility, located within the zone, of the primary business or a supporting business.

b. “*Primary business*” means a business which pays its full-time production employees at the facility average cash compensation, which shall not include the cost of the business's contribution to retirement or health benefit plans, equating to fifteen dollars per hour worked by the end of the second full year of operation following project completion, and which provides the department of economic development within thirty days of March 4, 1994, with notice of its intent to develop and operate a new manufacturing facility on a specific location within the state, including the legal description of the site which shall not contain more than two thousand five hundred acres, to invest at least two hundred fifty million dollars in the facility, and to commence construction of the facility by December 31, 1994, providing all necessary permits have been issued and zoning changes made in



time for construction to begin by that date. The business shall also guarantee that it will create at least three hundred full-time jobs at the facility. The headquarters of the primary business need not be within the zone.

c. “*Project completion*” means the first date upon which the average annualized production of finished product for the preceding ninety-day period at the manufacturing facility operated by the primary business within the zone is at least fifty percent of the initial design capacity of the facility. The primary business shall inform the department of revenue in writing within two weeks of project completion.

d. “*Supporting business*” means a business under contract with the primary business to provide property, materials, or services which are a necessary component of the operation of the manufacturing facility. To qualify as a supporting business, the business shall have a permanent facility or operations located within the zone and the revenue from fulfilling the contract with the primary business shall constitute at least seventy-five percent of the revenue generated by the business from all activities undertaken from the facility within the zone.

e. “*Zone or zones*” means a quality jobs enterprise zone or zones.

3. *New jobs credit.* At the request of the primary business or a supporting business, an agreement authorizing a supplemental new jobs credit from withholding from jobs within the zone may be entered into between the department of revenue, a community college, and the primary business or a supporting business. The agreement shall be for program services for an additional job training project, as defined in chapter 260E. The agreement shall provide for the following:

a. That the project shall be administered in the same manner as a project under chapter 260E and that a supplemental new jobs credit from withholding in an amount equal to one and one-half percent of the gross wages paid by the primary business or a supporting business pursuant to section 422.16 is authorized to fund the program services for the additional project.

b. That the supplemental new jobs credit from withholding shall be collected, accounted for, and may be pledged by the community college in the same manner as described in section 260E.5.

c. That the community college shall not be allowed any expenses for administering the additional project except those expenses which are directly attributable to the additional project and which are in excess of the expenses allowed for the project under chapter 260E.

To provide funds for the payment of the costs of the additional project, a community college may borrow money, issue and sell certificates, and secure the payment of the certificates in the same manner as described in section 260E.6, including, but not limited to, providing the assessment of an

annual levy as described in section 260E.6, subsection 4. The program and credit authorized by this subsection is in addition to, and not in lieu of, the program and credit authorized in chapter 260E.

4. *Investment tax credit.* The primary business and a supporting business shall be entitled to a corporate tax credit equal to ten percent of the new investment made within the zone by the primary business or a supporting business prior to project completion. A credit in excess of the tax liability for the tax year may be credited to the tax liability for the following twenty years or until depleted, whichever comes first.

For purposes of this section, “*new investment made within the zone*” means the capitalized cost of all real and personal property, including buildings and other improvements to real estate, purchased or otherwise acquired or relocated to the zone for use in the operation of the primary business or a supporting business within the zone. New investment in the zone does not include land, intangible property, or furniture and furnishings. The capitalized cost of property shall for the purposes of this section be determined in accordance with generally accepted accounting principles.

5. *Property tax exemption.*

a. All property, as defined in former section 427A.1, subsection 1, paragraphs “e” and “j”, Code 1993, used by the primary business or a supporting business and located within the zone, shall be exempt from property taxation for a period of twenty years beginning with the year it is first assessed for taxation. In order to be eligible for this exemption, the property shall be acquired or leased by the primary business or a supporting business or relocated by the primary business or a supporting business to the zone from outside the state prior to project completion.

b. Property which is exempt for property tax purposes under this subsection is eligible for the sales and use tax exemption under section 423.3, subsection 47, notwithstanding that subsection or any other provision of the Code to the contrary.

6. *Sales, services, and use tax refund.* Taxes paid pursuant to chapter 423 on the sales price or rental price of property purchased or rented by the primary business or a supporting business for use by the primary business or a supporting business within the zone or on gas, electricity, water, and sewer utility services prior to project completion shall be refunded to the primary business or supporting business if the item was purchased or the service was performed or received prior to project completion. Claims under this section shall be submitted on forms provided by the department of revenue not later than six months after project completion. The refund in this subsection shall not apply to furniture or furnishings, or intangible property.

7. *Sales, services, and use tax refund — contractor or subcontractor.* The primary business

or a supporting business shall be entitled to a refund of the sales and use taxes paid under chapter 423 for gas, electricity, water, or sewer utility services, goods, wares, or merchandise, or on services rendered, furnished, or performed to or for a contractor or subcontractor and used in the fulfillment of a written contract relating to the construction or equipping of a facility within the zone of the primary business or a supporting business. Taxes attributable to intangible property and furniture and furnishings shall not be refunded.

To receive the refund, a claim shall be filed by the primary business or a supporting business with the department of revenue as follows:

*a.* The contractor or subcontractor shall state under oath, on forms provided by the department, the amount of the sales of goods, wares, or merchandise or services rendered, furnished, or performed including water, sewer, gas, and electric utility services for use in the zone upon which sales or use tax has been paid prior to the project completion, and shall file the forms with the primary business or supporting business before final settlement is made.

*b.* The primary business or a supporting business shall, not more than six months after project completion, make application to the department for any refund of the amount of the sales and use taxes paid pursuant to chapter 423 upon any goods, wares, or merchandise, or services rendered, furnished, or performed, including water, sewer, gas, and electric utility services. The application shall be made in the manner and upon forms to be provided by the department, and the department shall audit the claim and, if approved, issue a warrant to the primary business or supporting business in the amount of the sales or use tax which has been paid to the state of Iowa under a contract. A claim filed by the primary business or a supporting business in accordance with this subsection shall not be denied by reason of a limitation provision set forth in chapter 421, 422, or 423.

*c.* A contractor or subcontractor who willfully makes a false report of tax paid under the provisions of this subsection is guilty of a simple misdemeanor and in addition is liable for the payment of the tax and any applicable penalty and interest.

8. *Corporate tax research credit.* A corporate tax credit shall be available to the primary business or a supporting business for increasing research activities in this state within the zone.

*a.* The credit equals the sum of the following:

(1) Thirteen percent of the excess of qualified research expenses during the tax year over the base amount for the tax year based upon the state's apportioned share of the qualifying expenditures for increasing research activities.

(2) Thirteen percent of the basic research payments determined under section 41(e)(1)(A) of the Internal Revenue Code during the tax year based upon the state's apportioned share of the qualify-

ing expenditures for increasing research activities.

The state's apportioned share of the qualifying expenditures for increasing research activities is a percent equal to the ratio of qualified research expenditures in this state within the zone to total qualified research expenditures.

*b.* In lieu of the credit amount computed in paragraph "a", subparagraph (1), a business may elect to compute the credit amount for qualified research expenses incurred in this state within the zone in a manner consistent with the alternative incremental credit described in section 41(c)(4) of the Internal Revenue Code. The taxpayer may make this election regardless of the method used for the taxpayer's federal income tax. The election made under this paragraph is for the tax year and the taxpayer may use another or the same method for any subsequent year.

*c.* For purposes of the alternate credit computation method in paragraph "b", the credit percentages applicable to qualified research expenses described in clauses (i), (ii), and (iii) of section 41(c)(4)(A) of the Internal Revenue Code are three and thirty hundredths percent, four and forty hundredths percent, and five and fifty hundredths percent, respectively.

*d.* Any credit in excess of the tax liability for the tax year shall be refunded with interest computed under section 422.25. In lieu of claiming a refund, the primary business or a supporting business may elect to have the overpayment shown on its final return credited to its tax liability for the following tax year.

*e.* For the purposes of this subsection, "base amount", "basic research payment", and "qualified research expense" mean the same as defined for the federal credit for increasing research activities under section 41 of the Internal Revenue Code, except that for the alternative incremental credit such amounts are for research conducted within this state within the zone.

For purposes of this subsection, "Internal Revenue Code" means the Internal Revenue Code in effect on January 1, 2007.

*f.* The credit authorized in this subsection is in lieu of the credit authorized in section 422.10 and section 422.33, subsection 5.

9. *Exemption from land ownership restrictions for nonresident aliens.*

*a.* The primary business and a supporting business, to the extent the primary business or the supporting business is not actively engaged in farming within the zone, may acquire, own, and lease land in the zone, notwithstanding the provisions of sections 9H.4, 9H.5, and 9I.3, and shall be exempt from the requirements of section 9I.4. The primary business and supporting business shall comply with the remaining provisions of chapters 9H and 9I to the extent they do not conflict with this subsection.

*b.* "Actively engaged in farming" means any of

the following:

(1) Inspecting agricultural production activities within the zone periodically and furnishing at least half of the value of the tools and paying at least half the direct cost of production.

(2) Regularly and frequently making or taking an important part in making management decisions substantially contributing to or affecting the success of the farm operations within the zone.

(3) Performing physical work which significantly contributes to crop or livestock production.

10. *Limitation on assistance.* Economic development assistance under subsections 3 through 9 shall only be available to the primary business or a supporting business. However, if the department of economic development finds that a primary business or a supporting business has a record of violations of the law, including but not limited to environmental and worker safety statutes, rules, and regulations, over a period of time

that tends to show a consistent pattern, the primary business or supporting business shall not qualify for economic development assistance under subsections 3 through 9, unless the department of economic development finds that the violations did not seriously affect public health or safety or the environment, or if it did that there were mitigating circumstances. In making the findings and determinations regarding violations, mitigating circumstances, and whether a primary business or a supporting business is eligible for economic development assistance under subsections 3 through 9, the department of economic development shall be exempt from chapter 17A.

2007 Acts, ch 12, §2, 7, 8

Internal Revenue Code definition is updated regularly; for applicable definition in a prior tax year, refer to Iowa Acts and Code for that year

2007 amendment to subsection 8, paragraph e, takes effect March 9, 2007, and applies retroactively to January 1, 2006, for tax years beginning on or after that date; 2007 Acts, ch 12, §7, 8

Subsection 8, paragraph e, unnumbered paragraph 2 amended

## CHAPTER 15E

### DEVELOPMENT ACTIVITIES

#### 15E.43 Investment tax credits.

1. *a.* For tax years beginning on or after January 1, 2002, a tax credit shall be allowed against the taxes imposed in chapter 422, divisions II, III, and V, and in chapter 432, and against the moneys and credits tax imposed in section 533.329, for a portion of a taxpayer's equity investment, as provided in subsection 2, in a qualifying business or a community-based seed capital fund. An individual may claim a tax credit under this paragraph of a partnership, limited liability company, S corporation, estate, or trust electing to have income taxed directly to the individual. The amount claimed by the individual shall be based upon the pro rata share of the individual's earnings from the partnership, limited liability company, S corporation, estate, or trust.

*b.* A tax credit shall be allowed only for an investment made in the form of cash to purchase equity in a qualifying business or in a community-based seed capital fund. A taxpayer shall not claim the tax credit prior to the third tax year following the tax year in which the investment is made. Any tax credit in excess of the taxpayer's liability for the tax year may be credited to the tax liability for the following five years or until depleted, whichever is earlier. A tax credit shall not be carried back to a tax year prior to the tax year in which the taxpayer redeems the tax credit.

*c.* In the case of a tax credit allowed against the taxes imposed in chapter 422, division II, where the taxpayer died prior to redeeming the entire tax credit, the remaining credit can be redeemed on the decedent's final income tax return.

2. A tax credit shall equal twenty percent of the taxpayer's equity investment. The maximum amount of a tax credit for an investment by an investor in any one qualifying business shall be fifty thousand dollars. Each year, an investor and all affiliates of the investor shall not claim tax credits under this section for more than five different investments in five different qualifying businesses.

3. An investment shall be deemed to have been made on the same date as the date of acquisition of the equity interest as determined by the Internal Revenue Code. An investment made prior to January 1, 2002, shall not qualify for a tax credit under this division.

4. The aggregate amount of tax credits issued pursuant to this division shall not exceed a total of ten million dollars. The total amount of tax credits issued during the fiscal year beginning July 1, 2002, shall not exceed three million dollars. The total amount of tax credits issued during the fiscal year beginning July 1, 2003, shall not exceed three million dollars. The total amount of tax credits issued during the fiscal year beginning July 1, 2004, shall not exceed four million dollars. Any amount of the maximum aggregate limit of tax credits that have not been issued by June 30, 2005, may be issued in any subsequent fiscal year. Not more than three million dollars of tax credits may be issued in any one subsequent fiscal year.

5. A tax credit shall not be redeemed during any tax year beginning prior to January 1, 2005. A tax credit shall not be transferable to any other taxpayer.

6. The board shall develop a system for regis-

tration and authorization of tax credits authorized pursuant to this division and shall control distribution of all tax credits distributed to investors pursuant to this division. The board shall develop rules for the qualification and administration of qualifying businesses and community-based seed capital funds. The department of revenue shall adopt these criteria as administrative rules and any other rules pursuant to chapter 17A necessary for the administration of this division.

7. The board may cooperate with the small business development centers in an effort to disseminate information regarding the availability of tax credits for investments in qualifying businesses under this division. The board may also cooperate with the small business development centers to develop a standard seed capital application form that the small business development centers may submit to the board on behalf of clients seeking seed capital. The board shall distribute copies of the application forms to all community-based seed capital funds and potential individual investors.

2007 Acts, ch 174, §83  
Subsection 1, paragraph a amended

#### 15E.44 Qualifying businesses.

1. In order for an equity investment to qualify for a tax credit, the business in which the equity investment is made shall, within one hundred twenty days of the date of the first investment, notify the board of the names, addresses, shares issued, consideration paid for the shares, and the amount of any tax credits, of all shareholders who may initially qualify for the tax credits, and the earliest year in which the tax credits may be redeemed. The list of shareholders who may qualify for the tax credits shall be amended as new equity investments are sold or as any information on the list shall change.

2. In order to be a qualifying business, a business must meet all of the following criteria:

a. The principal business operations of the business are located in this state.

b. The business has been in operation for six years or less.

c. The business has an owner who has successfully completed one of the following:

(1) An entrepreneurial venture development curriculum.

(2) Three years of relevant business experience.

(3) A four-year college degree in business management, business administration, or a related field.

(4) Other training or experience as the board may specify by rule or order as sufficient to increase the probability of success of the qualifying business.

d. The business is not a business engaged primarily in retail sales, real estate, or the provision of health care or other professional services.

e. The business shall not have a net worth that exceeds ten million dollars.

f. The business shall have secured, within twenty-four months following the first date on which the equity investments qualifying for tax credits have been made, total equity or near equity financing equal to at least two hundred fifty thousand dollars.

3. A qualifying business shall have the burden of proof to demonstrate to the board its qualifications under this section, and shall have the obligation to notify the board in a timely manner of any changes in the qualifications of the business or in the eligibility of investors to redeem the investment tax credits in any tax year.

4. After verifying the eligibility of a qualifying business, the board shall issue a tax credit certificate to be attached to the equity investor's tax return. The tax credit certificate shall contain the taxpayer's name, address, tax identification number, the amount of credit, the name of the qualifying business, and other information required by the department of revenue. The tax credit certificate, unless rescinded by the board, shall be accepted by the department of revenue as payment for taxes imposed pursuant to chapter 422, divisions II, III, and V, and in chapter 432, and for the moneys and credits tax imposed in section 533.329, subject to any conditions or restrictions placed by the board upon the face of the tax credit certificate and subject to the limitations of section 15E.43.

2007 Acts, ch 174, §84; 2007 Acts, ch 186, §1  
Subsection 1 amended  
Subsection 4 amended

#### 15E.45 Community-based seed capital funds.

1. An investment in a community-based seed capital fund shall qualify for a tax credit under section 15E.43 provided that all requirements of sections 15E.43, 15E.44, and this section are met.

2. In order to be a community-based seed capital fund qualifying under this section, a community-based seed capital fund must meet all of the following criteria:

a. The fund is a limited partnership or limited liability company.

b. The fund has, on or after January 1, 2002, a total of both capital commitments from investors and investments in qualifying businesses of at least one hundred twenty-five thousand dollars, but not more than three million dollars. However, if a fund is either a rural business investment company under the rural business investment program of the federal Farm Security and Rural Investment Act of 2002, Pub. L. No. 107-171, or an Iowa-based seed capital fund with at least forty percent of its committed capital subscribed by community-based seed capital funds, the fund may qualify notwithstanding having capital in excess of the limits set forth in this paragraph as long

as the fund otherwise meets the requirements of this subsection.

c. The fund has no fewer than five investors who are not affiliates, with no single investor and affiliates of that investor together owning a total of more than twenty-five percent of the ownership interests outstanding in the fund.

3. a. In order for an investment in a community-based seed capital fund to qualify for a tax credit, the community-based seed capital fund in which the investment is made shall, within one hundred twenty days of the date of the first investment, notify the board of all of the following:

(1) The names, addresses, equity interests issued, consideration paid for the interests, and the amount of any tax credits.

(2) All limited partners or members who may initially qualify for the tax credits.

(3) The earliest year in which the tax credits may be redeemed.

b. The list of limited partners or members who may qualify for the tax credits shall be amended as new equity interests are sold or as any information on the list shall change.

4. After verifying the eligibility of the community-based seed capital fund, the board shall issue a tax credit certificate to be attached to the taxpayer's tax return. The tax credit certificate shall contain the taxpayer's name, address, tax identification number, the amount of the tax credit, the name of the community-based seed capital fund, and other information required by the department of revenue. The tax credit certificate, unless rescinded by the board, shall be accepted by the department of revenue or a local taxing district, as applicable, as payment for taxes imposed pursuant to chapter 422, divisions II, III, and V, and chapter 432, and as payment for the moneys and credits tax imposed pursuant to section 533.329, subject to any conditions or restrictions placed by the board on the face of the tax credit certificate and subject to the limitations of section 15E.43.

5. The manager of the community-based seed capital fund shall have the burden of proof to demonstrate to the board the community-based seed capital fund's qualifications under this section, and shall have the obligation to notify the board in a timely manner of any changes in the qualifications of the community-based seed capital fund, in the qualifications of any qualifying business in which the fund has invested, or in the eligibility of limited partners or members to redeem the investment tax credits in any year.

6. In the event that a community-based seed capital fund fails to meet or maintain any requirement set forth in this section, or in the event that at least thirty-three percent of the invested capital of the community-based seed capital fund has not been invested in one or more separate qualifying businesses, measured at the end of the forty-eighth month after commencing the fund's invest-

ing activities, the board shall rescind any tax credit certificates issued to limited partners or members and shall notify the department of revenue that it has done so, and the tax credit certificates shall be null and void. However, a community-based seed capital fund may apply to the board for a one-year waiver of the requirements of this subsection.

7. An investor in a community-based seed capital fund shall receive a tax credit pursuant to this division only for the investor's investment in the community-based seed capital fund and shall not receive any additional tax credit for the investor's share of investments made by the community-based seed capital fund in a qualifying business or in an Iowa-based seed capital fund with at least forty percent of its committed capital subscribed by community-based seed capital funds. However, an investor in a community-based seed capital fund may receive a tax credit under this division with respect to a separate direct investment made by the investor in the same qualifying business in which the community-based seed capital fund invests.

8. A community-based seed capital fund shall not invest in the Iowa fund of funds, if organized pursuant to section 15E.65, but may invest up to sixty percent of its committed capital in an Iowa-based seed capital fund with at least forty percent of its committed capital subscribed by community-based seed capital funds.

2007 Acts, ch 174, §85; 2007 Acts, ch 186, §2  
Subsection 3, paragraph a, subparagraph (1) amended  
Subsection 4 amended

#### **15E.51 Venture capital fund investment tax credits.**

1. For purposes of this section, "*venture capital fund*" means a private seed and venture capital partnership or entity fund that has been certified by the Iowa capital investment board created in section 15E.63, pursuant to subsection 7.

2. A tax credit shall be allowed against the taxes imposed in chapter 422, divisions II, III, and V, and in chapter 432, and against the moneys and credits tax imposed in section 533.329, for a portion of a taxpayer's equity investment in a venture capital fund. An individual may claim a tax credit under this section of a partnership, limited liability company, S corporation, estate, or trust electing to have income taxed directly to the individual. The amount claimed by the individual shall be based upon the pro rata share of the individual's earnings from the partnership, limited liability company, S corporation, estate, or trust.

3. The amount of a tax credit shall not exceed six percent of the taxpayer's equity investment in venture capital funds.

4. A taxpayer shall not claim a tax credit under this section if the taxpayer is a venture capital investment fund allocation manager for the Iowa fund of funds created in section 15E.65 or an invest-

tor that receives a tax credit for the same investment in a qualifying business as described in section 15E.44 or in a community-based seed capital fund as described in section 15E.45.

5. *a.* The Iowa capital investment board created in section 15E.63 shall issue certificates which may be redeemed for tax credits. The Iowa capital investment board created in section 15E.63 shall issue certificates so that not more than a total of five million dollars of tax credits may be claimed. The certificates shall not be transferable.

*b.* The Iowa capital investment board created in section 15E.63 shall, in cooperation with the department of revenue, establish criteria and procedures for the allocation and issuance of tax credits by means of certificates issued by the Iowa capital investment board created in section 15E.63. The criteria shall include the contingencies that must be met for a certificate to be redeemable in order to receive a tax credit. The procedures established by the Iowa capital investment board created in section 15E.63, in cooperation with the department of revenue, shall relate to the procedures for the issuance of the certificates and for the redemption of a certificate and related tax credit.

6. A taxpayer shall not redeem a certificate and related tax credit prior to the third tax year following the tax year in which the investment is made. Any tax credit in excess of the taxpayer's liability for the tax year may be credited to the tax liability for the following five years or until depleted, whichever is earlier. A tax credit shall not be carried back to a tax year prior to the tax year in which the taxpayer claims the tax credit.

7. A venture capital fund shall submit an application for certification to the Iowa capital investment board created in section 15E.63. The board shall approve the application and certify the venture capital fund if all of the following criteria are met:

*a.* The venture capital fund is a private seed and venture capital partnership or entity fund.

*b.* The venture capital fund maintains a physical presence within the state of Iowa.

*c.* The venture capital fund makes a commitment to consider equity investments in businesses located within the state of Iowa.

2007 Acts, ch 174, §86  
Subsection 2 amended

#### 15E.62 Definitions.

As used in this division, unless the context otherwise requires:

1. "*Board*" means the Iowa capital investment board created in section 15E.63.

2. "*Certificate*" means a contract between the board and a designated investor pursuant to which a tax credit is available and issued to the designated investor.

3. "*Designated investor*" means a person, other than the Iowa capital investment corporation, who purchases an equity interest in the Iowa fund

of funds or a transferee of a certificate or tax credit.

4. "*Iowa capital investment corporation*" means a private, nonprofit corporation created pursuant to section 15E.64.

5. "*Iowa fund of funds*" means a private, for-profit limited partnership or limited liability company established by the Iowa capital investment corporation pursuant to section 15E.65 in which a designated investor purchases an equity interest.

6. "*Tax credit*" means a contingent tax credit issued pursuant to section 15E.66 that is available against tax liabilities imposed by chapter 422, divisions II, III, and V, and by chapter 432 and against the moneys and credits tax imposed by section 533.329.

2007 Acts, ch 174, §87  
Subsection 6 amended

#### 15E.68 Permissible investments.

Investments by designated investors in the Iowa fund of funds shall be deemed permissible investments for state-chartered banks, for credit unions, and for domestic insurance companies under applicable state laws.

Credit unions; §533.304  
Section not amended; footnote revised

#### 15E.120 Loan repayments.

1. Cities which have received loans under the former Iowa community development loan program, sections 7A.41 through 7A.49, Code 1985, are still obligated to repay borrowed funds to the state and to comply with terms and conditions of existing promissory notes.

2. After July 1, 1986, loan repayments made by recipient cities are payable to the Iowa department of economic development in an amount and at the time required by existing promissory notes.

3. Loan agreements with cities receiving loans under the former Iowa community development loan program for projects which have not been completed as of July 1, 1986, shall be amended by substituting "Iowa department of economic development" for "office for planning and programming". The Iowa department of economic development shall assume the state's administrative responsibilities for these uncompleted projects.

4. All loan agreements and promissory notes with cities with completed projects shall, on July 1, 1986, be amended by substituting "Iowa department of economic development" for "office for planning and programming".

5. Loan repayments received by the Iowa department of economic development shall be deposited into a special account to be used at its discretion as matching funds to attract financial assistance from and to participate in programs with national rural development and finance corporations. Funds in this special account shall not revert to the state general fund at the end of any fiscal year. If the programs for which the funds in the special account are to be used are terminated or

expire, the funds in the special account and funds that would be repaid, if any, to the special account shall be transferred or repaid to the community economic betterment account of the strategic investment fund established in section 15.313.

Temporary appropriation of all moneys available from deposits made pursuant to subsection 5; 2007 Acts, ch 212, §7  
Section not amended; footnote revised

**15E.131 through 15E.149** Repealed by 2007 Acts, ch 126, § 114.

**15E.192 Enterprise zones.**

1. A county may create an economic development enterprise zone as authorized in this division, subject to certification by the department of economic development, by designating up to one percent of the county area for that purpose. An eligible county containing a city whose boundaries extend into an adjacent county may establish an enterprise zone in an area of the city located in the adjacent county if the adjacent county's board of supervisors adopts a resolution approving the establishment of the enterprise zone in the city and the two counties enter into an agreement pursuant to chapter 28E regarding the establishment of the enterprise zone. A county may establish more than one enterprise zone.

2. A city which includes at least three census tracts with at least fifty percent of the population in each census tract located in the city, as shown by the 2000 certified federal census, may create an economic development enterprise zone as authorized in this division, subject to certification by the department of economic development, by designating one or more contiguous census tracts, as determined in the most recent federal census, or designating other geographic units approved by the department of economic development for that purpose. If there is an area in the city which meets the requirements for eligibility for an urban or rural enterprise community under Title XIII of the federal Omnibus Budget Reconciliation Act of 1993, such area shall be designated by the state as an economic development enterprise zone. The area meeting the requirements for eligibility for an urban or rural enterprise community shall not be included for the purpose of determining the area limitation pursuant to subsection 4. In creating an enterprise zone, a city which includes at least three census tracts with at least fifty percent of the population in each census tract located in the city, as shown by the 2000 certified federal census, may designate as part of the area tracts or approved geographic units located in a contiguous city if such tracts or approved geographic units meet the criteria and the city agrees to being included. The city may establish more than one enterprise zone. Reference in this division to "city" means a city which includes at least three census tracts with at least fifty percent of the population in each census tract located in the city, as shown

by the 2000 certified federal census.

3. A city may create an economic development enterprise zone as authorized in this division, subject to certification by the department of economic development, by designating up to four square miles of the city for that purpose. In order for an enterprise zone to be certified pursuant to this subsection, an enterprise zone shall meet the distress criteria provided in section 15E.194, subsection 3. Section 15E.194, subsection 2, shall not apply to an enterprise zone certified pursuant to this subsection. For the fiscal period beginning July 1, 2007, and ending June 30, 2010, each fiscal year a cumulative total of not more than twenty-five million dollars worth of incentives and assistance under section 15E.196, subsections 1, 2, 3, 4, and 6, shall be awarded to eligible businesses that apply to an enterprise zone commission for incentives and assistance during that fiscal year and that are located in an enterprise zone certified pursuant to this subsection. For purposes of this subsection and section 15E.194, subsection 3, "city" means a city that includes at least three census tracts, as determined in the most recent federal census.

4. *a.* An enterprise zone certified by the department pursuant to subsection 2 shall only be amended if the amendment consists of an area being added to the enterprise zone and the added area meets the criteria of section 15E.194, subsection 2. An enterprise zone certified by the department pursuant to subsection 1 or 2 may be decertified; however, if a subsequent enterprise zone is designated, the expiration date of the subsequent enterprise zone shall be the same as the expiration date of the decertified enterprise zone. A portion of a certified enterprise zone may be decertified, provided that the remaining portion of the certified enterprise zone meets the distress criteria provided in section 15E.194.

*b.* A county or city may apply to the department for an area to be certified as an enterprise zone at any time prior to July 1, 2010. However, the total amount of land designated as enterprise zones under subsection 1, and any other enterprise zones certified by the department, excluding those approved pursuant to subsection 2 and section 15E.194, subsections 3 and 5, shall not exceed in the aggregate one percent of the total county area.

5. An enterprise zone designation shall remain in effect for ten years following the date of certification. Prior to the expiration of an enterprise zone designation, a city or county meeting the distress criteria in section 15E.194 may apply for a one-time ten-year extension of the designation. In applying for a one-time ten-year extension of an enterprise zone designation, a city or county may redefine the boundaries of the enterprise zone provided that the redefined enterprise zone meets the applicable distress criteria provided in section 15E.194. Prior to the expiration of an enterprise zone designation, a city or county that is

not eligible to designate an enterprise zone but previously designated the enterprise zone pursuant to section 15E.194, Code Supplement 1997, may apply for a one-time extension of the enterprise zone designation to one year following the complete publication of the 2010 federal census. In applying for a one-time extension of the enterprise zone designation, the city or county may redefine the boundaries of the enterprise zone provided that the redefined enterprise zone meets the distress criteria provided in section 15E.194, Code Supplement 1997. The department shall designate by rule the specific date of one year following the complete publication of the 2010 federal census. Any state or local incentives or assistance that may be conferred must be conferred before the designation expires. However, the benefits of the incentive or assistance may continue beyond the expiration.

2007 Acts, ch 126, §6  
2006 amendments to subsections 2 and 4, and adding new subsection 3, take effect May 30, 2006, and apply retroactively to March 1, 2006; 2006 Acts, ch 1133, §10  
2006 amendment to subsection 5 takes effect May 30, 2006, and applies retroactively to May 14, 1997; 2006 Acts, ch 1133, §10  
Subsection 3 amended

#### **15E.193 Eligible business.**

1. A business which is or will be located, in whole or in part, in an enterprise zone is eligible to receive incentives and assistance under this division if the business has not closed or reduced its operation in one area of the state and relocated substantially the same operation into the enterprise zone and if the business meets all of the following:

*a.* Is not a retail business or a business where entrance is limited by a cover charge or membership requirement.

*b.* Provides all full-time employees with the option of choosing one of the following:

(1) The business pays eighty percent of both of the following:

(a) The cost of a standard medical insurance plan.

(b) The cost of a standard dental insurance plan or an equivalent plan.

(2) The business provides the employee with a monetarily equivalent plan to the plan provided for in subparagraph (1).

*c.* Pays an average wage that is at or greater than ninety percent of the lesser of the average county wage or average regional wage, as determined by the department. However, the wage paid by the business shall not be less than seven dollars and fifty cents per hour.

*d.* Creates at least ten full-time positions and maintains them for at least ten years. For an existing business in counties with a population of ten thousand or less or in cities with a population of two thousand or less, the commission may adopt a provision that allows the business to create at least five initial jobs with the additional jobs to be

added in five years. The business shall include in its strategic plan the timeline for job creation. If the existing business fails to meet the ten-job creation requirement within the five-year period, all incentives or assistance will cease immediately.

*e.* Makes a capital investment of at least five hundred thousand dollars. If the business will be occupying a vacant building suitable for industrial use, the fair market value of the building and land, not to exceed two hundred fifty thousand dollars, shall be counted toward the capital investment requirement. An existing business that has been operating in the enterprise zone for at least five years is exempt from the capital investment requirement of this paragraph of up to two hundred fifty thousand dollars of the fair market value, as established by an appraisal, of the building and land.

*f.* If the business is only partially located in an enterprise zone, the business must be located on contiguous parcels of land.

2. In addition to meeting the requirements under subsection 1, an eligible business shall provide the enterprise zone commission with all of the following:

*a.* The long-term strategic plan for the business which shall include labor and infrastructure needs.

*b.* Information dealing with the benefits the business will bring to the area.

*c.* Examples of why the business should be considered or would be considered a good business enterprise.

*d.* The impact the business will have on other businesses in competition with it.

*e.* An affidavit that it has not, within the last five years, violated state or federal environmental and worker safety statutes, rules, and regulations or if such violation has occurred that there were mitigating circumstances or such violations did not seriously affect public health or safety or the environment.

3. If a business has received incentives or assistance under section 15E.196 and fails to maintain the requirements of subsection 1 to be an eligible business, the business is subject to repayment of all or a portion of the incentives and assistance that it has received. The city or county, as applicable, shall have the authority to take action to recover the value of taxes not collected as a result of the exemption provided by the community to the business. The department of revenue shall have the authority to recover the value of state taxes or incentives provided under section 15E.196. The value of state incentives provided under section 15E.196 includes applicable interest and penalties. The department of economic development and the city and county, as applicable, shall enter into agreement with the business specifying the method for determining the amount of incentives or assistance paid which will be re-



paid in the event of failure to maintain the requirements of subsection 1. In addition, a business that fails to maintain the requirements of subsection 1 shall not receive incentives or assistance for each year during which the business is not in compliance.

4. If a business that is approved to receive incentives or assistance provided under section 15E.196 experiences a layoff within the state or closes any of its facilities within the state prior to receiving the incentives and assistance, the department may reduce or eliminate all or a portion of the incentives and assistance. If a business has received incentives or assistance under section 15E.196 and experiences a layoff within the state or closes any of its facilities within the state after receiving the incentives and assistance, the business may be subject to repayment of all or a portion of the incentives and assistance that it has received.

2007 Acts, ch 126, §7  
Subsection 1, paragraph f amended

#### **15E.194 Distress criteria.**

1. An enterprise zone may be designated by a county which meets at least two of the following criteria:

*a.* The county has an average weekly wage that ranks among the bottom twenty-five counties in the state based on the 2000 annual average weekly wage for employees in private business.

*b.* The county has a family poverty rate that ranks among the top twenty-five counties in the state based on the 2000 census.

*c.* The county has experienced a percentage population loss that ranks among the top twenty-five counties in the state between 1995 and 2000.

*d.* The county has a percentage of persons sixty-five years of age or older that ranks among the top twenty-five counties in the state based on the 2000 census.

2. An enterprise zone may be designated by a city which meets at least two of the following criteria:

*a.* The area has a per capita income of twelve thousand six hundred forty-eight dollars or less based on the 2000 census.

*b.* The area has a family poverty rate of twelve percent or higher based on the 2000 census.

*c.* Ten percent or more of the housing units are vacant in the area.

*d.* The valuations of each class of property in the designated area is seventy-five percent or less of the citywide average for that classification based upon the most recent valuations for property tax purposes.

*e.* The area is a blighted area, as defined in section 403.17.

3. A city may designate an area of up to four square miles to be an enterprise zone if the area is a blighted area as defined in section 403.17 and

the area includes or is located within four miles of at least three of the following:

*a.* A commercial service airport.

*b.* A barge terminal or a navigable waterway.

*c.* Entry to a rail line.

*d.* Entry to an interstate highway.

*e.* Entry to a commercial and industrial highway network as identified pursuant to section 313.2A.

An eligible housing business under section 15E.193B shall not receive incentives or assistance for a home or multiple dwelling unit built or rehabilitated in an enterprise zone designated pursuant to this subsection.

4. The department of economic development shall certify eligible enterprise zones that meet the requirements of subsection 1 upon request by the county, subsection 2 upon request by the city, or subsection 3 upon request by the city, as applicable.

5. *a.* A city of any size or any county may designate an enterprise zone at any time prior to July 1, 2010, when a business closure or permanent layoff occurs. The business closure or permanent layoff must involve the loss of full-time employees, not including retail employees, at one place of business totaling at least one thousand employees or four percent or more of the county's resident labor force based on the most recent annual resident labor force statistics from the department of workforce development, whichever is lower. A permanent layoff does not include a layoff of seasonal employees or a layoff that is seasonal in nature. For purposes of this paragraph, "permanent layoff" means the loss of jobs to an out-of-state location, the cessation of one or more production lines, the removal of manufacturing machinery and equipment, or similar actions determined to be equivalent in nature by the department. A permanent layoff must occur on or after February 1, 2007. The enterprise zone may be established on the property of the place of business that has closed or imposed a permanent layoff and the enterprise zone may include an area up to an additional three miles adjacent to the property. The area meeting the requirements for enterprise zone eligibility under this subsection shall not be included for the purpose of determining the area limitation pursuant to section 15E.192, subsection 4. The closing business or business creating a permanent layoff shall not be eligible to receive incentives or assistance under this division. An eligible housing business under section 15E.193B shall not receive incentives or assistance for a home or multiple dwelling unit built or rehabilitated in an enterprise zone designated pursuant to this subsection.

*b.* The area included in an enterprise zone designated under this subsection on or after June 1, 2000, may be amended to change the boundaries of the enterprise zone. Such an amendment must

be approved by the department within three years of the date the enterprise zone was certified.

2007 Acts, ch 183, §1  
Subsection 5, paragraph a amended

#### **15E.197 New jobs credit from withholding.**

An eligible business may enter into an agreement with the department of revenue and a community college for a supplemental new jobs credit from withholding from jobs created under the program. The agreement shall be for program services for an additional job training project, as defined in chapter 260E.

1. The agreement shall provide for the following:

*a.* That the project shall be administered in the same manner as a project under chapter 260E and that a supplemental new jobs credit from withholding in an amount equal to one and one-half percent of the gross wages paid by the eligible business pursuant to section 422.16 is authorized to fund the program services for the additional project.

*b.* That the supplemental new jobs credit from withholding shall be collected, accounted for, and may be pledged by the community college in the same manner as described in section 260E.5.

2. The auditor of state shall perform an annual audit regarding how the training funds are being used.

3. To provide funds for the payment of the costs of the additional project, a community college may borrow money, issue and sell certificates, and secure the payment of the certificates in the same manner as described in section 260E.6, including but not limited to providing the assessment of an annual levy as described in section 260E.6, subsection 4. The program and credit authorized by this section is in addition to, and not in lieu of, the program and credit authorized in chapter 260E.

4. For purposes of this section, “*eligible business*” means a business which has been approved to receive incentives and assistance by the department of economic development pursuant to application as provided in section 15E.195.

2007 Acts, ch 126, §8  
Section amended

#### **15E.232 Economic development region revolving funds — tax credits.**

1. An economic development region may create an economic development region revolving fund.

2. *a.* A nongovernmental entity making a contribution to an economic development region revolving fund, except those described in paragraph “*b*”, may claim a tax credit equal to twenty percent of the amount contributed to the revolving fund. The tax credit shall be allowed against taxes imposed in chapter 422, divisions II, III, and V, and in chapter 432, and against the moneys and cred-

its tax imposed in section 533.329. An individual may claim under this subsection the tax credit of a partnership, limited liability company, S corporation, estate, or trust electing to have income taxed directly to the individual. The amount claimed by the individual shall be based upon the pro rata share of the individual’s earnings from the partnership, limited liability company, S corporation, estate, or trust. Any tax credit in excess of the taxpayer’s liability for the tax year may be credited to the tax liability for the following ten years or until depleted, whichever occurs first. A tax credit shall not be carried back to a tax year prior to the tax year in which the taxpayer redeems the tax credit. A tax credit under this section is not transferable.

*b.* Subject to the provisions of paragraph “*c*”, an organization exempt from federal income tax pursuant to section 501(c) of the Internal Revenue Code making a contribution to an economic development region revolving fund, shall be paid from the general fund of the state an amount equal to twenty percent of such contributed amount within thirty days after the end of the fiscal year during which the contribution was made.

*c.* The total amount of tax credits and payments to contributors, referred to as the credit amount, authorized during a fiscal year shall not exceed two million dollars plus any unused credit amount carried over from previous years. Any credit amount which remains unused for a fiscal year may be carried forward to the succeeding fiscal year. The maximum credit amount that may be authorized in a fiscal year for contributions made to a specific economic development region revolving fund is equal to two million dollars plus any unused credit amount carried over from previous years divided by the number of economic development region revolving funds existing in the state.

*d.* The department of economic development shall administer the authorization of tax credits under this section and payments to contributors described in paragraph “*b*” and shall, in cooperation with the department of revenue, adopt rules pursuant to chapter 17A necessary for the administration of this section.

3. An economic development region may apply for financial assistance from the grow Iowa values fund to assist with the installation of physical infrastructure needs including, but not limited to, horizontal infrastructure, water and sewer infrastructure, and telecommunications infrastructure, related to the development of fully served business and industrial sites by one or more of the region’s economic development partners or for the installation of infrastructure related to a new business location or expansion. In order to receive financial assistance pursuant to this subsection, the economic development region must demonstrate all of the following:

a. The ability to provide matching moneys on a basis of a one dollar contribution of local matching moneys for every two dollars received from the grow Iowa values fund.

b. The commitment of the specific business partner including, but not limited to, a letter of intent defining a capital commitment or a percentage of equity.

c. That all other funding alternatives have been exhausted.

4. The department may establish and administer a regional economic development revenue sharing pilot project for one or more regions. The department shall take into consideration the geographical dispersion of the pilot projects. The department shall provide technical assistance to the regions participating in a pilot project.

5. An economic development region may apply for financial assistance from the grow Iowa values fund to assist an existing business threatened with closure due to a potential consolidation to an out-of-state location. The economic development region may apply for financial assistance from the grow Iowa values fund for the purchase, rehabilitation, or marketing of a building that has become available due to the closing of an existing business due to a consolidation to an out-of-state location. In order to receive financial assistance under this subsection, an economic development region must demonstrate the ability to provide local matching moneys on a basis of a one dollar contribution of local moneys for every three dollars received from the grow Iowa values fund.

6. An economic development region may apply for financial assistance from the grow Iowa values fund to establish and operate an entrepreneurial initiative. In order to receive financial assistance under this subsection, an economic development region must demonstrate the ability to provide local matching moneys on a basis of a one dollar contribution of local moneys for every two dollars received from the grow Iowa values fund.

7. a. An economic development region may apply for financial assistance from the grow Iowa values fund to establish and operate a business succession assistance program for the region.

b. In order to receive financial assistance under this subsection, an economic development region must demonstrate the ability to provide local matching moneys on a basis of a one dollar contribution of local moneys for every two dollars received from the grow Iowa values fund.

8. An economic development region may apply for financial assistance from the grow Iowa values fund to implement economic development initiatives that are either unique to the region or innovative in design and implementation. In order to receive financial assistance under this subsection, an economic development region must demonstrate the ability to provide local matching moneys on a one-to-one basis.

9. Financial assistance under subsections 3, 5,

6, 7, and 8, and section 15E.233 shall be limited to a total of one million dollars each fiscal year for the fiscal period beginning July 1, 2005, and ending June 30, 2015, and shall not be provided to assist in the establishment, operation, or installation of a project, initiative, or activity that may result in the provision, lease, or sale of goods or services by a government body that competes with private enterprise.

2007 Acts, ch 174, §88  
Subsection 2, paragraph a amended

### 15E.305 Endow Iowa tax credit.

1. For tax years beginning on or after January 1, 2003, a tax credit shall be allowed against the taxes imposed in chapter 422, divisions II, III, and V, and in chapter 432, and against the moneys and credits tax imposed in section 533.329 equal to twenty percent of a taxpayer's endowment gift to an endow Iowa qualified community foundation. An individual may claim a tax credit under this section of a partnership, limited liability company, S corporation, estate, or trust electing to have income taxed directly to the individual. The amount claimed by the individual shall be based upon the pro rata share of the individual's earnings from the partnership, limited liability company, S corporation, estate, or trust. A tax credit shall be allowed only for an endowment gift made to an endow Iowa qualified community foundation for a permanent endowment fund established to benefit a charitable cause in this state. Any tax credit in excess of the taxpayer's tax liability for the tax year may be credited to the tax liability for the following five years or until depleted, whichever occurs first. A tax credit shall not be carried back to a tax year prior to the tax year in which the taxpayer claims the tax credit.

2. The aggregate amount of tax credits authorized pursuant to this section shall not exceed a total of two million dollars plus such additional credit amount as provided by this section annually. The maximum amount of tax credits granted to a taxpayer shall not exceed five percent of the aggregate amount of tax credits authorized.

Ten percent of the aggregate amount of tax credits authorized in a calendar year shall be reserved for those endowment gifts in amounts of thirty thousand dollars or less. If by September 1 of a calendar year the entire ten percent of the reserved tax credits is not distributed, the remaining tax credits shall be available to any other eligible applicants.

For purposes of this subsection, the additional credit amount shall be an amount for each applicable calendar year determined by the department of revenue equal to the amount of money credited as provided by section 99F.11, subsection 3, paragraph "e", subparagraph (3), for the prior fiscal year.

3. A tax credit shall not be transferable to any other taxpayer.

4. The department shall develop a system for registration and authorization of tax credits under this section and shall control the distribution of all tax credits to taxpayers providing an endowment gift subject to this section. The department shall adopt administrative rules pursuant to chapter 17A for the qualification and administration of endowment gifts.

2006 Acts, ch 1151, §1 – 3, 7, 8; 2007 Acts, ch 174, §89  
 2005 amendments to this section take effect June 9, 2005, and apply retroactively to January 1, 2005; intent regarding issuance of tax credits; 2005 Acts, ch 150, §80, 81

2006 amendments to subsection 2, 2006 amendment striking subsection 4, and 2006 amendment striking future repeal of this section take effect July 1, 2007; 2006 Acts, ch 1151, §8

Subsection 1 amended  
 Subsection 2, unnumbered paragraph 1 amended  
 Subsection 2, NEW unnumbered paragraph 3  
 Subsection 4 stricken and former subsection 5 renumbered as 4

**15E.311 County endowment fund.**

1. The purpose of this section is to enhance the quality of life for citizens of Iowa by providing moneys to new or existing citizen groups of this state organized to establish county affiliate funds or community foundations that will address countywide needs.

2. A county endowment fund is created in the state treasury under the control of the department of revenue. The fund consists of all moneys appropriated to the fund. Moneys in the fund shall be distributed by the department as provided in this section.

3. *a.* At the end of each fiscal year, moneys in the fund shall be transferred into separate accounts within the fund and designated for use by each county in which no licensee authorized to conduct gambling games under chapter 99F was located during that fiscal year. Moneys transferred to county accounts shall be divided equally among the counties. Moneys transferred into an account for a county shall be transferred by the department to an eligible county recipient for that county. Of the moneys transferred, an eligible county recipient shall distribute seventy-five percent of the moneys as grants to charitable organizations for charitable purposes in that county and shall retain twenty-five percent of the moneys for use in establishing a permanent endowment fund for the benefit of charitable organizations for charitable purposes. Of the amounts distributed, eligible county recipients shall give special consideration to grants for projects that include significant vertical infrastructure components designed to enhance quality of life aspects within local communities. In addition, as a condition of receiving a grant, the governing body of a charitable organization receiving a grant shall approve all expenditures of grant moneys and shall allow a state audit of expenditures of all grant moneys.

*b.* If a county does not have an eligible county recipient, moneys in the account for that county shall remain in that account until an eligible county recipient for that county is established.

4. As used in this section, unless the context

otherwise requires:

*a.* “Charitable organization” means an organization that is described in section 501(c)(3) of the Internal Revenue Code that is exempt from taxation under section 501(a) of the Internal Revenue Code or an organization that is established for a charitable purpose.

*b.* “Charitable purpose” means a purpose described in section 501(c)(3) of the Internal Revenue Code, or a benevolent, educational, philanthropic, humane, scientific, patriotic, social welfare or advocacy, public health, environmental conservation, civic, or other eleemosynary objective.

*c.* “Eligible county recipient” means an endow Iowa qualified community foundation or community affiliate organization, as defined in section 15E.303, that is selected, in accordance with the procedures described in section 15E.304, to receive moneys from an account created in this section for a particular county. To be selected as an eligible county recipient, a community affiliate organization shall establish a county affiliate fund to receive moneys as provided by this section.

5. Notwithstanding section 12C.7, subsection 2, interest or earnings on moneys deposited in the county endowment fund shall be credited to the county endowment fund. Notwithstanding section 8.33, moneys credited to the county endowment fund shall not revert at the close of a fiscal year.

6. Three percent of the moneys deposited in the county endowment fund shall be used by the lead philanthropic organization identified by the department pursuant to section 15E.304 for purposes of administering and marketing the county endowment fund. Of the amounts available to be used by the lead philanthropic organization pursuant to this subsection, seventy thousand dollars is appropriated to the department of economic development each fiscal year for administrative costs related to the endow Iowa program.

2006 Acts, ch 1151, §4, 5, 8  
 2005 amendments to this section take effect June 9, 2005, and apply retroactively to January 1, 2005; 2005 Acts, ch 150, §81

2006 amendments to subsections 3 and 6 take effect July 1, 2007; 2006 Acts, ch 1151, §8

Subsection 3, paragraph a amended  
 Subsection 6 amended

**15E.312 through 15E.320 Reserved.**

DIVISION XXIV  
 REGIONAL SPORTS  
 AUTHORITY DISTRICTS

**15E.321 Regional sports authority districts.**

1. As used in this section, “district” means a regional sports authority district certified under this section.

2. A convention and visitors bureau may apply to the department for certification of a regional

sports authority district which may include more than one city and more than one convention and visitors bureau within the district. The department shall not certify more than ten such districts.

3. Each district shall actively promote youth sports, high school athletic activities, the special olympics, and other nonprofessional sporting events in the local area.

4. Each district shall be governed by a seven-member board consisting of seven members appointed by the convention and visitors bureau filing the application pursuant to subsection 2. At least three members of the board shall consist of

city council members of any cities located in the district. Each board shall be responsible for administering programs designed to promote the activities enumerated in subsection 3.

2007 Acts, ch 219, §32  
NEW section

**15E.322 through 15E.350** Reserved.

#### DIVISION XXV

#### BUSINESS ACCELERATORS

## CHAPTER 15F

### COMMUNITY ATTRACTION AND TOURISM DEVELOPMENT

#### **15F.203 Community attraction and tourism program application review.**

1. Applications for assistance under the program shall be submitted to the department. For those applications that meet the eligibility criteria, the department shall provide a staff review analysis and evaluation to the community attraction and tourism program review committee referred to in subsection 2 and the board.

2. A review committee composed of five members of the board shall review community attraction and tourism program applications submitted to the board and make recommendations regarding the applications to the board. The review committee shall consist of members of the board listed in section 15F.102, subsection 2, paragraphs "a" through "c".

3. When reviewing the applications, the review committee and the department shall consider, at a minimum, all of the following:

a. Whether the wages, benefits, including health benefits, safety, and other attributes of the project would improve the quality of life or the quality of attraction or tourism employment in the community.

b. The extent to which such a project would generate additional recreational and cultural attractions or tourism opportunities.

c. The ability of the project to produce a long-term, tax-generating economic impact.

d. The location of the projects and geographic diversity of the applications.

e. The project is primarily a vertical infrastructure project with demonstrated substantial regional or statewide economic impact. For purposes of the program, "vertical infrastructure" means land acquisition and construction, major renovation and major repair of buildings, all appurtenant structures, utilities, site development, and recreational trails and water trails. "Vertical infrastructure" does not include routine, recurring

maintenance or operational expenses or leasing of a building, appurtenant structure, or utility without a lease-purchase agreement.

f. Whether the applicant has received financial assistance under the program for the same project.

g. The extent to which the project has taken the following planning principles into consideration:

(1) Efficient and effective use of land resources and existing infrastructure by encouraging development in areas with existing infrastructure or capacity to avoid costly duplication of services and costly use of land.

(2) Provision for a variety of transportation choices, including pedestrian traffic.

(3) Maintenance of a unique sense of place by respecting local cultural and natural environmental features.

(4) Conservation of open space and farmland and preservation of critical environmental areas.

(5) Promotion of the safety, livability, and revitalization of existing urban and rural communities.

4. Upon review of the recommendations of the review committee, the board shall approve, defer, or deny the applications.

5. Upon approval of an application for financial assistance under the program, the board shall notify the treasurer of state regarding the amount of moneys needed to satisfy the award of financial assistance and the terms of the award. The treasurer of state shall notify the department any time moneys are disbursed to a recipient of financial assistance under the program.

2007 Acts, ch 215, §58  
Subsection 3, paragraph e amended

#### **15F.303 Eligibility.**

1. The total cost for a project must be at least twenty million dollars in order for an applicant to

receive financial assistance under the program. An applicant or the board may divide a proposed project into component parts. The board may choose to provide financial assistance under the program to one or more component parts instead of providing financial assistance under the program for the entire project.

2. An applicant must demonstrate financial and nonfinancial support for the project which may be from a public or private source. Nonfinancial support may include, but is not limited to, the value of labor and services, real and personal property donated for purposes of the project, and the use of real and personal property for purposes of the project. The financial and nonfinancial support for the project described under this subsection shall equal at least fifty percent of the total cost of the project.

3. In order for a project to be eligible to receive financial assistance, the project must satisfy all of the following criteria:

a. The project is primarily a vertical infrastructure project with demonstrated substantial regional or statewide economic impact. For purposes of the program, “vertical infrastructure” means land acquisition and construction, major renovation and major repair of buildings, all appurtenant structures, utilities, site development, and recreational trails. “Vertical infrastructure” does not include routine, recurring maintenance

or operational expenses or leasing of a building, appurtenant structure, or utility without a lease-purchase agreement.

b. The project supports or is strategically aligned with other existing regional or statewide cultural, recreational, entertainment, or educational activities or with communities adjacent to cultural and entertainment districts whose existing or planned amenity base will augment or complement the cultural and entertainment venues of such districts.

c. The project provides benefits to persons living outside the county in which the project is located or to persons living outside the state.

d. The project will increase the diversity of activities available to citizens, workers, families, and tourists, and enhance recruitment and retention of young people as residents.

e. The project has economic or other obstacles impeding local financing of the project.

4. The board shall not approve an application for assistance for any of the following purposes:

a. To refinance a loan existing prior to the initial application date.

b. For a project that has previously received assistance under the program, unless the applicant demonstrates that the assistance would be used for a significant expansion of a project.

2007 Acts, ch 215, §81  
Subsection 3, paragraph b amended

## CHAPTER 15G

### ECONOMIC GROWTH AND EXPANSION ACTIVITIES

#### 15G.111 Appropriations.

1. a. For the fiscal period beginning July 1, 2005, and ending June 30, 2015, there is appropriated each fiscal year from the grow Iowa values fund created in section 15G.108, the following amounts for the purposes designated:

(1) For the fiscal year beginning July 1, 2005, and ending June 30, 2006, to the department of economic development thirty-five million dollars for programs administered by the department of economic development.

(2) For each fiscal year of the fiscal period beginning July 1, 2006, and ending June 30, 2007, to the department of economic development thirty-three million dollars for programs administered by the department of economic development.

(3) For each fiscal year of the fiscal period beginning July 1, 2007, and ending June 30, 2009, to the department of economic development thirty million dollars for programs administered by the department of economic development.

(4) For each fiscal year of the fiscal period beginning July 1, 2009, and ending June 30, 2015, to the department of economic development thirty-

two million dollars for programs administered by the department of economic development.

b. Each year that moneys are appropriated under this subsection, the department shall allocate a percentage of the moneys for each of the following types of activities:

- (1) Business start-ups.
- (2) Business expansion.
- (3) Business modernization.
- (4) Business attraction.
- (5) Business retention.
- (6) Marketing.
- (7) Research and development.

c. The department shall require an applicant for moneys appropriated under this subsection to include in the application a statement regarding the intended return on investment. A recipient of moneys appropriated under this subsection shall annually submit a statement to the department regarding the progress achieved on the intended return on investment stated in the application. The department, in cooperation with the department of revenue, shall develop a method of identifying and tracking each new job created and the le-

veraging of moneys through financial assistance from moneys appropriated under this subsection. The department of economic development shall identify research and development activities funded through financial assistance from not more than ten percent of the moneys appropriated under this subsection, and, instead of determining return on investment and job creation for the identified funding, determine the potential impact on the state's economy.

d. The department may use moneys appropriated under this subsection to procure technical assistance from either the public or private sector, for information technology purposes, for a state-wide labor shed study, and for rail, air, or river port transportation-related purposes. The use of moneys appropriated for rail, air, or river port transportation-related purposes must be directly related to an economic development project and the moneys must be used to leverage other financial assistance moneys.

e. Of the moneys appropriated under this subsection, the department may use up to one and one-half percent for administrative purposes.

f. The Iowa economic development board shall approve or deny applications for financial assistance provided with moneys appropriated under this subsection. In providing such financial assistance, the board shall, whenever possible, coordinate the assistance with other programs administered by the department of economic development, including the community economic betterment program established in section 15.317 and the value-added agricultural products and processes financial assistance program established in section 15E.111.

g. It is the policy of this state to expand and stimulate the state economy by advancing, promoting, and expanding biotechnology industries in this state. To implement this policy, the Iowa economic development board shall consider providing assistance to projects that increase value-added income to individuals or organizations involved in agricultural business or biotechnology projects. Such a project need not create jobs specific to the project site; however, such a project must foster the knowledge and creativity necessary to promote the state's agricultural economy and to increase employment in urban and rural areas as a result.

2. For the fiscal period beginning July 1, 2005, and ending June 30, 2015, there is appropriated each fiscal year from the grow Iowa values fund created in section 15G.108 to the department of economic development five million dollars for financial assistance to institutions of higher learning under the control of the state board of regents for capacity building infrastructure in areas related to technology commercialization, for marketing and business development efforts in areas related to technology commercialization, entrepreneurship, and business growth, and for infrastructure

projects and programs needed to assist in the implementation of activities under chapter 262B. In allocating moneys to institutions under the control of the state board of regents, the board shall require the institutions to provide a one-to-one match of additional moneys for the activities funded with moneys appropriated under this subsection. The state board of regents shall annually prepare a report for submission to the governor, the general assembly, and the legislative services agency regarding the activities, projects, and programs funded with moneys appropriated under this subsection.

The state board of regents may allocate any moneys appropriated under this subsection and received from the department for financial assistance to a single biosciences development organization determined by the department to possess expertise in promoting the area of bioscience entrepreneurship. The organization must be composed of representatives of both the public and the private sector and shall be composed of subunits or subcommittees in the areas of existing identified biosciences platforms, education and workforce development, commercialization, communication, policy and governance, and finance. Such financial assistance shall be used for purposes of activities related to biosciences and bioeconomy development under chapter 262B, and to accredited private universities in this state.

By September 30, 2007, the legislative services agency shall submit a written report to the fiscal committee of the legislative council and the standing committees on economic growth in the senate and the house of representatives regarding a review of expenditures by the state board of regents from appropriations under this subsection and 2006 Iowa Acts, ch. 1179, section 14.

3. For the fiscal period beginning July 1, 2005, and ending June 30, 2015, there is appropriated each fiscal year from the grow Iowa values fund created in section 15G.108 to the department of economic development one million dollars for purposes of providing financial assistance for projects in targeted state parks, state banner parks, and destination parks. The department of natural resources shall submit a plan to the department of economic development for the expenditure of moneys appropriated under this subsection. The plan shall focus on improving state parks, state banner parks, and destination parks for economic development purposes. Based on the report submitted, the department of economic development shall provide financial assistance to the department of natural resources for support of state parks, state banner parks, and destination parks. For purposes of this subsection, "state banner park" means a park with multiple uses and which focuses on the economic development benefits of a community or area of the state.

4. For the fiscal period beginning July 1, 2005, and ending June 30, 2015, there is appropriated

each fiscal year from the grow Iowa values fund created in section 15G.108 to the office of the treasurer of state one million dollars for deposit in the Iowa cultural trust fund created in section 303A.4.

5. For the fiscal period beginning July 1, 2005, and ending June 30, 2015, there is appropriated each fiscal year from the grow Iowa values fund created in section 15G.108 to the department of economic development seven million dollars for deposit into the workforce training and economic development funds of the community colleges created pursuant to section 260C.18A.

6. *a.* For the fiscal period beginning July 1, 2005, and ending June 30, 2015, there is appropriated each fiscal year from the grow Iowa values fund created in section 15G.108 to the department of economic development one million dollars for providing economic development region financial assistance under section 15E.232, subsections 3, 5, 6, 7, and 8, and under section 15E.233.

*b.* Of the moneys appropriated in this subsection, the department shall transfer three hundred fifty thousand dollars each fiscal year for the fiscal period beginning July 1, 2005, and ending June 30, 2015, to Iowa state university of science and technology, for purposes of providing financial assistance to establish small business development centers in areas of the state previously served by a small business development center, to develop business succession plans, and to maintain existing small business development centers. Of the three hundred fifty thousand dollars transferred each fiscal year pursuant to this paragraph, not more than one hundred thousand dollars shall be used for business succession activities. Financial assistance for a small business development center shall not exceed fifty thousand dollars per fiscal year and shall not be awarded unless the city or county where the center is located or scheduled to be located demonstrates the ability to obtain local matching moneys on a dollar-for-dollar basis for at least twenty-five percent of the cost of the center.

*c.* Of the moneys appropriated under this subsection, the department may use up to fifty thousand dollars each fiscal year during the fiscal period beginning July 1, 2005, and ending June 30, 2015, for purposes of providing training, materials, and assistance to Iowa business resource centers.

7. *a.* For the fiscal period beginning July 1, 2006, and ending June 30, 2009, there is appropriated for each fiscal year from the grow Iowa values fund created in section 15G.108 two million dollars for deposit in the renewable fuel infrastructure fund as provided in section 15G.205.

*b.* This subsection is repealed on July 1, 2009.

8. For the fiscal period beginning July 1, 2007, and ending June 30, 2015, there is appropriated for each fiscal year from the grow Iowa values fund created in section 15G.108 to the department of

economic development three million dollars for the purpose of providing the commercialization services described in section 15.411, subsections 2 and 3.

9. Notwithstanding section 8.33, moneys that remain unexpended at the end of a fiscal year shall not revert to any fund but shall remain available for expenditure for the designated purposes during the succeeding fiscal year.

2007 Acts, ch 122, §2 - 4  
Subsection 1, paragraph a amended  
Subsection 2, unnumbered paragraph 3 stricken and rewritten  
NEW subsection 8 and former subsection 8 renumbered as 9

### **15G.203 Renewable fuel infrastructure program for retail motor fuel sites.**

A renewable fuel infrastructure program is established in the department under the direction of the renewable fuel infrastructure board created pursuant to section 15G.202.

1. The purpose of the program is to improve retail motor fuel sites by installing, replacing, or converting motor fuel storage and dispensing infrastructure. The infrastructure must be designed and shall be used exclusively to store and dispense renewable fuel which is E-85 gasoline, biodiesel, or biodiesel blended fuel on the premises of retail motor fuel sites operated by retail dealers.

2. A person may apply to the department to receive financial incentives on a cost-share basis. The department shall forward the applications to the underground storage tank fund board as required by that board for evaluation and recommendation. The underground storage tank fund board may rank the applications with comments and shall forward them to the infrastructure board for approval or disapproval. The department shall award financial incentives on a cost-share basis to an eligible person whose application was approved by the infrastructure board.

3. To the extent practicable, the program shall be administered in conjunction with the programs provided in section 15.401.

4. The infrastructure board shall approve cost-share agreements executed by the department and persons that the infrastructure board determines are eligible as provided in this section, according to terms and conditions required by the infrastructure board. The infrastructure board shall determine the amount of the financial incentives to be awarded to a person participating in the program. In order to be eligible to participate in the program all of the following must apply:

*a.* The person must be an owner or operator of the retail motor fuel site.

*b.* The person must apply to the department in a manner and according to procedures required by the infrastructure board. The application must contain all information required by the infrastructure board and shall at least include all of the following:

(1) The name of the person and the address of



the retail motor fuel site to be improved.

(2) A detailed description of the infrastructure to be installed, replaced, or converted, including but not limited to the model number of each installed, replaced, or converted motor fuel storage tank if available.

(3) A statement describing how the retail motor fuel site is to be improved, the total estimated cost of the planned improvement, and the date when the infrastructure will be first used to store and dispense the renewable fuel.

(4) A statement certifying that the infrastructure shall not be used to store or dispense motor fuel other than E-85 gasoline, biodiesel, or biodiesel blended fuel, unless granted a waiver by the infrastructure board pursuant to this section.

5. A retail motor fuel site which is improved using financial incentives must comply with federal and state standards governing new or upgraded motor fuel storage tanks used to store and dispense the renewable fuel. A site classified as a no further action site pursuant to a certificate issued by the department of natural resources under section 455B.474 shall retain its classification following modifications necessary to store and dispense the renewable fuel and the owner or operator shall not be required to perform a new site assessment unless a new release occurs or if a previously unknown or unforeseen risk condition should arise.

6. The infrastructure board shall not approve a cost-share agreement which awards financial incentives to install, replace, or convert infrastructure associated with more than one motor fuel storage tank located at the same retail motor fuel site.

7. An award of financial incentives to a participating person shall be in the form of a grant.

In order to participate in the program an eligible person must execute a cost-share agreement with the department as approved by the infrastructure board in which the person contributes a percentage of the total costs related to improving the retail motor fuel site.

*a.* Except as provided in paragraph “*b*”, a participating person may be awarded standard financial incentives. The standard financial incentives awarded to the participating person shall not exceed fifty percent of the actual cost of making the improvement or thirty thousand dollars, whichever is less. The infrastructure board may approve multiple awards to make improvements to a retail motor fuel site so long as the total amount of the awards does not exceed the limitations provided in this paragraph.

*b.* In addition to any standard financial incentives awarded to a participating person under paragraph “*a*”, the participating person may be awarded supplemental financial incentives to upgrade or replace a dispenser which is part of gasoline storage and dispensing infrastructure used to store and dispense E-85 gasoline as provided in section 455G.31. The person is only eligible to re-

ceive the supplemental financial incentives if the person installed the dispenser not later than sixty days after the date of the publication in the Iowa administrative bulletin of the state fire marshal’s order providing that a commercially available dispenser is listed as compatible for use with E-85 gasoline by an independent testing laboratory as provided in section 455G.31. The supplemental financial incentives awarded to the participating person shall not exceed seventy-five percent of the actual cost of making the improvement or thirty thousand dollars, whichever is less.

8. A participating person shall not use the infrastructure to store and dispense motor fuel other than the type of renewable fuel approved by the board in the cost-share agreement, unless one of the following applies:

*a.* The participating person is granted a waiver by the infrastructure board. The participating person shall store or dispense the motor fuel according to the terms and conditions of the waiver.

*b.* The renewable fuel infrastructure fund created in section 15G.205 is immediately repaid the total amount of moneys awarded to the participating person together with a monetary penalty equal to twenty-five percent of that awarded amount. The amount shall be deposited in the renewable fuel infrastructure fund created in section 15G.205.

9. A participating person who acts in violation of an agreement executed with the department pursuant to this section is subject to a civil penalty of not more than one thousand dollars a day for each day of the violation. The civil penalty shall be deposited into the general fund of the state.

2007 Acts, ch 126, §9; 2007 Acts, ch 211, §46  
Subsections 1, 3, and 7 amended

#### **15G.204 Renewable fuel infrastructure program for biodiesel terminal facilities.**

The department, under the direction of the renewable fuel infrastructure board created in section 15G.202, shall establish and administer a renewable fuel infrastructure program for terminal facilities that store and dispense biodiesel or biodiesel blended fuel. The infrastructure must be designed and shall be used exclusively to store and distribute biodiesel or biodiesel blended fuel. The department as directed by the infrastructure board shall provide a cost-share program for financial incentives.

1. A person may apply to the department to receive financial incentives on a cost-share basis. The department shall forward the applications to the underground storage tank fund board as required by that board for evaluation and recommendation. The underground storage tank fund board may rank the applications with comments and shall forward them to the infrastructure board for approval or disapproval. The department shall award financial incentives on a cost-share basis to an eligible person whose application

was approved by the infrastructure board.

2. To the extent practicable, the program shall be administered in conjunction with the programs provided in section 15.401.

3. The department shall award financial incentives to a terminal operator participating in the program as directed by the infrastructure board. In order to be eligible to participate in the program, the terminal operator must apply to the department in a manner and according to procedures required by the infrastructure board. The application must contain information required by the infrastructure board and shall at least include all of the following:

*a.* The name of the terminal operator and the address of the terminal to be improved.

*b.* A detailed description of the infrastructure to be installed, replaced, or converted.

*c.* A statement describing how the terminal is to be improved, the total estimated cost of the planned improvement, and the date when the infrastructure will be first used to store and distribute biodiesel or biodiesel blended fuel.

*d.* A statement certifying that the infrastructure shall not be used to store or dispense motor fuel other than biodiesel or biodiesel blended fuel, unless granted a waiver by the infrastructure board pursuant to this section.

4. An award of financial incentives to a participating person shall be in the form of a grant. In order to participate in the program, an eligible person must execute a cost-share agreement with the department as approved by the infrastructure board in which the person contributes a percentage of the total costs related to improving the ter-

terminal. The financial incentives awarded to the participating person shall not exceed fifty percent of the actual cost of making the improvements or fifty thousand dollars, whichever is less. The infrastructure board may approve multiple awards to make improvements to a terminal so long as the total amount of the awards does not exceed the limitations provided in this subsection.

5. A participating terminal operator shall not use the infrastructure to store or dispense motor fuel other than biodiesel or biodiesel blended fuel, unless one of the following applies:

*a.* The participating terminal operator is granted a waiver by the infrastructure board. The participating terminal operator shall store or dispense the motor fuel according to the terms and conditions of the waiver.

*b.* The renewable fuel infrastructure fund created in section 15G.205 is immediately repaid the total amount of moneys awarded to the participating terminal operator together with a monetary penalty equal to twenty-five percent of that awarded amount. The amount shall be deposited in the renewable fuel infrastructure fund created in section 15G.205.

*c.* A participating terminal operator who acts in violation of an agreement executed with the department pursuant to this section is subject to a civil penalty of not more than one thousand dollars a day for each day of the violation. The civil penalty shall be deposited into the general fund of the state.

2007 Acts, ch 126, §10  
Subsection 2 amended

## CHAPTER 15I

### WAGE-BENEFITS TAX CREDIT

#### 15I.2 Wage-benefits tax credit.

1. *a.* Any nonretail, nonservice business may claim a tax credit equal to a percentage of the annual wages and benefits paid for a qualified new job created by the location or expansion of the business in the state. The tax credit shall be allowed against taxes imposed under chapter 422, division II, III, or V, and chapter 432 and against the moneys and credits tax imposed in section 533.329. The percentage shall be equal to the amount provided in subsection 2.

Any credit in excess of the tax liability shall be refunded. In lieu of claiming a refund, a taxpayer may elect to have the overpayment shown on the taxpayer's final, completed return credited to the tax liability for the following taxable year.

*b.* If the business is a partnership, S corporation, limited liability company, or estate or trust electing to have the income taxed directly to the in-

dividual, an individual may claim the tax credit allowed. The amount claimed by the individual shall be based upon the pro rata share of the individual's earnings of the partnership, S corporation, limited liability company, or estate or trust.

2. The percentage of the annual wages and benefits paid for a qualified new job is determined as follows:

*a.* If the annual wage and benefits for the qualified new job equals less than one hundred thirty percent of the average county wage, zero percent.

*b.* If the annual wage and benefits for the qualified new job equals at least one hundred thirty percent but less than one hundred sixty percent of the average county wage, five percent.

*c.* If the annual wage and benefits for the qualified new job equals at least one hundred sixty percent of the average county wage, ten percent.

3. A qualified new job is entitled to the tax

credit upon the end of the twelfth month of the job having been filled. Once a qualified new job is approved for a tax credit, tax credits for the next four subsequent tax years may be approved if the job continues to be filled and application is made as provided in section 15I.3. The percentage determined under subsection 2 for the first tax year shall continue to apply to subsequent tax credits as the credits relate to that qualified new job.

2007 Acts, ch 174, §90  
Section is effective June 9, 2005, and applies to qualified new jobs created and tax years ending on or after the effective date of division X of 2005 Acts, ch 150; 2005 Acts, ch 150, §69  
Subsection 1, paragraph a, unnumbered paragraph 1 amended

### **15I.3 Tax credit certification — credit limitation.**

1. In order for a wage-benefits tax credit to be claimed, the business shall submit an application to the department along with information on the qualified new job or retained qualified new job and any other information required. Applications for approval of the tax credit shall be on forms approved by the department. Within forty-five days of receipt of the application, the department shall either approve or disapprove the application. After the forty-five-day limit, the application is deemed approved.

2. Upon approval of the tax credit and subject to subsection 4, a tax credit certificate shall be issued by the department. A tax credit certificate shall identify the business claiming the tax credit under this chapter and the wage and benefit costs incurred during the previous twelve months.

3. The tax credit certificate shall contain the taxpayer's name, address, tax identification number, the date of the qualified new job, the amount of credit, and other information required by the department.

4. The total amount of tax credit certificates that may be issued for a fiscal year under this chapter shall not exceed ten million dollars for the fiscal years beginning before July 1, 2007, and shall not exceed four million dollars for fiscal years beginning on or after July 1, 2007. The department shall establish by rule the procedures for the

application, review, selection, awarding of certificates, and the method to be used to determine for which fiscal year the tax credits are available. If the approved tax credits exceed the maximum amount for a fiscal year, tax credit certificates shall be issued on an earliest date applied basis.

5. *a.* A nonretail, nonservice business that has created a qualified new job for which a tax credit certificate under this chapter is issued is eligible to receive a tax credit certificate for each of the four subsequent tax years if the business retains the qualified new job during each of the twelve months ending in each of the tax years by applying for the credit under this section. Preference in issuing these tax credit certificates shall be given to businesses applying for the credit for retained qualified new jobs.

*b.* A nonretail, nonservice business that created a qualified new job but failed to receive all or part of the tax credit because of the limitation in subsection 4 is eligible to reapply for the tax credit for the retained qualified new job.

6. *a.* A business whose application has been disapproved by the department may appeal the decision to the Iowa economic development board within thirty days of notice of disapproval. If the board subsequently approves the application, the business shall receive the tax credit certificates subject to the availability of the amount of credits that may be issued as provided in subsection 4.

*b.* A nonretail, nonservice business may apply to the Iowa economic development board for a waiver of any provision of this chapter as it relates to the requirements for qualifying for the wage-benefits tax credit. The Iowa economic development board shall establish by rule the conditions under which a waiver of such requirements will be granted. A waiver from average county wage calculations shall be applied for and considered by the board according to the procedures provided in section 15.335A.

2007 Acts, ch 22, §9; 2007 Acts, ch 215, §82  
Section is effective June 9, 2005, and applies to qualified new jobs created and tax years ending on or after the effective date of division X of 2005 Acts, ch 150; 2005 Acts, ch 150, §69  
Subsections 1 and 4 amended

## **CHAPTER 16**

### **IOWA FINANCE AUTHORITY**

#### **16.1 Definitions.**

1. As used in this chapter, unless the context otherwise requires:

*a.* When used in the context of an assumption of a loan, “*assume*” or “*assumed*” means any type of transaction involving the sale or transfer of an ownership interest in real estate financed by the authority, whether the conveyance involves a transfer by deed or real estate contract or some other device.

*b.* “*Authority*” means the Iowa finance authority established in section 16.2.

*c.* “*Bond*” means a bond issued by the authority pursuant to sections 16.26 to 16.30, and includes a note or other instrument evidencing a debt authorized or referred to in this chapter.

*d.* “*Child foster care facilities*” means the same as defined in section 237.1.

*e.* “*Cost*” as applied to economic development loan program projects means the cost of acquisi-

tion, construction, or both including the cost of acquisition of all land, rights-of-way, property rights, easements, franchise rights, and interests required for acquisition, construction, or both. It also means the cost of demolishing or removing structures on acquired land, the cost of access roads to private property, including the cost of land or easements, and the cost of all machinery, furnishings, and equipment, financing charges, and interest prior to and during construction and for no more than the greater of eighteen months or the period authorized to be capitalized under applicable provisions of the Internal Revenue Code after completion of construction. Cost also means the cost of engineering, legal expenses, plans, specifications, surveys, estimates of cost and revenues, as well as other expenses incidental to determining the feasibility or practicability of acquiring or constructing a project. It also means other expenses incidental to the acquisition or construction of the project, the financing of the acquisition or construction, including the amount to be paid into any special funds from the proceeds of bonds issued for the project, and the financing of the placing of a project in operation. It also means all grants, payments, and amounts necessary to pay or refund outstanding bonds and all costs for which federally tax-exempt bonds may be issued under the Internal Revenue Code.

f. *“Dilapidated”* means decayed, deteriorated, or fallen into partial disuse through neglect or misuse.

g. *“Displaced”* means displaced by governmental action, or by having one’s dwelling extensively damaged or destroyed as a result of a disaster.

h. *“Division”* means the title guaranty division.

i. *“Elderly families”* means families of low or moderate income where the head of the household or the head’s spouse is at least sixty-two years of age or older, or the surviving member of any such tenant family.

j. (1) *“Families”* includes but is not limited to families consisting of a single adult person who is primarily responsible for the person’s own support, is at least sixty-two years of age, is a person with a disability, is displaced, or is the remaining member of a tenant family.

(2) *“Families”* includes but is not limited to two or more persons living together who are at least sixty-two years of age, are persons with disabilities, or one or more such individuals living with another person who is essential to such individual’s care or well-being.

k. *“Goals”* means legislative goals and policies as articulated in this chapter.

l. *“Guiding principles”* means the principles provided in section 16.4 which shall be considered for amplification and interpretation of the goals of the authority.

m. *“Health care facilities”* means those facilities referred to in section 135C.1, subsection 6, which contain fifteen beds or less.

n. (1) *“Housing”* means single family and multifamily dwellings, and facilities incidental or appurtenant to the dwellings, and includes group homes of fifteen beds or less licensed as health care facilities or child foster care facilities and modular or mobile homes which are permanently affixed to a foundation and are assessed as realty.

(2) *“Adequate housing”* means housing which meets minimum structural, heating, lighting, ventilation, sanitary, occupancy, and maintenance standards compatible with applicable building and housing codes, as determined under rules of the authority.

o. *“Housing program”* means any work or undertaking of new construction or rehabilitation of one or more housing units, or the acquisition of existing residential structures, for the provision of housing, which is financed pursuant to the provisions of this chapter for the primary purpose of providing housing for low or moderate income families. A housing program may include housing for other economic groups as part of an overall plan to develop new or rehabilitated communities or neighborhoods, where housing low or moderate income families is a primary goal. A housing program may include any buildings, land, equipment, facilities, or other real or personal property which is necessary or convenient in connection with the provision of housing, including, but not limited to, streets, sewers, utilities, parks, site preparation, landscaping, and other nonhousing facilities, such as administrative, community, health, recreational, educational, and commercial facilities, as the authority determines to be necessary or convenient in relation to the purposes of this chapter.

p. *“Housing sponsor”* means any individual, joint venture, partnership, limited partnership, trust, corporation, housing cooperative, local public entity, governmental unit, or other legal entity, or any combination thereof, approved by the authority or pursuant to standards adopted by the authority as qualified to either own, construct, acquire, rehabilitate, operate, manage, or maintain a housing program, whether for profit, nonprofit or limited profit, subject to the regulatory powers of the authority and other terms and conditions set forth in this chapter.

q. *“Income”* means income from all sources of each member of the household, with appropriate exceptions and exemptions reasonably related to an equitable determination of the family’s available income, as established by rule of the authority.

r. *“Internal Revenue Code”* means the Internal Revenue Code of the United States as it may exist at the time of its applicability to the provisions of this chapter.

s. *“Legislative findings”* or *“findings”* means

the findings established by the general assembly with respect to the authority as provided in this chapter.

*t. "Lower income families"* means families whose incomes do not exceed eighty percent of the median income for the area with adjustments for the size of the family or other adjustments necessary due to unusual prevailing conditions in the area, and includes, but is not limited to, very low income families.

*u. "Low income housing credit"* means the low income housing credit as defined in Internal Revenue Code § 42(a).

*v. "Low or moderate income families"* means families who cannot afford to pay enough to cause private enterprise in their locality to build an adequate supply of decent, safe, and sanitary dwellings for their use, and also includes, but is not limited to, (1) elderly families, families in which one or more persons are persons with disabilities, lower income families and very low income families, and (2) families purchasing or renting qualified residential housing.

*w. "Mortgage"* means a mortgage, mortgage deed, deed of trust, or other instrument creating a first lien, subject only to title exceptions acceptable to the authority, on a fee interest in real property which includes completed housing located within this state, or on a leasehold on such a fee interest which has a remaining term at the time of computation that exceeds by not less than ten years the maturity date of the mortgage loan.

*x. "Mortgage-backed security"* means a security issued by the authority which is secured by residential mortgage loans owned by the authority.

*y. "Mortgage lender"* means any bank, trust company, mortgage company, national banking association, savings and loan association, life insurance company, any governmental agency, or any other financial institution authorized to make mortgage loans in this state and includes a financial institution as defined in section 496B.2, subsection 2, which lends moneys for industrial or business purposes.

*z. "Mortgage loan"* means a financial obligation secured by a mortgage.

*aa. "Note"* means a bond anticipation note or a housing development fund note issued by the authority pursuant to this chapter. "Note" also includes bonds.

*ab. "Person with a disability"* means a person who is unable to engage in any substantial gainful activity by reason of a medically determinable physical or mental impairment, or a person having a physical or mental impairment which is expected to be of long-continued and indefinite duration, substantially impedes the ability to live independently, and is of a nature that the ability to live independently could be improved by more suitable housing conditions.

*ac. "Powers"* means all of the general and specific powers of the authority as provided in this

chapter and shall be broadly and liberally interpreted to authorize the authority to act in accordance with the goals of the authority and in a manner consistent with the legislative findings and guiding principles which are reasonably necessary.

*ad. "Programs"* means any program administered by the authority or any program in which the authority is directed or authorized to participate pursuant to any statute, executive order, or inter-agency agreement, or any other program participation or administration of which the authority finds useful and convenient to further the goals and purposes of the authority. "Program" shall include but not be limited to all of the following:

- (1) The housing assistance payments program.
- (2) The rent supplements program.
- (3) The emergency housing fund program.
- (4) The special housing assistance program.
- (5) The single-family housing program.
- (6) The multifamily housing program.
- (7) The title guaranty program.
- (8) The housing improvement fund program.
- (9) The economic development loan program.
- (10) The Iowa economic development bond bank program.
- (11) The sewage treatment and drinking facilities financing program.
- (12) The Iowa tank assistance bond program.
- (13) The residential treatment facilities program.
- (14) The E-911 program.
- (15) The community college dormitory program.
- (16) The prison infrastructure program.
- (17) The wastewater treatment financial assistance program.

(18) Any other program established by the authority which the authority finds useful and convenient to further goals of the authority and which is consistent with the legislative findings. Such additional programs shall be administered in accordance with the guiding principles of the authority after such notice and hearing as is determined to be reasonable by the authority under the circumstances. Such additional programs shall be administered in accordance with rules, if any, which the authority determines useful and convenient to adopt pursuant to chapter 17A.

*ae. "Project"* means any of the following:

- (1) Real or personal property connected with a facility to be acquired, constructed, financed, refinanced, improved, or equipped pursuant to one or more of the programs.
- (2) Refunds, loans, refinancings, grants, or other assistance or programs which the authority finds useful and convenient to carry out and further the goals of the authority and the Iowa economic development bond program. In furtherance thereof and not in limitation, "project" shall include projects for which bonds or notes may be is-

sued by a city or a county pursuant to any power so long as the authority finds it is consistent with the goals and legislative findings of the authority and the Iowa economic development bond program.

(3) Any project for which tax exempt financing is authorized by the Internal Revenue Code which the authority finds furthers the goals of the authority and is consistent with the legislative findings.

*af. "Property improvement loan"* means a financial obligation secured by collateral acceptable to the authority, the proceeds of which shall be used for improvement or rehabilitation of housing which is deemed by the authority to be substandard in its protective coatings or its structural, plumbing, heating, cooling, or electrical systems; and regardless of the condition of the property the term "*property improvement loan*" may include loans to increase the energy efficiency of housing or to finance solar or other renewable energy systems for use in that housing.

*ag. "Qualified residential housing"* means any of the following:

(1) Owner-occupied residences purchased in a manner which satisfies the requirements contained in section 103A of the Internal Revenue Code in order to be financed with tax exempt mortgage subsidy bonds.

(2) Residential property qualifying pursuant to section 103(b)(4) of the Internal Revenue Code to be financed with tax exempt residential rental property bonds.

(3) Housing for low or moderate income families, elderly families, and families which include one or more persons with disabilities.

*ah. "State agency"* means any board, commission, department, public officer, or other agency of the state of Iowa.

*ai. "State housing credit ceiling"* means the state housing credit ceiling as defined in Internal Revenue Code § 42(h)(3)(C).

*aj. "Title guaranty"* means a guaranty against loss or damage caused by defective title to real property.

*ak. "Very low income families"* means families whose incomes do not exceed fifty percent of the median income for the area, with adjustments for the size of the family or other adjustments necessary due to unusual prevailing conditions in the area.

2. The authority may establish by rule further definitions applicable to this chapter, and clarification of the definitions in this section, as it deems convenient and necessary including any rules necessary to assure eligibility for funds available under federal housing laws, or to assure compliance with federal tax laws relating to the issuance of tax exempt bonds pursuant to the Internal Revenue Code or relating to the allowance of low in-

come credits under Internal Revenue Code § 42.

2007 Acts, ch 54, §2 - 10  
Section amended and editorially renumbered

## 16.2 Establishment of authority.

1. The Iowa finance authority is established, and constituted a public instrumentality and agency of the state exercising public and essential governmental functions, to undertake programs which assist in attainment of adequate housing for low or moderate income families, elderly families, and families which include one or more persons with disabilities, and to undertake the various finance programs. The powers of the authority are vested in and shall be exercised by a board of nine members appointed by the governor subject to confirmation by the senate. No more than five members shall belong to the same political party. As far as possible, the governor shall include within the membership persons who represent community and housing development industries, housing finance industries, the real estate sales industry, elderly families, minorities, lower income families, very low income families, families which include persons with disabilities, average taxpayers, local government, business interests, and any other person specially interested in community housing, finance, or small business.

2. Members of the authority shall be appointed by the governor for staggered terms of six years beginning and ending as provided in section 69.19. A person appointed to fill a vacancy shall serve only for the unexpired portion of the term. A member is eligible for reappointment. A member of the authority may be removed from office by the governor for misfeasance, malfeasance, or willful neglect of duty or other just cause, after notice and hearing, unless the notice and hearing is expressly waived in writing.

3. Five members of the authority constitute a quorum and the affirmative vote of a majority of the appointed members is necessary for any substantive action taken by the authority. The majority shall not include any member who has a conflict of interest and a statement by a member of a conflict of interest shall be conclusive for this purpose. A vacancy in the membership does not impair the right of a quorum to exercise all rights and perform all duties of the authority.

4. Members of the authority are entitled to receive a per diem as specified in section 7E.6 for each day spent in performance of duties as members, and shall be reimbursed for all actual and necessary expenses incurred in the performance of duties as members.

5. Members of the authority and the executive director shall give bond as required for public officers in chapter 64.

6. Meetings of the authority shall be held at the call of the chairperson or whenever two mem-

bers so request.

7. Members shall elect a chairperson and vice chairperson annually, and other officers as they determine, but the executive director shall serve as secretary to the authority.

8. The net earnings of the authority, beyond that necessary for retirement of its notes, bonds or other obligations, or to implement the public purposes and programs herein authorized, shall not inure to the benefit of any person other than the state. Upon termination of the existence of the authority, title to all property owned by the authority, including any such net earnings of the authority, shall vest in the state. The state reserves the right at any time to alter, amend, repeal, or otherwise change the structure, organization, programs, or activities of the authority, including the power to terminate the authority, except that no law shall ever be passed impairing the obligation of any contract or contracts entered into by the authority to the extent that any such law would contravene Article I, section 21, of the Constitution of the State of Iowa or Article I, section 10, of the Constitution of the United States.

2007 Acts, ch 22, §10; 2007 Acts, ch 54, §11  
Confirmation, see §2.32  
See Code editor's note  
Section amended

#### 16.2A Title guaranty division.

1. A title guaranty division is created within the authority. The powers of the division relating to the issuance of title guaranties are vested in and shall be exercised by a division board of five members appointed by the governor subject to confirmation by the senate. The membership of the board shall include an attorney, an abstractor, a real estate broker, a representative of a mortgage lender, and a representative of the housing development industry. The executive director of the authority shall appoint an attorney as director of the title guaranty division, who shall serve as an ex officio member of the board. The appointment of and compensation for the division director are exempt from the merit system provisions of chapter 8A, subchapter IV.

2. Members of the division board shall be appointed by the governor for staggered terms of six years beginning and ending as provided in section 69.19. A person shall not serve on the division board while serving on the authority board. A person appointed to fill a vacancy shall serve only for the unexpired portion of the term. A member is eligible for reappointment. A member of the division board may be removed from office by the governor for misfeasance, malfeasance, or willful neglect of duty or for other just cause, after notice and hearing, unless notice and hearing is expressly waived in writing.

3. Three members of the board shall constitute a quorum. An affirmative vote of a majority of the appointed members is necessary for any substan-

tive action taken by the division.

4. Members of the board are entitled to receive a per diem as specified in section 7E.6 for each day spent in performance of duties as members and shall be reimbursed for all actual and necessary expenses incurred in the performance of duties as members.

5. Members of the board and the director shall give bond as required for public officers in chapter 64.

6. Meetings of the board shall be held at the call of the chair of the board or on written request of two members.

7. Members shall elect a chair and vice chair annually and other officers as they determine. The director shall serve as secretary to the board.

8. The net earnings of the division, beyond that necessary for reserves, backing, guaranties issued, or to otherwise implement the public purposes and programs authorized, shall not inure to the benefit of any person other than the state and are subject to section 16.2, subsection 8.

2007 Acts, ch 54, §12  
NEW section

#### 16.3 Legislative findings.

The general assembly finds and declares as follows:

1. The establishment of the authority is in all respects for the benefit of the people of the state of Iowa, for the improvement of their health and welfare, and for the promotion of the economy, which are public purposes.

2. The authority will be performing an essential governmental function in the exercise of the powers and duties conferred upon it by this chapter.

3. There exists a serious shortage of safe and sanitary residential housing available to low or moderate income families.

4. This shortage is conducive to disease, crime, environmental decline and poverty and impairs the economic value of large areas, which are characterized by depreciated values, impaired investments, and reduced capacity to pay taxes and are a menace to the health, safety, morals and welfare of the citizens of the state.

5. These conditions result in a loss in population and further deterioration, accompanied by added costs to communities for creation of new public facilities and services elsewhere.

6. One major cause of this condition has been recurrent shortages of funds in private channels.

7. These shortages have contributed to reductions in construction of new residential units, and have made the sale and purchase of existing residential units a virtual impossibility in many parts of the state.

8. The ordinary operations of private enterprise have not in the past corrected these conditions.

9. A stable supply of adequate funds for resi-

dential financing is required to encourage new housing and the rehabilitation of existing housing in an orderly and sustained manner and to reduce the problems described in this section.

10. It is necessary to create a state finance authority to encourage the investment of private capital and stimulate the construction and rehabilitation of adequate housing through the use of public financing.

11. All of the purposes stated in this section are public purposes and uses for which public moneys may be borrowed, expended, advanced, loaned or granted.

12. The interest costs paid by group homes of fifteen beds or less licensed as health care facilities or child foster care facilities for facility acquisition and indirectly reimbursed by the department of human services through payments for patients at those facilities who are recipients of medical assistance or state supplementary assistance are severe drains on the state's budget. A reduction in these costs obtained through financing with tax-exempt revenue bonds would clearly be in the public interest.

13. There is a need in areas of the state for new construction of certain group homes of fifteen beds or less licensed as health care facilities or child foster care facilities to provide adequate housing and care for elderly Iowans and Iowans with disabilities, and to provide adequate housing and foster care for children.

14. There is a need to provide for early intensive intervention on behalf of juveniles which is designed to meet the juveniles' needs and prevent future antisocial and criminal behavior and there is a need in areas of the state to establish facilities providing residential housing or treatment facilities for juveniles requiring a more enhanced level of services than those services currently available in the state's existing foster care system.

15. The abstract-attorney's title opinion system promotes land title stability for determining the marketability of land titles and is a public purpose. A public purpose will be served by providing, as an adjunct to the abstract-attorney's title opinion system, a low cost mechanism to provide for additional guaranties of real property titles in Iowa. The title guaranties will facilitate mortgage lenders' participation in the secondary market and add to the integrity of the land-title transfer system in the state.

16. Economic development and expansion of business, industry, and farming in the state is dependent upon the availability of financing of the development and expansion at affordable interest rates.

17. The pooling of private financing enhances the marketability of the obligations involved and increases access to other state, regional, and national credit markets.

18. The creation of an Iowa economic development bond bank program as provided in section

16.102 will make the pooling of private financing available to small businesses, farmers, agricultural landowners and operators, and commercial, industrial, and other business enterprises at favorable interest rates with reduced marketing costs.

19. All of the purposes stated in this section are public purposes and uses for which public moneys may be borrowed, expended, advanced, loaned, or granted.

2007 Acts, ch 54, §13  
NEW subsections 16 – 19

### 16.3A Conflicts of interest.

1. *a.* If a member or employee of the authority other than the executive director of the authority has an interest, either direct or indirect, in a contract to which the authority is, or is to be, a party, or in a mortgage lender requesting a loan from, or offering to sell mortgage loans to, the authority, the interest shall be disclosed to the authority in writing and shall be set forth in the minutes of the authority. The member or employee having the interest shall not participate in any action of the authority with respect to that contract or mortgage lender.

*b.* A violation of a provision of this subsection is misconduct in office under section 721.2. However, a resolution of the authority is not invalid because of a vote cast by a member in violation of this subsection unless the vote was decisive in the passage of the resolution.

*c.* For the purposes of this subsection, "*action of the authority with respect to that contract or mortgage lender*" means only an action directly affecting a separate contract or mortgage lender, and does not include an action which benefits the general public or which affects all or a substantial portion of the contracts or mortgage lenders included in a program of the authority.

2. Nothing in this section shall be deemed to limit the right of a member, officer, or employee of the authority to acquire an interest in bonds or notes of the authority or to limit the right of a member or employee other than the executive director to have an interest in a bank or other financial institution in which the funds of the authority are, or are to be, deposited or which is, or is to be, acting as trustee or paying agent under a trust indenture to which the authority is a party.

3. The executive director shall not have an interest in a bank or other financial institution in which the funds of the authority are, or are to be, deposited or which is, or is to be, acting as trustee or paying agent under a trust indenture to which the authority is a party. The executive director shall not receive, in addition to fixed salary or compensation, any money or valuable thing, either directly or indirectly, or through any substantial interest in any other corporation or business unit, for negotiating, procuring, recommending, or aiding in any purchase or sale of property, or loan, made by the authority, nor shall the executive di-



rector be pecuniarily interested, either as principal, coprincipal, agent, or beneficiary, either directly or indirectly, or through any substantial interest in any other corporation or business unit, in any such purchase, sale, or loan.

2007 Acts, ch 54, §14  
NEW section

#### 16.4 Guiding principles.

In the performance of its duties and implementation of its powers, and in the selection of specific programs and projects to receive its assistance, the authority shall be guided by the following precatory principles:

1. The authority shall not become an owner of real property constituting a project under any program, except on a temporary basis where necessary in order to implement its programs, protect its investments by means of foreclosure or other means, or to facilitate transfer of real property for the use of low or moderate income families.

2. The authority shall strive to function in cooperation with local governmental units and local or regional housing agencies, and in fulfillment of local or regional housing plans, and to that end shall provide technical assistance to local governmental units and local or regional agencies in need of that assistance.

3. When feasible, a local contributing effort may be required of each project assisted by the authority. The local contribution may be provided by local governmental units or by local or regional agencies, public or private. The percentage and type of local contribution shall be determined by the authority, and may include but should not be limited to cash match, land contribution, tax abatement, or ancillary facilities. The authority shall seek to encourage ingenuity and creativity in local effort.

4. The authority shall encourage units of local government and local and regional housing agencies to use federal revenue-sharing funds for programs which increase or improve the supply of adequate housing for low or moderate income families.

5. The authority shall seek to encourage cooperative housing efforts at the local level, both with respect to the cooperation of public bodies with private enterprise and civic groups, and with respect to the formation of regional or multicity units engaged in housing.

6. With respect to programs relating to housing, wherever practicable, the authority shall give preference to the following types of programs:

*a.* Those which treat housing problems in the context of the total needs of individuals and communities, recognizing that individuals may have other problems and needs closely related to their need for adequate housing, and that the development of isolated housing units without regard for neighborhood and community development tends to create undesirable consequences.

*b.* Those which promote home ownership by families of low or moderate income, recognizing the need for educational counseling programs in family financial management and home maintenance in order to achieve this goal.

*c.* Those which involve the rehabilitation and conservation of existing housing units, and the preservation of existing neighborhoods and communities.

*d.* Those designed to serve elderly families, families which include one or more persons with disabilities, lower income families, or very low income families.

7. The authority shall encourage the protection, restoration and rehabilitation of historic properties, and the preservation of other properties of special value for architectural or esthetic reasons. As used in this subsection, “*historic properties*” means landmarks, landmark sites, or districts which are significant in the history, architecture, archaeology, or culture of this state, its communities, or the nation.

2007 Acts, ch 54, §15 – 18  
Unnumbered paragraph 1 amended  
Subsections 1 – 3 and 5 amended  
Subsection 6, unnumbered paragraph 1 amended  
Subsection 8 stricken

#### 16.5 General powers.

1. The authority has any and all powers necessary and convenient to carry out its purposes and duties, and exercise its specific powers, including but not limited to the power to:

*a.* Issue its negotiable bonds and notes as provided in this chapter in order to finance its programs.

*b.* Sue and be sued in its own name.

*c.* Have and alter a corporate seal.

*d.* Make and alter bylaws for its management consistent with the provisions of this chapter.

*e.* Make and execute agreements, contracts, and other instruments of any and all types on such terms and conditions as the authority may find necessary or convenient to the purposes of the authority, with any public or private entity, including but not limited to contracts for goods and services. All political subdivisions, public housing agencies, other public agencies and state departments and agencies may enter into contracts and otherwise cooperate with the authority.

*f.* By rule, the board shall adopt procedures relating to competitive bidding, including the identification of those circumstances under which competitive bidding by the authority, either formally or informally, shall be required. In any bidding process, the authority may administer its own bidding and procurement or may utilize the services of the department of administrative services or any other agency. Except when such rules apply, the authority and all contracts made by it in carrying out its public and essential governmental functions with respect to any of its programs shall be exempt from the provisions and requirements of

all laws or rules of the state which require competitive bids in connection with the letting of such contracts.

*g.* Acquire, hold, improve, mortgage, lease, and dispose of real and personal property, including, but not limited to, the power to sell at public or private sale, with or without public bidding, any such property, mortgage loan, or other obligation held by it.

*h.* Procure insurance against any loss in connection with its operations and property interests.

*i.* Fix and collect fees and charges for its services.

*j.* Subject to an agreement with bondholders or noteholders, invest or deposit moneys of the authority in a manner determined by the authority, notwithstanding chapter 12B or 12C.

*k.* Accept appropriations, gifts, grants, loans, or other aid from public or private entities. A record of all gifts or grants, stating the type, amount and donor, shall be clearly set out in the authority's annual report along with the record of other receipts.

*l.* Provide technical assistance and counseling related to the authority's purposes, to public and private entities.

*m.* In cooperation with other local, state, or federal governmental agencies, conduct research studies, develop estimates of unmet housing needs, and gather and compile data useful to facilitate decision making and enter into agreements to carry out programs within or without the state which the authority finds to be consistent with the goals of the authority.

*n.* Cooperate in the development of and initiate housing demonstration projects.

*o.* Contract with architects, engineers, attorneys, accountants, housing construction and finance experts, and other advisors. However, the authority may enter into contracts or agreements for such services with local, state, or federal governmental agencies.

*p.* Through the title guaranty division, make and issue title guaranties on Iowa real property in a form acceptable to the secondary market, to fix and collect the charges for the guaranties and to procure reinsurance against any loss in connection with the guaranties.

*q.* Own or acquire intellectual property rights including but not limited to copyrights, trademarks, service marks, and patents, and enforce the rights of the authority with respect to such intellectual property rights.

*r.* Make, alter, and repeal rules consistent with the provisions of this chapter, and subject to chapter 17A.

*s.* Establish one or more funds within the state treasury under the control of the authority and invest moneys of the authority therein. Notwithstanding section 8.33 or 12C.7, or any other provision to the contrary, moneys invested by the trea-

surer of state pursuant to this subsection shall not revert to the general fund of the state and interest accrued on the moneys shall be moneys of the authority and shall not be credited to the general fund. For purposes of this paragraph, the treasurer of state shall enter into an agreement with the authority to carry out the provisions of this paragraph.

*t.* Select projects to receive assistance by the exercise of diligence and care and apply customary and acceptable business and lending standards in the selection and subsequent implementation of such projects.

*u.* Exercise generally all powers typically exercised by private enterprises engaged in business pursuits unless the exercise of such a power would violate the terms of this chapter or the Constitution of the State of Iowa.

2. Notwithstanding any other provision of law, any purchase or lease of real property, other than on a temporary basis, when necessary in order to implement the programs of the authority, protect the investments of the authority by means of foreclosure or other means, or to facilitate the transfer of real property for the use of low or moderate income families, shall require written notice from the authority to the government oversight standing committees of the general assembly and the prior approval of the executive council.

3. The powers enumerated in this section are cumulative of and in addition to those powers enumerated elsewhere in this chapter and no such powers limit or restrict any other powers of the authority.

4. Notwithstanding any other provision of law, the authority may elect whether to utilize any or all of the goods or services available from other state agencies in the conduct of its affairs. Departments, boards, commissions, or other agencies of the state shall provide reasonable assistance and services to the authority upon the request of the executive director.

2007 Acts, ch 54, §19  
Section amended

**16.5A and 16.5B** Repealed by 2007 Acts, ch 54, § 45.

### **16.5C Specific program powers.**

In addition to the general powers of the authority, the authority shall have all powers convenient and necessary to carry out its programs, including but not limited to the power to:

1. Make property improvement loans and mortgage loans, including but not limited to mortgage loans insured, guaranteed, or otherwise secured by the federal government or by private mortgage insurers, to housing sponsors to provide financing of adequate housing for low or moderate income families, elderly families, families which include one or more persons with disabilities,

child foster care facilities, and health care facilities.

2. Provide down payment grants on behalf of low and moderate income families to nonprofit sponsors to defray all or part of the down payment on real property that is transferred by such sponsors to such families under the terms of the lease-purchase program.

3. Make grants and temporary loans, at interest rates and on terms as determined convenient and necessary by the authority, to defray the local contribution requirement for housing sponsors who apply for rent supplement assistance, to defray temporary housing costs that result from displacement by natural or other disaster, and to defray a portion of the expenses required to develop and initiate housing which deals creatively with housing problems of low or moderate income families, elderly families, and families which include one or more persons with disabilities.

4. Make temporary loans, at interest rates and on terms as determined convenient and necessary by the authority, to defray development costs for housing for low or moderate income families including but not limited to payments for options on sites; deposits on contracts and payments for purchase; legal and organizational expenses including attorney fees, project manager, clerical, and other staff salaries, office rent, and other additional expenses; payment of fees for preliminary feasibility studies and advances for planning, engineering, and architectural work; expenses for tenant surveys and market analysis; and necessary application and other fees.

5. Make or participate in the making of property improvement loans or mortgage loans for rehabilitation or preservation of existing dwellings. The authority may issue housing assistance fund notes payable solely from the housing assistance fund.

6. Renegotiate a mortgage loan or loan to a mortgage lender in default; waive a default or consent to the modification of the terms of a mortgage loan or a loan to a mortgage lender; forgive or forbear all or part of a mortgage loan or a loan to a mortgage lender; and commence, prosecute, and enforce a judgment in any action, including but not limited to a foreclosure action, to protect or enforce any right conferred upon the authority by law, mortgage loan agreement, contract, or other agreement, and in connection with any such action, bid for and purchase the property or acquire or take possession of it, complete, administer, and pay the principal of and interest on any obligations incurred in connection with the property, and dispose of and otherwise deal with the property in a manner as the authority deems advisable to protect its interests.

7. Designate areas of economic distress for purposes of section 103A(k)(3)(A)(i) of the Internal Revenue Code.

8. Purchase, and make advance commitments to purchase, residential mortgage loans from mortgage lenders at prices and upon terms and conditions it determines consistent with its goals and legislative findings. However, the total purchase price for all residential mortgage loans which the authority commits to purchase from a mortgage lender at any one time shall not exceed the total of the unpaid principal balances of the residential mortgage loans purchased. Mortgage lenders are authorized to sell residential mortgage loans to the authority in accordance with this section and the rules of the authority. The authority may charge a mortgage lender a commitment fee or other fees as set by rule as a condition for the authority purchasing residential mortgage loans.

9. Sell or make advanced commitments to sell residential mortgage loans in the organized or unorganized secondary mortgage market. The authority may issue and sell securities that are secured by residential mortgage loans held by the authority. The authority may aggregate the residential mortgage loans sold in the secondary market or used as security on the mortgage-backed securities. The amount of mortgage-backed securities sold shall not exceed the principal of the mortgages retained by the authority as security.

10. File a lien on property where appropriate, convenient, and necessary in carrying out a program.

2007 Acts, ch 54, §20  
NEW section

#### **16.10 Surplus moneys — loan and grant fund.**

1. Moneys declared by the authority to be surplus moneys which are not required to service bonds and notes issued by the authority, to pay administrative expenses of the authority, or to accumulate necessary operating or loss reserves, shall be used by the authority to provide grants, subsidies, and services to lower income families and very low income families through the programs authorized in this chapter and consistent with legislative findings and guiding principles. In addition, the authority may use such surplus moneys to provide assistance to the local housing assistance program established in sections 15.351 through 15.354 for purposes of providing assistance to low and moderate income families. Surplus moneys shall not be used for infrastructure or administration purposes under the local housing assistance program.

2. The authority may establish a loan and grant fund which may be comprised of the proceeds of appropriations, grants, contributions, surplus moneys transferred as provided in this section and repayment of authority loans made from such fund.

2007 Acts, ch 54, §21  
Subsection 1 amended

**16.11 through 16.14** Repealed by 2007 Acts, ch 54, § 45.

**16.15 Participation in federal housing assistance payments program.**

The authority shall participate in the housing assistance payments program under section 8 of the United States Housing Act of 1937, as amended by § 201 of the Housing and Community Development Act of 1974, Pub. L. No. 93-383, codified at 42 U.S.C. § 1437 et seq.

2007 Acts, ch 54, §22, 23  
Subsection 1 amended and redesignated as an unnumbered paragraph  
Former subsections 2 – 8 stricken

**16.16 through 16.19** Repealed by 2007 Acts, ch 54, § 45.

**16.22 through 16.25** Repealed by 2007 Acts, ch 54, § 45.

**16.29 Local urban homesteading.** Repealed by 2007 Acts, ch 54, § 45.

**16.32 Limitation of liability.** Repealed by 2007 Acts, ch 54, § 45.

**16.35 and 16.36** Repealed by 2007 Acts, ch 54, § 45.

**16.38 and 16.39** Repealed by 2007 Acts, ch 54, § 45.

**16.40 Housing assistance fund.**

1. A housing assistance fund is created within the authority. The moneys in the fund shall be used by the authority to protect, preserve, create, and improve access to safe and affordable housing. The authority shall establish programs utilizing the fund by administrative rules adopted pursuant to chapter 17A and provide the requirements for the proper administration of the programs.

2. Moneys in the fund, including moneys which are annually appropriated to the authority, may be allocated for any use authorized by this chapter unless otherwise specified.

3. The authority may use moneys in the fund to provide financial assistance to a housing sponsor or an individual in the form of a loan, loan guarantee, grant, or interest subsidy, or by other means under the general powers of the authority.

4. Moneys in the fund may be used for but are not limited to the following purposes:

*a.* Home ownership programs including all of the following:

(1) Authority bond issues and loans to facilitate and ensure equal access across the state to funds for first-time homebuyers programs.

(2) Home ownership incentive programs not

restricted to first-time homebuyers, including down payment and closing costs assistance.

(3) Programs for home maintenance and repair, new construction, acquisition, and rehabilitation.

(4) Support for home ownership education and counseling programs.

*b.* Rental programs, including rental subsidy, rehabilitation, preservation, new construction, and acquisition.

*c.* Programs that provide a continuum of housing services, including construction, operation, and maintenance of homeless shelters, domestic violence shelters, and transitional housing and supportive services to lower income and very low-income families.

*d.* Technical assistance programs that increase the capacity of for-profit and nonprofit housing entities.

5. Notwithstanding section 8.33, moneys in the housing assistance fund at the end of each fiscal year shall not revert to the general fund or any other fund but shall remain in the housing assistance fund for expenditure for subsequent fiscal years.

6. The authority may establish, by rule adopted pursuant to chapter 17A, an annual administration fee to be charged to the housing assistance fund. The annual fee shall not exceed four percent of the moneys, loans, or other assets held in the fund.

7. During each regular session of the general assembly, the authority shall present to the appropriate joint appropriations subcommittee a report concerning the total estimated resources to be available for expenditure under this section for the next fiscal year and the amount the authority proposes to allocate to each program created pursuant to this section.

2007 Acts, ch 54, §24

Assets of Iowa finance authority in housing program fund to be transferred to housing assistance fund; 2007 Acts, ch 54, §44  
Section stricken and rewritten

**16.43 Economic distress areas named.** Repealed by 2007 Acts, ch 54, § 45. See § 16.5C.

**16.45 Qualified mortgage bonds — allocation of state ceiling.** Repealed by 2007 Acts, ch 54, § 45.

**16.53 Residential reverse annuity mortgage model program.**

The authority may develop a model reverse annuity mortgage conforming to the requirements of this chapter, and may offer reverse annuity mortgages to qualified participants.

2007 Acts, ch 54, §25

Iowa finance authority authorized to issue bonds for the residential reverse annuity mortgage model program, to be repaid from program proceeds; 89 Acts, ch 267, §11

Section amended

**16.61 through 16.65** Repealed by 2007 Acts, ch 54, § 45.

**16.71 and 16.72** Repealed by 2007 Acts, ch 54, § 45. See § 16.5C.

**16.73 Rules.**

The authority may adopt rules pursuant to chapter 17A relating to the purchase and sale of residential mortgage loans and the sale of mortgage-backed securities. The rules may provide for the following:

1. Procedures for the submission by mortgage lenders to the authority of offers to sell mortgage loans.
2. Standards for allocating bond proceeds among mortgage lenders offering to sell mortgage loans to the authority.
3. Standards for determining the aggregate principal amount of mortgage loans to be purchased from each mortgage lender and the purchase price.
4. Schedules of fees and charges to be imposed by the authority.
5. Procedures for issuing mortgage-backed securities.

2007 Acts, ch 54, §26  
Unnumbered paragraph 1 amended

**16.81 through 16.84** Repealed by 2007 Acts, ch 54, § 45.

**16.91 Title guaranty program.**

1. The authority through the title guaranty division shall initiate and operate a program in which the division shall offer guaranties of real property titles in this state. The terms, conditions and form of the guaranty contract shall be forms approved by the division board. The division shall fix a charge for the guaranty in an amount sufficient to permit the program to operate on a self-sustaining basis, including payment of administrative costs and the maintenance of an adequate reserve against claims under the title guaranty program. A title guaranty fund is created in the office of the treasurer of state. Funds collected under this program shall be placed in the title guaranty fund and are available to pay all claims, necessary reserves and all administrative costs of the title guaranty program. Moneys in the fund shall not revert to the general fund and interest on the moneys in the fund shall be transferred to the department of economic development for deposit in the local housing assistance program fund established in section 15.354 and shall not accrue to the general fund. If the authority board in consultation with the division board determines that there are surplus funds in the title guaranty fund after providing for adequate reserves and operating expenses of the division, the surplus funds shall be transferred to the housing assistance fund created

pursuant to section 16.40.

2. A title guaranty, closing protection letter, or gap coverage issued under this program is an obligation of the division only and claims are payable solely and only out of the moneys, assets, and revenues of the title guaranty fund and are not an indebtedness or liability of the state. The state is not liable on any guaranty, closing protection letter, or gap coverage.

3. With the approval of the authority board the division and its board shall consult with the insurance division of the department of commerce in developing a guaranty contract acceptable to the secondary market and developing any other feature of the program with which the insurance division may have special expertise. The insurance division shall establish the amount for a loss reserve fund. Except as provided in this subsection, the title guaranty program is not subject to the jurisdiction of or regulation by the insurance division or the commissioner of insurance.

4. Each participating attorney and abstractor may be required to pay an annual participation fee to be eligible to participate in the title guaranty program. The fee, if any, shall be set by the division, subject to the approval of the authority.

5. The participation of abstractors and attorneys shall be in accordance with rules established by the division and adopted by the authority pursuant to chapter 17A. Each participant shall at all times maintain liability coverage in amounts approved by the division. Upon payment of a claim by the division, the division shall be subrogated to the rights of the claimant against all persons relating to the claim.

Additionally, each participating abstractor is required to own or lease, and maintain and use in the preparation of abstracts, an up-to-date abstract title plant including tract indices for real estate for each county in which abstracts are prepared for real property titles guaranteed by the division. The tract indices shall contain a reference to all instruments affecting the real estate which are recorded in the office of the county recorder, and shall commence not less than forty years prior to the date the abstractor commences participation in the title guaranty program. However, a participating attorney providing abstract services continuously from November 12, 1986, to the date of application, either personally or through persons under the attorney's supervision and control is exempt from the requirements of this paragraph.

The division may waive the requirements of this subsection pursuant to an application of an attorney or abstractor which shows that the requirements impose a hardship to the attorney or abstractor and that the waiver clearly is in the public interest or is absolutely necessary to ensure availability of title guaranties throughout the state.

6. Prior to the issuance of a title guaranty, the division shall require evidence that an abstract of

title to the property in question has been brought up-to-date and certified by a participating abstractor in a form approved by division rules and a title opinion issued by a participating attorney in the form approved in the rules stating the attorney's opinion as to the title. The division shall require evidence of the abstract being brought up-to-date and the abstractor shall retain evidence of the abstract as determined by the board.

7. The attorney rendering a title opinion shall be authorized to issue a title guaranty certificate subject to the rules of the authority.

8. The authority shall adopt rules pursuant to chapter 17A that are necessary for the implementation of the title guaranty program as established by the division and that have been approved by the authority.

2007 Acts, ch 54, §27  
Subsection 1 amended

### **16.92 Real estate transfer — mortgage release certificate.**

1. *Definitions.* As used in this section, unless the context otherwise requires:

a. *"Division"* means the title guaranty division in the Iowa finance authority.

b. *"Division board"* means the board of directors of the title guaranty division of the Iowa finance authority.

c. *"Mortgage"* means a mortgage or mortgage lien on an interest in real property in this state given to secure a loan in an original principal amount equal to or less than the maximum amount as determined by the division board.

d. *"Mortgagee"* means the grantee of a mortgage. If a mortgage has been assigned of record, the mortgagee is the last person to whom the mortgage is assigned of record.

e. *"Mortgage servicer"* means the mortgagee or a person other than the mortgagee to whom a mortgagor or the mortgagor's successor in interest is instructed by the mortgagee to send payments on a loan secured by the mortgage. A person transmitting a payoff statement for a mortgage is the mortgage servicer for purposes of such mortgage.

f. *"Mortgagor"* means the grantor of a mortgage.

g. *"Participating abstractor"* means an abstractor participating in the title guaranty program.

h. *"Payoff statement"* means a written statement furnished by the mortgage servicer which sets forth all of the following:

(1) The unpaid balance of the loan secured by a mortgage, including principal, interest, and any other charges properly due under or secured by the mortgage, or the amount required to be paid in order to release or partially release the mortgage.

(2) Interest on a per-day basis for an amount set forth pursuant to subparagraph (1).

(3) The address where payment is to be sent or other specific instructions for making a payment.

(4) If after payment of the unpaid balance of the loan secured by the mortgage, the mortgage continues to secure any unpaid obligation due the mortgagee or any unfunded commitment by the mortgagor to the mortgagee, the legal description of the property that will be released from the mortgage.

i. *"Real estate lender or closer"* means a person licensed to regularly lend moneys to be secured by a mortgage on real property in this state, a licensed real estate broker, a licensed attorney, or a participating abstractor.

2. *Execution of certificate of release.* A duly authorized officer or employee of the division may execute and record a certificate of release in the real property records of each county in which a mortgage is recorded as provided in this section if all of the following are satisfied:

a. The real estate lender or closer has certified in writing to the division all of the following:

(1) That the payoff statement satisfies one of the following:

(a) The statement does not indicate that the mortgage continues to secure an unpaid obligation due the mortgagee or an unfunded commitment by the mortgagor to the mortgagee.

(b) The statement contains the legal description of the property to be released from the mortgage.

(2) That payment was made in accordance with the payoff statement, including a statement as to the date the payment was received by the mortgagee or mortgage servicer, as evidenced by one or more of the following in the records of the real estate lender or closer or its agent:

(a) A bank check, certified check, escrow account check, real estate broker trust account check, or attorney trust account check that was negotiated by the mortgagee or mortgage servicer.

(b) Other documentary evidence of payment to the mortgagee or mortgage servicer.

(3) That more than thirty days have elapsed since the date the payment was sent.

b. The division determines that an effective satisfaction or release of the mortgage has not been executed and recorded within thirty days after the date payment was sent or otherwise made in accordance with a payoff statement.

c. The division, at least thirty days prior to executing the certificate of release, sends by certified mail, to the last known address of the mortgage servicer, written notice of its intention to execute and record a certificate of release pursuant to this section after expiration of the thirty-day period following the sending of such notice, including instructions to notify the division of any reason why the certificate of release should not be executed and recorded. If, prior to executing and recording the certificate of release, the division receives written notification setting forth a reason satisfactory to the division why the certificate of release should not be executed and recorded by the divi-

sion, the division shall not execute and record the certificate of release.

3. *Contents.* A certificate of release executed under this section must contain substantially the information set forth as follows:

a. The name of the mortgagor; the name of the original mortgagee, and, if applicable, the mortgage servicer; the date of the mortgage; the date of recording, including the volume and page or other applicable recording information in the real property records where the mortgage is recorded, and the same information for the last recorded assignment of the mortgage.

b. A statement that the original mortgage principal was in an amount equal to or less than the maximum amount as determined by the division board and adopted by the authority pursuant to chapter 17A.

c. A statement that the person executing the certificate of release is a duly authorized officer or employee of the division.

d. A statement indicating one of the following:

(1) That the mortgage servicer provided a payoff statement that was used to make payment, and that does not indicate that the mortgage continues to secure any unpaid obligation due the mortgagee or any unfunded commitment by the mortgagor to the mortgagee.

(2) A statement that the certificate is a partial release of the mortgage and the legal description of the property that will be released from the mortgage.

e. A statement that payment was made in accordance with the payoff statement, and the date the payment was received by the mortgagee or mortgage servicer, as evidenced by one or more of the following in the records of the real estate lender or closer or its agent:

(1) A bank check, certified check, escrow account check, real estate broker trust account check, or attorney trust account check that was negotiated by the mortgagee or mortgage servicer.

(2) Other documentary evidence of payment to the mortgagee or mortgage servicer.

f. A statement that more than thirty days have elapsed since the date payment in accordance with the payoff statement was sent.

g. A statement that the division has sent the thirty-day notice required under subsection 2, paragraph "c", and that thirty days have elapsed since the date the notice was sent.

h. A statement that the division has not received written notification of any reason satisfactory to the division why the certificate of release should not be executed and recorded after the expiration of the thirty-day notice period under subsection 2, paragraph "c".

4. *Execution.* A certificate of release under this section shall be executed and acknowledged in the same manner as required by law for the execution of a deed.

5. *Effect.*

a. For purposes of a release or partial release of the mortgage, a certificate of release executed under this section that contains the information and statements required under subsection 3 is prima facie evidence of the facts contained in such release or partial release, is entitled to be recorded with the county recorder where the mortgage is recorded, operates as a release or partial release of the mortgage described in the certificate of release, and may be relied upon by any person who owns or subsequently acquires an interest in the property released from the mortgage. The county recorder shall rely upon the certificate of release to release the mortgage.

b. Recording of a wrongful or erroneous certificate of release by the division shall not relieve the mortgagor, or the mortgagor's successors or assigns on the debt, from personal liability on the loan or on other obligations secured by the mortgage.

c. In addition to any other remedy provided by law, if the division wrongfully or erroneously records a certificate of release under this section, the division is liable to the mortgagee and mortgage servicer for actual damages sustained due to the recording of the certificate of release.

d. Upon payment of a claim relating to the recording of a certificate of release, the division is subrogated to the rights of the claimant against all persons relating to the claim.

6. *Recording.* If a mortgage is recorded in more than one county and a certificate of release or partial release is recorded in one of them, a certified copy of the certificate of release may be recorded in another county with the same effect as the original. In all cases, the certificate of release or partial release shall be entered and indexed in the manner that a satisfaction of mortgage is entered and indexed.

7. *Prior mortgages.*

a. If the real estate lender or closer has notified the division that a mortgage has been paid in full by someone other than the real estate lender or closer, or was paid by the real estate lender or closer under a previous transaction, and an effective release has not been filed of record, the division may execute and record a certificate of release without certification by the real estate lender or closer that payment was made pursuant to a payoff statement and the date payment was received by the mortgagee. A certificate of release filed pursuant to this subsection is subject to the requirements of subsection 2, paragraph "c".

b. For purposes of this subsection, an effective release has not been filed of record if it appears that a mortgagee in the record chain of title to the mortgage has not, either on the mortgagee's own behalf or by the mortgagee's duly appointed servicer or attorney in fact as established of record by a filed servicing agreement or power of attorney, filed of record either an assignment of the mortgage to another mortgagee in the record chain of

title to the mortgage or a release of the mortgagee's interest in the mortgage. For the purposes of this subsection and subsection 2, paragraph "c", "mortgage servicer" includes a mortgagee for which an effective release has not been filed of record as provided in this paragraph.

8. *Application.* This section applies only to a mortgage in an original principal amount equal to or less than the maximum amount as determined by the division board and adopted by the authority pursuant to chapter 17A.

2007 Acts, ch 52, §1 - 4  
Subsection 1, NEW paragraph b and former paragraph b amended and redesignated as c  
Subsection 1, former paragraphs c - h redesignated as d - i  
Subsection 3, paragraph b amended  
Subsection 8 amended

**16.101 Legislative findings.** Repealed by 2007 Acts, ch 54, § 45.

**16.102 Establishment of bond bank program — bonds and notes — projects.**

The authority may assist the development and expansion of family farming, soil conservation, housing, and business in the state through the establishment of the Iowa economic development bond bank program. The authority may issue its bonds or notes, or series of bonds or notes for the purpose of defraying the cost of one or more projects and make secured and unsecured loans for the acquisition and construction of projects on terms the authority determines. For purposes of this section, projects shall include any of the following:

1. The acquisition of agricultural land and improvements and depreciable agricultural property by beginning farmers for the implementation of permanent soil and water conservation practices and the acquisition of conservation farm equipment, or any other purpose for which loans may be made by the Iowa agricultural development authority pursuant to chapter 175.

2. A project defined in section 419.1, subsection 12, for which bonds or notes may be issued by a city or a county.

2007 Acts, ch 54, §28, 29  
Unnumbered paragraph 1 amended  
Former subsection 1 stricken and former subsections 2 and 3 renumbered as 1 and 2

**16.106 Adoption of rules.**

The board of directors of the authority shall adopt rules pursuant to chapter 17A to implement sections 16.102 through 16.105.

2007 Acts, ch 54, §30  
Section amended

**16.121 through 16.125** Repealed by 2007 Acts, ch 54, § 45.

**16.181 Housing trust fund.**

1. *a.* A housing trust fund is created within the authority. The moneys in the housing trust fund are annually appropriated to the authority to

be used for the development and preservation of affordable housing for low-income people in the state. Payment of interest, recaptures of awards, or other repayments to the housing trust fund shall be deposited in the fund. Notwithstanding section 12C.7, interest or earnings on moneys in the housing trust fund or appropriated to the fund shall be credited to the fund. Notwithstanding section 8.33, unencumbered and unobligated moneys remaining in the fund at the close of each fiscal year shall not revert but shall remain available for expenditure for the same purposes in the succeeding fiscal year.

*b.* Assets in the housing trust fund shall consist of all of the following:

(1) Any assets received by the authority from the Iowa housing corporation.\*

(2) Any assets transferred by the authority for deposit in the housing trust fund.

(3) Any other moneys appropriated by the general assembly and any other moneys available to and obtained or accepted by the authority for placement in the housing trust fund.

*c.* The authority shall create the following programs within the housing trust fund:

(1) Local housing trust fund program. Sixty percent of available moneys in the housing trust fund shall be allocated for the local housing trust fund program. Any moneys remaining in the local housing trust fund program on April 1 of each fiscal year which have not been awarded to a local housing trust fund may be transferred to the project-based housing program at any time prior to the end of the fiscal year.

(2) Project-based housing program. Forty percent of the available moneys in the housing trust fund shall be allocated to the project-based housing program.

2. *a.* In order to be eligible to apply for funding from the local housing trust fund program, a local housing trust fund must be approved by the authority and have all of the following:

(1) A local governing board recognized by the city, county, council of governments, or regional officials as the board responsible for coordinating local housing programs.

(2) A housing assistance plan approved by the authority.

(3) Sufficient administrative capacity in regard to housing programs.

(4) A local match requirement approved by the authority.

*b.* An award from the local housing trust fund program shall not exceed ten percent of the balance in the program at the beginning of the fiscal year plus ten percent of any deposits made during the fiscal year.

*c.* By December 31 of each year, a local housing trust fund receiving moneys from the local housing trust fund program shall submit a report to the authority itemizing expenditures of the awarded moneys.



3. In an area where no local housing trust fund exists, a person may apply for moneys from the project-based housing program.

4. The authority shall adopt rules pursuant to

chapter 17A necessary to administer this section.

\*Code sections 16.5A and 16.5B repealed by 2007 Acts, ch 54, §45; "former Iowa housing corporation" probably intended; corrective legislation is pending

Section not amended; footnote added

## CHAPTER 16A

### ECONOMIC PROTECTIVE AND INVESTMENT AUTHORITY

#### 16A.2 Definitions.

As used in this chapter, unless the context otherwise requires:

1. "Authority" means the Iowa economic protective and investment authority established in section 16A.3.

2. "Farmer" means a person engaged in farming.

3. "Farming" means as defined in section 9H.1.

4. "Lending institution" means a bank, trust company, mortgage company, national banking association, savings and loan association, savings bank, or another state financial institution or entity authorized to make farm or small business operating loans or loans to farmers or small businesses

to acquire real or personal property.

5. "Operating loan" means a loan made by a lending institution to a borrower in an amount sufficient to enable the borrower to pay the reasonably necessary expenses and cash flow requirements of farming or of operating a small business.

6. "Cash flow requirements" includes but is not limited to the availability of money adequate to provide for obligations which become due during the term of the operating loan for operating expenses, family living expenses, principal and interest installments on loans for real or personal property, and rent.

2007 Acts, ch 54, §31  
Subsection 7 stricken

## CHAPTER 18A

### CAPITOL PLANNING

§18A.1 – 18A.7 transferred to §8A.371 – 8A.378 in Code Supplement 2007;  
see 2007 Acts, ch 115, §10 – 16

§18A.11 repealed by 2007 Acts, ch 115, §17

## CHAPTER 19B

### EQUAL OPPORTUNITY AND AFFIRMATIVE ACTION

#### 19B.7 State contracts and services — state-assisted programs — responsibilities of department of management — regents.

1. Except as otherwise provided in subsection 2, the department of management is responsible for the administration and promotion of equal opportunity in all state contracts and services and the prohibition of discriminatory and unfair practices within any program receiving or benefiting from state financial assistance in whole or in part. In carrying out these responsibilities the department of management shall:

a. Establish for all state agencies a contract compliance policy, applicable to state contracts and services and to programs receiving or benefiting from state financial assistance, to assure:

(1) The equitable provision of services within state programs.

(2) The utilization of minority, women's, and

disadvantaged business enterprises as sources of supplies, equipment, construction, and services.

(3) Nondiscrimination in employment by state contractors and subcontractors.

b. Adopt administrative rules in accordance with chapter 17A to implement the contract compliance policy.

c. Monitor the actions of state agencies to ensure compliance.

d. Report results under the contract compliance policy to the governor and the general assembly on an annual basis. Any information reported by the department of administrative services to the department of economic development pursuant to section 15.108 shall not be required to be part of the report under this paragraph. The report shall detail specific efforts to promote equal opportunity through state contracts and services and efforts to promote, develop, and stimulate the

utilization of minority, women's, and disadvantaged business enterprises in programs receiving or benefiting from state financial assistance.

e. Do other acts necessary to carry out the contract compliance policy described in this section.

2. The state board of regents is responsible for administering the provisions of this section for the institutions under its jurisdiction.

2007 Acts, ch 207, §9, 18  
Subsection 1, paragraph d amended

## CHAPTER 20

### PUBLIC EMPLOYMENT RELATIONS (COLLECTIVE BARGAINING)

#### 20.4 Exclusions.

The following public employees shall be excluded from the provisions of this chapter:

1. Elected officials and persons appointed to fill vacancies in elective offices, and members of any board or commission.

2. Representatives of a public employer, including the administrative officer, director or chief executive officer of a public employer or major division thereof as well as the officer's or director's deputy, first assistant, and any supervisory employees.

"Supervisory employee" means any individual having authority in the interest of the public employer to hire, transfer, suspend, layoff, recall, promote, discharge, assign, reward or discipline other public employees, or the responsibility to direct them, or to adjust their grievances, or effectively to recommend such action, if, in connection with the foregoing, exercise of such authority is not of a merely routine or clerical nature, but requires the use of independent judgment. All school superintendents, assistant superintendents, principals and assistant principals shall be deemed to be supervisory employees.

3. Confidential employees.

4. Students working as part-time public employees twenty hours per week or less, except graduate or other postgraduate students in preparation for a profession who are engaged in academically related employment as a teaching, research, or service assistant.

5. Temporary public employees employed for a period of four months or less.

6. Commissioned and enlisted personnel of the Iowa national guard.

7. Judicial officers, and confidential, professional, or supervisory employees of the judicial branch.

8. Patients and inmates employed, sentenced or committed to any state or local institution.

9. Persons employed by the state department of justice, except nonsupervisory employees of the consumer advocate division who are employed primarily for the purpose of performing technical analysis of nonlegal issues.

10. Persons employed by the credit union divi-

sion of the department of commerce.

11. Persons employed by the banking division of the department of commerce.

12. The appointee serving as the coordinator of the office of renewable fuels and coproducts, as provided in section 159A.3.

2007 Acts, ch 88, §1  
Subsection 12 stricken and former subsection 13 renumbered as 12

#### 20.5 Public employment relations board.

1. There is established a board to be known as the "Public Employment Relations Board". The board shall consist of three members appointed by the governor, subject to confirmation by the senate. No more than two members shall be of the same political affiliation, no member shall engage in any political activity while holding office and the members shall devote full time to their duties.

The members shall be appointed for staggered terms of four years beginning and ending as provided in section 69.19.

The member first appointed for a term of four years shall serve as chairperson and each of the member's successors shall also serve as chairperson.

2. Any vacancy occurring shall be filled in the same manner as regular appointments are made.

3. In selecting the members of the board, consideration shall be given to their knowledge, ability, and experience in the field of labor-management relations. The chairperson and the remaining two members shall be compensated as provided in section 7E.6, subsection 5.

4. The board may employ such persons as are necessary for the performance of its functions. Personnel of the board shall be employed pursuant to the provisions of chapter 8A, subchapter IV.

5. Members of the board and other employees of the board shall be allowed their actual and necessary expenses incurred in the performance of their duties. All expenses and salaries shall be paid from appropriations for such purposes and the board shall be subject to the budget requirements of chapter 8.

2007 Acts, ch 215, §25  
Confirmation, see §2.32  
Subsection 3 amended

## CHAPTER 21

### OFFICIAL MEETINGS OPEN TO PUBLIC (OPEN MEETINGS)

#### 21.5 Closed session.

1. A governmental body may hold a closed session only by affirmative public vote of either two-thirds of the members of the body or all of the members present at the meeting. A governmental body may hold a closed session only to the extent a closed session is necessary for any of the following reasons:

*a.* To review or discuss records which are required or authorized by state or federal law to be kept confidential or to be kept confidential as a condition for that governmental body's possession or continued receipt of federal funds.

*b.* To discuss application for letters patent.

*c.* To discuss strategy with counsel in matters that are presently in litigation or where litigation is imminent where its disclosure would be likely to prejudice or disadvantage the position of the governmental body in that litigation.

*d.* To discuss the contents of a licensing examination or whether to initiate licensee disciplinary investigations or proceedings if the governmental body is a licensing or examining board.

*e.* To discuss whether to conduct a hearing or to conduct hearings to suspend or expel a student, unless an open session is requested by the student or a parent or guardian of the student if the student is a minor.

*f.* To discuss the decision to be rendered in a contested case conducted according to the provisions of chapter 17A.

*g.* To avoid disclosure of specific law enforcement matters, such as current or proposed investigations, inspection or auditing techniques or schedules, which if disclosed would enable law violators to avoid detection.

*h.* To avoid disclosure of specific law enforcement matters, such as allowable tolerances or criteria for the selection, prosecution or settlement of cases, which if disclosed would facilitate disregard of requirements imposed by law.

*i.* To evaluate the professional competency of an individual whose appointment, hiring, performance or discharge is being considered when necessary to prevent needless and irreparable injury to that individual's reputation and that individual requests a closed session.

*j.* To discuss the purchase of particular real estate only where premature disclosure could be reasonably expected to increase the price the governmental body would have to pay for that property. The minutes and the tape recording of a session closed under this paragraph shall be available for public examination when the transaction discussed is completed.

*k.* To discuss information contained in records

in the custody of a governmental body that are confidential records pursuant to section 22.7, subsection 50.

2. The vote of each member on the question of holding the closed session and the reason for holding the closed session by reference to a specific exemption under this section shall be announced publicly at the open session and entered in the minutes. A governmental body shall not discuss any business during a closed session which does not directly relate to the specific reason announced as justification for the closed session.

3. Final action by any governmental body on any matter shall be taken in an open session unless some other provision of the Code expressly permits such actions to be taken in closed session.

4. A governmental body shall keep detailed minutes of all discussion, persons present, and action occurring at a closed session, and shall also tape record all of the closed session. The detailed minutes and tape recording of a closed session shall be sealed and shall not be public records open to public inspection. However, upon order of the court in an action to enforce this chapter, the detailed minutes and tape recording shall be unsealed and examined by the court in camera. The court shall then determine what part, if any, of the minutes should be disclosed to the party seeking enforcement of this chapter for use in that enforcement proceeding. In determining whether any portion of the minutes or recording shall be disclosed to such a party for this purpose, the court shall weigh the prejudicial effects to the public interest of the disclosure of any portion of the minutes or recording in question, against its probative value as evidence in an enforcement proceeding. After such a determination, the court may permit inspection and use of all or portions of the detailed minutes and tape recording by the party seeking enforcement of this chapter. A governmental body shall keep the detailed minutes and tape recording of any closed session for a period of at least one year from the date of that meeting.

5. Nothing in this section requires a governmental body to hold a closed session to discuss or act upon any matter.

2007 Acts, ch 63, §1, 2  
Subsection 1, paragraph k amended

#### 21.8 Electronic meetings.

1. A governmental body may conduct a meeting by electronic means only in circumstances where such a meeting in person is impossible or impractical and only if the governmental body complies with all of the following:

*a.* The governmental body provides public ac-

cess to the conversation of the meeting to the extent reasonably possible.

b. The governmental body complies with section 21.4. For the purpose of this paragraph, the place of the meeting is the place from which the communication originates or where public access is provided to the conversation.

c. Minutes are kept of the meeting. The minutes shall include a statement explaining why a meeting in person was impossible or impractical.

2. A meeting conducted in compliance with this section shall not be considered in violation of this chapter.

3. A meeting by electronic means may be conducted without complying with paragraph “a” of subsection 1 if conducted in accordance with all of the requirements for a closed session contained in section 21.5.

2007 Acts, ch 22, §11  
Subsection 1, paragraph c amended

## CHAPTER 22

### EXAMINATION OF PUBLIC RECORDS (OPEN RECORDS)

#### 22.7 Confidential records.

The following public records shall be kept confidential, unless otherwise ordered by a court, by the lawful custodian of the records, or by another person duly authorized to release such information:

1. Personal information in records regarding a student, prospective student, or former student maintained, created, collected or assembled by or for a school corporation or educational institution maintaining such records. This subsection shall not be construed to prohibit a postsecondary education institution from disclosing to a parent or guardian information regarding a violation of a federal, state, or local law, or institutional rule or policy governing the use or possession of alcohol or a controlled substance if the child is under the age of twenty-one years and the institution determines that the student committed a disciplinary violation with respect to the use or possession of alcohol or a controlled substance regardless of whether that information is contained in the student’s education records.

2. Hospital records, medical records, and professional counselor records of the condition, diagnosis, care, or treatment of a patient or former patient or a counselee or former counselee, including outpatient. However, confidential communications between a crime victim and the victim’s counselor are not subject to disclosure except as provided in section 915.20A. However, the Iowa department of public health shall adopt rules which provide for the sharing of information among agencies and providers concerning the maternal and child health program including but not limited to the statewide child immunization information system, while maintaining an individual’s confidentiality.

3. Trade secrets which are recognized and protected as such by law.

4. Records which represent and constitute the work product of an attorney, which are related to

litigation or claim made by or against a public body.

5. Peace officers’ investigative reports, and specific portions of electronic mail and telephone billing records of law enforcement agencies if that information is part of an ongoing investigation, except where disclosure is authorized elsewhere in this Code. However, the date, time, specific location, and immediate facts and circumstances surrounding a crime or incident shall not be kept confidential under this section, except in those unusual circumstances where disclosure would plainly and seriously jeopardize an investigation or pose a clear and present danger to the safety of an individual. Specific portions of electronic mail and telephone billing records may only be kept confidential under this subsection if the length of time prescribed for commencement of prosecution or the finding of an indictment or information under the statute of limitations applicable to the crime that is under investigation has not expired.

6. Reports to governmental agencies which, if released, would give advantage to competitors and serve no public purpose.

7. Appraisals or appraisal information concerning the purchase of real or personal property for public purposes, prior to public announcement of a project.

8. Iowa department of economic development information on an industrial prospect with which the department is currently negotiating.

9. Criminal identification files of law enforcement agencies. However, records of current and prior arrests and criminal history data shall be public records.

10. Personal information in confidential personnel records of the military division of the department of public defense of the state.

11. Personal information in confidential personnel records of public bodies including but not limited to cities, boards of supervisors and school districts.

12. Financial statements submitted to the department of agriculture and land stewardship pursuant to chapter 203 or chapter 203C, by or on behalf of a licensed grain dealer or warehouse operator or by an applicant for a grain dealer license or warehouse license.

13. The records of a library which, by themselves or when examined with other public records, would reveal the identity of the library patron checking out or requesting an item or information from the library. The records shall be released to a criminal or juvenile justice agency only pursuant to an investigation of a particular person or organization suspected of committing a known crime. The records shall be released only upon a judicial determination that a rational connection exists between the requested release of information and a legitimate end and that the need for the information is cogent and compelling.

14. The material of a library, museum or archive which has been contributed by a private person to the extent of any limitation that is a condition of the contribution.

15. Information concerning the procedures to be used to control disturbances at adult correctional institutions. Such information shall also be exempt from public inspection under section 17A.3. As used in this subsection disturbance means a riot or a condition that can reasonably be expected to cause a riot.

16. Information in a report to the Iowa department of public health, to a local board of health, or to a local health department, which identifies a person infected with a reportable disease.

17. Records of identity of owners of public bonds or obligations maintained as provided in section 76.10 or by the issuer of the public bonds or obligations. However, the issuer of the public bonds or obligations and a state or federal agency shall have the right of access to the records.

18. Communications not required by law, rule, procedure, or contract that are made to a government body or to any of its employees by identified persons outside of government, to the extent that the government body receiving those communications from such persons outside of government could reasonably believe that those persons would be discouraged from making them to that government body if they were available for general public examination. As used in this subsection, "*persons outside of government*" does not include persons or employees of persons who are communicating with respect to a consulting or contractual relationship with a government body or who are communicating with a government body with whom an arrangement for compensation exists. Notwithstanding this provision:

a. The communication is a public record to the extent that the person outside of government making that communication consents to its treatment as a public record.

b. Information contained in the communica-

tion is a public record to the extent that it can be disclosed without directly or indirectly indicating the identity of the person outside of government making it or enabling others to ascertain the identity of that person.

c. Information contained in the communication is a public record to the extent that it indicates the date, time, specific location, and immediate facts and circumstances surrounding the occurrence of a crime or other illegal act, except to the extent that its disclosure would plainly and seriously jeopardize a continuing investigation or pose a clear and present danger to the safety of any person. In any action challenging the failure of the lawful custodian to disclose any particular information of the kind enumerated in this paragraph, the burden of proof is on the lawful custodian to demonstrate that the disclosure of that information would jeopardize such an investigation or would pose such a clear and present danger.

19. Examinations, including but not limited to cognitive and psychological examinations for law enforcement officer candidates administered by or on behalf of a governmental body, to the extent that their disclosure could reasonably be believed by the custodian to interfere with the accomplishment of the objectives for which they are administered.

20. Information concerning the nature and location of any archaeological resource or site if, in the opinion of the state archaeologist, disclosure of the information will result in unreasonable risk of damage to or loss of the resource or site where the resource is located. This subsection shall not be construed to interfere with the responsibilities of the federal government or the state historic preservation officer pertaining to access, disclosure, and use of archaeological site records.

21. Information concerning the nature and location of any ecologically sensitive resource or site if, in the opinion of the director of the department of natural resources after consultation with the state ecologist, disclosure of the information will result in unreasonable risk of damage to or loss of the resource or site where the resource is located. This subsection shall not be construed to interfere with the responsibilities of the federal government or the director of the department of natural resources and the state ecologist pertaining to access, disclosure, and use of the ecologically sensitive site records.

22. Reports or recommendations of the Iowa insurance guaranty association filed or made pursuant to section 515B.10, subsection 1, paragraph "a", subparagraph (2).

23. Information or reports collected or submitted pursuant to section 508C.12, subsections 3 and 5, and section 508C.13, subsection 2, except to the extent that release is permitted under those sections.

24. Records of purchases of alcoholic liquor from the alcoholic beverages division of the de-

partment of commerce which would reveal purchases made by an individual class “E” liquor control licensee. However, the records may be revealed for law enforcement purposes or for the collection of payments due the division pursuant to section 123.24.

25. Financial information, which if released would give advantage to competitors and serve no public purpose, relating to commercial operations conducted or intended to be conducted by a person submitting records containing the information to the department of agriculture and land stewardship for the purpose of obtaining assistance in business planning.

26. Applications, investigation reports, and case records of persons applying for county general assistance pursuant to section 252.25.

27. Marketing and advertising budget and strategy of a nonprofit corporation which is subject to this chapter. However, this exemption does not apply to salaries or benefits of employees who are employed by the nonprofit corporation to handle the marketing and advertising responsibilities.

28. The information contained in records of the centralized employee registry created in chapter 252G, except to the extent that disclosure is authorized pursuant to chapter 252G.

29. Records and information obtained or held by independent special counsel during the course of an investigation conducted pursuant to section 68B.31A. Information that is disclosed to a legislative ethics committee subsequent to a determination of probable cause by independent special counsel and made pursuant to section 68B.31 is not a confidential record unless otherwise provided by law.

30. Information contained in a declaration of paternity completed and filed with the state registrar of vital statistics pursuant to section 144.12A, except to the extent that the information may be provided to persons in accordance with section 144.12A.

31. Memoranda, work products, and case files of a mediator and all other confidential communications in the possession of a mediator, as provided in chapters 86 and 216. Information in these confidential communications is subject to disclosure only as provided in sections 86.44 and 216.15B, notwithstanding any other contrary provision of this chapter.

32. Social security numbers of the owners of unclaimed property reported to the treasurer of state pursuant to section 556.11, subsection 2, included on claim forms filed with the treasurer of state pursuant to section 556.19, included in outdated warrant reports received by the treasurer of state pursuant to section 556.2C, or stored in record systems maintained by the treasurer of state for purposes of administering chapter 556, or social security numbers of payees included on state warrants included in records systems maintained

by the department of administrative services for the purpose of documenting and tracking outdated warrants pursuant to section 556.2C.

33. Data processing software, as defined in section 22.3A, which is developed by a government body.

34. A record required under the Iowa financial transaction reporting Act listed in section 529.2, subsection 9.

35. Records of the Iowa department of public health pertaining to participants in the gambling treatment program except as otherwise provided in this chapter.

36. Records of a law enforcement agency or the state department of transportation regarding the issuance of a driver’s license under section 321.189A.

37. Mediation communications as defined in section 679C.102, except written mediation agreements that resulted from a mediation which are signed on behalf of a governing body. However, confidentiality of mediation communications resulting from mediation conducted pursuant to chapter 216 shall be governed by chapter 216.

38. *a.* Records containing information that would disclose, or might lead to the disclosure of, private keys used in an electronic signature or other similar technologies as provided in chapter 554D.

*b.* Records which if disclosed might jeopardize the security of an electronic transaction pursuant to chapter 554D.

39. Information revealing the identity of a packer or a person who sells livestock to a packer as reported to the department of agriculture and land stewardship pursuant to section 202A.2.

40. The portion of a record request that contains an internet protocol number which identifies the computer from which a person requests a record, whether the person using such computer makes the request through the IowAccess network or directly to a lawful custodian. However, such record may be released with the express written consent of the person requesting the record.

41. Medical examiner records and reports, including preliminary reports, investigative reports, and autopsy reports. However, medical examiner records and reports shall be released to a law enforcement agency that is investigating the death, upon the request of the law enforcement agency, and autopsy reports shall be released to the decedent’s immediate next of kin upon the request of the decedent’s immediate next of kin unless disclosure to the decedent’s immediate next of kin would jeopardize an investigation or pose a clear and present danger to the public safety or the safety of an individual. Information regarding the cause and manner of death shall not be kept confidential under this subsection unless disclosure would jeopardize an investigation or pose a clear and present danger to the public safety or the safety of an individual.

42. Information obtained by the commissioner of insurance in the course of an investigation as provided in section 523C.23.

43. Information obtained by the commissioner of insurance pursuant to section 502.607.

44. Information provided to the court and state public defender pursuant to section 13B.4, subsection 5; section 814.11, subsection 6; or section 815.10, subsection 5.

45. The critical asset protection plan or any part of the plan prepared pursuant to section 29C.8 and any information held by the homeland security and emergency management division that was supplied to the division by a public or private agency or organization and used in the development of the critical asset protection plan to include, but not be limited to, surveys, lists, maps, or photographs. However, the administrator shall make the list of assets available for examination by any person. A person wishing to examine the list of assets shall make a written request to the administrator on a form approved by the administrator. The list of assets may be viewed at the division's offices during normal working hours. The list of assets shall not be copied in any manner. Communications and asset information not required by law, rule, or procedure that are provided to the administrator by persons outside of government and for which the administrator has signed a nondisclosure agreement are exempt from public disclosures. The homeland security and emergency management division may provide all or part of the critical asset plan to federal, state, or local governmental agencies which have emergency planning or response functions if the administrator is satisfied that the need to know and intended use are reasonable. An agency receiving critical asset protection plan information from the division shall not disseminate the information without prior approval of the administrator.

46. Military personnel records recorded by the county recorder pursuant to section 331.608.

47. A report regarding interest held in agricultural land required to be filed pursuant to chapter 10B.

48. Sex offender registry records under chapter 692A, except as provided in section 692A.13.

49. Confidential information, as defined in section 86.45, subsection 1, filed with the workers' compensation commissioner.

50. Information concerning security procedures or emergency preparedness information developed and maintained by a government body for the protection of governmental employees, visitors to the government body, persons in the care, custody, or under the control of the government body, or property under the jurisdiction of the government body, if disclosure could reasonably be expected to jeopardize such employees, visitors, persons, or property.

Such information includes but is not limited to information directly related to vulnerability as-

sessments; information contained in records relating to security measures such as security and response plans, security codes and combinations, passwords, restricted area passes, keys, and security or response procedures; emergency response protocols; and information contained in records that if disclosed would significantly increase the vulnerability of critical physical systems or infrastructures of a government body to attack. This subsection shall only apply to information held by a government body that has adopted a rule or policy identifying the specific records or class of records to which this subsection applies and which is contained in such a record.

51. The information contained in the information program established in section 124.551, except to the extent that disclosure is authorized pursuant to section 124.553.

52. *a.* The following records relating to a charitable donation made to a foundation acting solely for the support of an institution governed by the state board of regents, to a foundation acting solely for the support of an institution governed by chapter 260C, to a private foundation as defined in section 509 of the Internal Revenue Code organized for the support of a government body, or to an endow Iowa qualified community foundation, as defined in section 15E.303, organized for the support of a government body:

(1) Portions of records that disclose a donor's or prospective donor's personal, financial, estate planning, or gift planning matters.

(2) Records received from a donor or prospective donor regarding such donor's prospective gift or pledge.

(3) Records containing information about a donor or a prospective donor in regard to the appropriateness of the solicitation and dollar amount of the gift or pledge.

(4) Portions of records that identify a prospective donor and that provide information on the appropriateness of the solicitation, the form of the gift or dollar amount requested by the solicitor, and the name of the solicitor.

(5) Portions of records disclosing the identity of a donor or prospective donor, including the specific form of gift or pledge that could identify a donor or prospective donor, directly or indirectly, when such donor has requested anonymity in connection with the gift or pledge. This subparagraph does not apply to a gift or pledge from a publicly held business corporation.

*b.* The confidential records described in paragraph "a", subparagraphs (1) through (5), shall not be construed to make confidential those portions of records disclosing any of the following:

(1) The amount and date of the donation.

(2) Any donor-designated use or purpose of the donation.

(3) Any other donor-imposed restrictions on the use of the donation.

(4) When a pledge or donation is made ex-

pressly conditioned on receipt by the donor, or any person related to the donor by blood or marriage within the third degree of consanguinity, of any privilege, benefit, employment, program admission, or other special consideration from the government body, a description of any and all such consideration offered or given in exchange for the pledge or donation.

c. Except as provided in paragraphs “a” and “b”, portions of records relating to the receipt, holding, and disbursement of gifts made for the benefit of regents institutions and made through foundations established for support of regents institutions, including but not limited to written fund-raising policies and documents evidencing fund-raising practices, shall be subject to this chapter.

d. This subsection does not apply to a report filed with the ethics and campaign disclosure board pursuant to section 8.7.

53. Information obtained and prepared by the commissioner of insurance pursuant to section 507.14.

54. Information obtained and prepared by the commissioner of insurance pursuant to section 507E.5.

55. An intelligence assessment and intelligence data under chapter 692, except as provided in section 692.8A.

56. Individually identifiable client information contained in the records of the state database

created as a homeless management information system pursuant to standards developed by the United States department of housing and urban development and utilized by the Iowa department of economic development.

57. The following information contained in the records of any governmental body relating to any form of housing assistance:

a. An applicant’s social security number.

b. An applicant’s personal financial history.

c. An applicant’s personal medical history or records.

d. An applicant’s current residential address when the applicant has been granted or has made application for a civil or criminal restraining order for the personal protection of the applicant or a member of the applicant’s household.

58. Information filed with the commissioner of insurance pursuant to sections 523A.204 and 523A.502A.

59. The information provided in any report, record, claim, or other document submitted to the treasurer of state pursuant to chapter 556 concerning unclaimed or abandoned property, except the name and last known address of each person appearing to be entitled to unclaimed or abandoned property paid or delivered to the treasurer of state pursuant to that chapter.

2007 Acts, ch 37, §1; 2007 Acts, ch 62, §1; 2007 Acts, ch 126, §11; 2007 Acts, ch 175, §1  
Subsections 5 and 52 amended  
NEW subsections 58 and 59

## CHAPTER 26

### PUBLIC CONSTRUCTION BIDDING

#### 26.2 Definitions.

As used in this chapter, unless the context clearly indicates otherwise:

1. “*Estimated total cost of a public improvement*” or “*estimated total cost*” means the estimated total cost to the governmental entity to construct a public improvement, including cost of labor, materials, equipment, and supplies, but excluding the cost of architectural, landscape architectural, or engineering design services and inspection.

2. “*Governmental entity*” means the state, political subdivisions of the state, public school corporations, and all officers, boards, or commissions empowered by law to enter into contracts for the construction of public improvements, excluding the state board of regents and the state department of transportation.

3. “*Public improvement*” means a building or construction work which is constructed under the control of a governmental entity and is paid for in whole or in part with funds of the governmental

entity, including a building or improvement constructed or operated jointly with any other public or private agency, but excluding urban renewal demolition and low-rent housing projects, industrial aid projects authorized under chapter 419, emergency work or repair or maintenance work performed by employees of a governmental entity, and excluding a highway, bridge, or culvert project, and excluding construction or repair or maintenance work performed for a city utility under chapter 388 by its employees or performed for a rural water district under chapter 357A by its employees.

4. “*Repair or maintenance work*” means the preservation of a building, storm sewer, sanitary sewer, or other public facility or structure so that it remains in sound or proper condition, including minor replacements and additions as necessary to restore the public facility or structure to its original condition with the same design.

2007 Acts, ch 144, §1, 2  
Subsections 1 and 4 amended



### 26.3 Competitive bids for public improvement contracts.

1. If the estimated total cost of a public improvement exceeds the competitive bid threshold of one hundred thousand dollars, or the adjusted competitive bid threshold established in section 314.1B, the governmental entity shall advertise for sealed bids for the proposed public improvement by publishing a notice to bidders. The notice to bidders shall be published at least once, not less than four and not more than forty-five days before the date for filing bids, in a newspaper published at least once weekly and having general circulation in the geographic area served by the governmental entity. Additionally, the governmental entity may publish a notice in a relevant contractor organization publication and a relevant contractor plan room service with statewide circulation, provided that a notice is posted on a website sponsored by either a governmental entity or a statewide association that represents the governmental entity.

2. A governmental entity shall have an engineer licensed under chapter 542B, a landscape architect licensed under chapter 544B, or an architect registered under chapter 544A prepare plans and specifications, and calculate the estimated total cost of a proposed public improvement.

3. Sections 26.4 through 26.13 apply to all competitive bidding pursuant to this section.

2007 Acts, ch 144, §3  
Subsections 1 and 2 amended

### 26.4 Exemptions from competitive bids and quotations.

Architectural, landscape architectural, or engineering design services procured for a public improvement are not subject to sections 26.3 and 26.14.

2007 Acts, ch 144, §4  
Section amended

### 26.8 Bid security.

1. Each bidder shall accompany its bid with a bid security as security that the successful bidder will enter into a contract for the work bid upon and will furnish after the award of contract a corporate surety bond, acceptable to the governmental entity, for the faithful performance of the contract, in an amount equal to one hundred percent of the amount of the contract. The bid security shall be in an amount fixed by the governmental entity, and shall be in the form of a cashier's check or certified check drawn on a state-chartered or federally chartered bank, or a certified share draft drawn on a state-chartered or federally chartered credit union, or the governmental entity may provide for a bidder's bond with corporate surety satisfactory to the governmental entity. The bidder's bond shall contain no conditions except as provided in this section.

2. The governmental entity shall fix the

amount of bid security prior to ordering publication of the notice to bidders and such amount must equal at least five percent, but shall not exceed ten percent, of either the estimated total contract cost of the public improvement or the amount of each bid.

2007 Acts, ch 144, §5  
Subsection 1 amended

### 26.10 Opening and considering bids.

1. The date and time that each bid is received by the governmental entity, together with the name of the person receiving the bid, shall be recorded on the envelope containing the bid. All bids received after the deadlines for submission of bids as stated in the project specifications shall not be considered and shall be returned to the late bidder unopened. The governmental entity shall open, announce the amount of the bids, and file all proposals received, at the time and place specified in the notice to bidders. The governmental entity may, by resolution, award the contract for the public improvement to the bidder submitting the lowest responsive, responsible bid, determined as provided in section 26.9, or the governmental entity may reject all bids received, fix a new date for receiving bids, and order publication of a new notice to bidders. The governmental entity shall retain the bid security furnished by the successful bidder until the approved contract form has been executed, a bond has been filed by the bidder guaranteeing the performance of the contract, and the contract and bond have been approved by the governmental entity. The provisions of chapter 573, where applicable, apply to contracts awarded under this chapter.

2. The governmental entity shall promptly return the checks or bidder's bonds of unsuccessful bidders to the bidders as soon as the successful bidder is determined or within thirty days, whichever is sooner.

2007 Acts, ch 144, §6  
Unnumbered paragraph 1 amended and editorially numbered as subsection 1  
Unnumbered paragraph 2 editorially numbered as subsection 2

### 26.11 Delegation of authority.

When bids are required for any public improvement, the governmental entity may delegate, by motion, resolution, or policy to the city manager, clerk, engineer, or other public officer, as applicable, the duty of receiving and opening bids and announcing the results. The officer shall report the results of the bidding with the officer's recommendations to the next regular meeting of the governmental entity's governing body or at a special meeting called for that purpose.

2007 Acts, ch 144, §7  
Section amended

### 26.13 Early release of retained funds.

Payments made by a governmental entity or the state department of transportation for the construction of public improvements and highway,

bridge, or culvert projects shall be made in accordance with the provisions of chapter 573, except as provided in this section. For purposes of this section, “*department*” means the state department of transportation.

1. At any time after all or any part of the work on the public improvement or highway, bridge, or culvert project is substantially completed, the contractor may request the release of all or part of the retained funds owed. The request shall be accompanied by a sworn statement of the contractor that, ten calendar days prior to filing the request, notice was given as required by subsection 7 to all known subcontractors, sub-subcontractors, and suppliers.

2. Except as provided under subsection 3, upon receipt of the request, the governmental entity or the department shall release all or part of the retained funds. Retained funds that are approved as payable shall be paid at the time of the next monthly payment or within thirty days, whichever is sooner. If partial retained funds are released pursuant to a contractor’s request, no retained funds shall be subsequently held based on that portion of the work. If within thirty days of when payment becomes due the governmental entity or the department does not release the retained funds due, interest shall accrue on the amount of retained funds at the rate of interest that is calculated as the prime rate plus one percent per year as of the day interest begins to accrue until the amount is paid.

3. If labor and materials are yet to be provided at the time the request for the release of the retained funds is made, an amount equal to two hundred percent of the value of the labor or materials yet to be provided, as determined by the governmental entity’s or the department’s authorized contract representative, may be withheld until such labor or materials are provided. For purposes of this section, “*authorized contract representative*” means the person chosen by the governmental entity or the department to represent its interests or the person designated in the contract as the party representing the governmental entity’s or the department’s interest regarding administration and oversight of the project.

4. An itemization of the labor or materials yet to be provided, or the reason that the request for release of retained funds is denied, shall be provided to the contractor in writing within thirty calendar days of the receipt of the request for release of retained funds.

5. For purposes of this section, “*substantially completed*” means the first date on which any of the following occurs:

*a.* Completion of the public improvement project or the highway, bridge, or culvert project or when the work on the public improvement or the highway, bridge, or culvert project has been substantially completed in general accordance with the terms and provisions of the contract.

*b.* The work on the public improvement or on the designated portion is substantially completed in general accordance with the terms of the contract so that the governmental entity or the department can occupy or utilize the public improvement or designated portion of the public improvement for its intended purpose. This paragraph shall not apply to highway, bridge, or culvert projects.

*c.* The public improvement project or the highway, bridge, or culvert project is certified as having been substantially completed by either of the following:

(1) The architect or engineer authorized to make such certification.

(2) The authorized contract representative.

*d.* The governmental entity or the department is occupying or utilizing the public improvement for its intended purpose. This paragraph shall not apply to highway, bridge, or culvert projects.

6. The contractor shall release retained funds to the subcontractor or subcontractors in the same manner as retained funds are released to the contractor by the governmental entity or the department. Each subcontractor shall pass through to each lower tier subcontractor all retained fund payments from the contractor.

7. Prior to applying for release of retained funds, the contractor shall send a notice to all known subcontractors, sub-subcontractors, and suppliers that provided labor or materials for the public improvement project or the highway, bridge, or culvert project. The notice shall be substantially similar to the following:

“NOTICE OF CONTRACTOR’S  
REQUEST FOR EARLY RELEASE  
OF RETAINED FUNDS

You are hereby notified that [name of contractor] will be requesting an early release of funds on a public improvement project or a highway, bridge, or culvert project designated as [name of project] for which you have or may have provided labor or materials. The request will be made pursuant to Iowa Code section 26.13. The request may be filed with the [name of governmental entity or department] after ten calendar days from the date of this notice. The purpose of the request is to have [name of governmental entity or department] release and pay funds for all work that has been performed and charged to [name of governmental entity or department] as of the date of this notice. This notice is provided in accordance with Iowa Code section 26.13.”

2007 Acts, ch 144, §8  
Subsection 3 amended

**26.14 Competitive quotations for public improvement contracts.**

1. Competitive quotations shall be required for a public improvement having an estimated to-

tal cost that exceeds the applicable threshold amount provided in this section, but is less than the competitive bid threshold established in section 26.3.

2. Unless the threshold amounts are adjusted pursuant to section 314.1B, the following threshold amounts shall apply:

*a.* Sixty-seven thousand dollars for a county, including a county hospital.

*b.* Fifty-one thousand dollars for a city having a population of fifty thousand or more.

*c.* Fifty-one thousand dollars for a school district having a population of fifty thousand or more.

*d.* Fifty-one thousand dollars for an aviation authority created within a city having a population of fifty thousand or more.

*e.* Thirty-six thousand dollars for a city having a population of less than fifty thousand, for a school district having a population of less than fifty thousand, and for any other governmental entity.

*f.* The threshold amount applied to a city applies to a city hospital.

3. *a.* When a competitive quotation is required, the governmental entity shall make a good faith effort to obtain quotations for the work from at least two contractors regularly engaged in such work prior to letting a contract. Good faith effort shall include advising all contractors who have filed with the governmental entity a request for notice of projects. The governmental entity shall provide such notice in a timely manner so that a requesting contractor will have a reasonable opportunity to submit a competitive quotation. Quotations may be obtained from contractors after the governmental entity provides a description of the work to be performed, including the plans and specifications prepared by an architect, landscape architect, or engineer, if required under chapter 542B, 544B, or 544A, and an opportunity to inspect the work site. The contractor shall include in the quotation the price for labor, materials, equipment, and supplies required to perform the work. If the work can be performed by an employee or employees of the governmental entity, the governmental entity may file a quotation for the work to be performed in the same manner as a contractor. If the governmental entity receives no quotations after making a good faith effort to obtain quotations from at least two contractors regularly engaged in such work, the governmental entity may negotiate a contract with a contractor regularly engaged in such work.

*b.* The governmental entity shall designate the time, place, and manner for filing quotations,

which may be received by mail, facsimile, or electronic mail. The governmental entity shall award the contract to the contractor submitting the lowest responsive, responsible quotation subject to section 26.9, or the governmental entity may reject all of the quotations. The unconditional acceptance and approval of the lowest responsive, responsible quotation shall constitute the award of a contract. The governmental entity shall record the approved quotation in its meeting minutes. The contractor awarded the contract shall not commence work until the contractor's performance and payment bond has been approved by the governmental entity. A governmental entity may delegate the authority to award a contract, to execute a contract, to authorize work to proceed under a contract, or to approve the contractor's performance and payment bond to an officer or employee of the governmental entity. A quotation approved outside a meeting of the governing body of a governmental entity shall be included in the minutes of the next regular or special meeting of the governing body.

*c.* If a public improvement may be performed by an employee of the governmental entity, the amount of estimated sales and fuel tax and the premium cost for the performance and payment bond which a contractor identifies in its quotation shall be deducted from the contractor's price for determining the lowest responsible quotation. If no quotations are received to perform the work, or if the governmental entity's estimated cost to do the work with its employee is less than the lowest responsive, responsible quotation received, the governmental entity may authorize its employee or employees to perform the work.

2007 Acts, ch 144, §9  
Section amended

#### **26.14A Alternative procedures.**

1. When competitive quotations are required under section 26.14 for a public improvement, the governmental entity may proceed, in lieu of competitive quotations, as if the estimated total cost of the public improvement exceeds the competitive bid threshold under section 26.3.

2. If the total estimated cost of the public improvement does not warrant either competitive quotations under section 26.14 or competitive bidding under section 26.3, the governmental entity may nevertheless proceed with competitive quotations or competitive bidding for the public improvement.

2007 Acts, ch 144, §10  
NEW section

## CHAPTER 28D

### INTERCHANGE OF FEDERAL, STATE, AND LOCAL GOVERNMENT EMPLOYEES

#### 28D.3 Authority to interchange employees.

1. Any department, agency, or instrumentality of the state, county, city, municipality, land-grant college, or college or university operated by the state or any local government is authorized to participate in a program of interchange of employees with departments, agencies, or instrumentalities of the federal government, another state or locality, or other agencies, municipalities, or instrumentalities of this state as a sending or receiving agency.

2. The period of individual assignment or detail under an interchange program shall not exceed twenty-four months, except that an employee may be assigned for an additional twenty-four-month period upon the agreement of the employee and both the sending and receiving agencies. No employee shall be assigned or detailed without the

employee's expressed consent or by using undue coercion to obtain said consent. Details relating to any matter covered in this chapter may be the subject of an agreement between the sending and receiving agencies. Elected officials shall not be assigned from a sending agency nor detailed to a receiving agency.

3. The period of individual assignment or detail may be terminated if the receiving agency offers a permanent appointment to the employee and both the sending and receiving agencies agree.

4. Persons employed by the department of natural resources, department of administrative services, and the Iowa communications network under this chapter are not subject to the twenty-four-month time limitation specified in subsection 2.

2007 Acts, ch 215, §83, 129  
Subsection 4 amended

## CHAPTER 28E

### JOINT EXERCISE OF GOVERNMENTAL POWERS

#### 28E.6 Additional provisions.

1. If the agreement does not establish a separate legal entity to conduct the joint or cooperative undertaking, the agreement shall also include:

*a.* Provision for an administrator or a joint board responsible for administering the joint or cooperative undertaking. In the case of a joint board, public agencies party to the agreement shall be represented.

*b.* The manner of acquiring, holding, and disposing of real and personal property used in the joint or cooperative undertaking.

2. The joint board specified in the agreement shall be a governmental body for purposes of chapter 21 and the entity created shall be a government body for purposes of chapter 22 unless the entity created or agreement includes public agencies from more than one state.

3. *a.* A summary of the proceedings of each regular, adjourned, or special meeting of the joint board of the entity created in the agreement, including the schedule of bills allowed, shall be published after adjournment of the meeting in one newspaper of general circulation within the geographic area served by the joint board of the entity created in the agreement. The summary of the proceedings shall include the date, time, and place the meeting was held, the members present, and the actions taken at the meeting. The joint board

of the entity created in the agreement shall furnish the summary of the proceedings to be submitted for publication to the newspaper within twenty days following adjournment of the meeting. The publication of the schedule of bills allowed shall include a list of all salaries paid for services performed, showing the name of the person or firm performing the service and the amount paid. The publication of the schedule of bills allowed may consolidate amounts paid to the same claimant if the purpose of the individual bills is the same. However, the names and gross salaries of persons regularly employed by the entity created in the agreement shall only be published annually.

*b.* An entity created which had a cash balance, including investments, of less than one hundred thousand dollars at the end of the previous fiscal year and which had total expenditures of less than one hundred thousand dollars during the prior fiscal year is not required to publish as required in paragraph "a". However, such an entity shall file without charge, in an electronic format, the information described in paragraph "a" with the office of the county recorder in the most populous county served by the entity. The county recorder shall make the information submitted available to the public, which information shall also include access to a copy of the agreement creating the entity.

*c.* This subsection shall not apply to an entity

created in an agreement that includes public agencies from more than one state or to a contract entered into pursuant to section 28E.12.

2007 Acts, ch 158, §1, 4  
Subsections 2 and 3 amended

#### **28E.8 Filing with secretary of state.**

1. *a.* Before entry into force, an agreement made pursuant to this chapter shall be filed, in an electronic format, with the secretary of state in a manner specified by the secretary of state.

*b.* Any amendment, modification, or notice of termination of an agreement made pursuant to this chapter shall be filed, in an electronic format, with the secretary of state within thirty days of the effective date of the amendment, modification, or termination, in a manner specified by the secretary of state.

2. *a.* In addition to subsection 1, each entity subject to section 28E.5 shall submit, in an electronic format, an initial report to the secretary of state as prescribed by the secretary of state. The report shall include, as applicable, the name of the entity created, the board members of the joint board created, whether the entity is exempt from the publication requirements of section 28E.6, subsection 3, a valid electronic mail address, and any additional information the secretary of state deems appropriate.

*b.* Following submission of an initial report pursuant to paragraph “*a*”, each entity subject to section 28E.5 shall submit, in an electronic format, a biennial report to the secretary of state in a manner prescribed by the secretary of state by April 1 of every odd-numbered year beginning in

calendar year 2009.

2007 Acts, ch 158, §2, 4  
For transition provisions relating to reporting by entities created prior to January 1, 2008, see 2007 Acts, ch 158, §3, 4  
2007 amendments to this section are effective January 1, 2008; 2007 Acts, ch 158, §4  
Section amended

#### **28E.32 Emergency services agreements.**

1. A municipality that agrees to provide fire protection service or emergency medical service for another municipality shall do so in writing.

2. The written agreement shall state the purposes of the agreement and the services to be provided. The agreement shall state the duration of the agreement and provide for renewal or cancellation of the agreement.

3. An advisory board created by agreement may prepare a proposed annual budget for services provided pursuant to the agreement until the agreement is canceled or expires. For the proposed budget, the board may allocate among the parties to the agreement responsibility to provide revenue for the amount of the budget. The proposed budget shall be submitted to the municipality providing the services. However, the municipality providing the services shall have full and final authority over the proposed budget and may alter the proposed budget without approval of the board before it is included in the budget of such municipality.

4. For purposes of this section, “*municipality*” means a city, county, township, benefited fire district, or agency formed under this chapter and authorized by law to provide emergency services.

2007 Acts, ch 96, §1, 2  
Subsection 3 amended

## CHAPTER 28H

### COUNCILS OF GOVERNMENTS

#### **28H.1 Councils of governments established.**

For purposes of this chapter, a council of governments includes the following areas established by executive order number 11,1969 or a chapter 28E agreement:

1. Upper explorerland regional planning commission serving Allamakee, Clayton, Fayette, Howard, and Winneshiek counties.

2. North Iowa area council of governments serving Cerro Gordo, Floyd, Franklin, Hancock, Kossuth, Mitchell, Winnebago, and Worth counties.

3. Northwest Iowa planning and development commission serving Buena Vista, Clay, Dickinson, Emmet, Lyon, O'Brien, Osceola, Palo Alto, and Sioux counties.

4. Siouxland interstate metropolitan planning

council serving Ida, Monona, Plymouth, Woodbury, and Cherokee counties.

5. MIDAS council of governments serving Calhoun, Hamilton, Humboldt, Pocahontas, Webster, and Wright counties.

6. Region six planning commission serving Hardin, Poweshiek, Tama, and Marshall counties.

7. Iowa northland regional council of governments serving Black Hawk, Bremer, Buchanan, Butler, Chickasaw, and Grundy counties.

8. East central intergovernmental association serving Cedar, Clinton, Delaware, Dubuque, and Jackson counties.

9. Bi-state metropolitan planning commission serving Scott and Muscatine counties.

10. East central Iowa council of governments serving Benton, Iowa, Johnson, Jones, Linn, and Washington counties.

11. Region twelve council of governments serving Audubon, Carroll, Crawford, Greene, Guthrie, and Sac counties.

12. Southwest Iowa planning council serving Cass, Fremont, Harrison, Montgomery, Page, and Shelby counties.

13. Southern Iowa council of governments serving Adair, Adams, Clarke, Decatur, Madison, Ringgold, Taylor, and Union counties.

14. Area fifteen regional planning commission serving Davis, Jefferson, Keokuk, Mahaska, Van Buren, and Wapello counties.

15. Southeast Iowa regional planning com-

mission serving Des Moines, Henry, Lee, and Louisa counties.

16. Metropolitan area planning agency serving Mills and Pottawattamie counties.

17. Chariton valley council of governments serving Appanoose, Lucas, Monroe, and Wayne counties.

2007 Acts, ch 76, §1, 2  
Boone, Dallas, Jasper, Marion, Polk, Story, and Warren counties, or combinations of these, may form councils of governments or associate with any existing councils of governments; 90 Acts, ch 1157, §6; 90 Acts, ch 1262, §41  
Subsection 14 amended  
NEW subsection 17

## CHAPTER 28M

### REGIONAL TRANSIT DISTRICTS

#### **28M.4 Regional transit district commission — membership — powers.**

1. The governing bodies of counties and cities participating in a regional transit district shall appoint a commission to manage and administer the regional transit district. Unless otherwise provided in the chapter 28E agreement, commission members shall serve for staggered six-year terms. The agreement creating the regional transit district shall set the compensation of commission members.

2. The title to all property of a regional transit district shall be held in the name of the district, and the commission has all the powers and authorities of a board of supervisors with respect to the acquisition by purchase, condemnation or otherwise, lease, sale, or other disposition of the property, and the management, control, and operation of the property, subject to the requirements, terms, covenants, conditions, and provisions of any resolutions authorizing the issuance of revenue bonds, pledge orders, or other obligations which are payable from the revenues of the regional transit district, and which are then outstanding.

3. A commission shall adopt and certify an annual budget for the regional transit district. A commission in its budget shall allocate the revenue responsibilities of each county and city participating in the regional transit district. A commission shall be considered a municipality for purposes of adopting and certifying a budget pursuant to chapter 24.

4. A commission may establish a schedule of fares and collect fares for the transportation of passengers.

5. A commission shall levy for and control any tax revenues paid to the regional transit district the commission administers and all moneys de-

rived from the operation of the regional transit district, the sale of its property, interest on investments, or from any other source related to the regional transit district.

6. Tax revenues collected from a regional transit district levy shall be held by the county treasurer. Before the fifteenth day of each month, the county treasurer shall send the amount collected for each fund through the last day of the preceding month for direct deposit into the depository and account designated by the commission. The county treasurer shall send a notice to the secretary of the commission or the secretary's designee stating the amount deposited, the date, the amount to be credited to each fund according to the budget, and the source of the revenue.

7. A commission is subject to section 331.341, subsections 1, 2, 4, and 5, and section 331.342, in contracting for public improvements.

8. Immediately following a regular or special meeting of a commission, the secretary of the commission shall prepare a condensed statement of the proceedings of the commission and cause the statement to be published not more than twenty days following the meeting in one or more newspapers which meet the requirements of section 618.14. The statement shall include a list of all claims allowed, showing the name of the person or firm making the claim, the reason for the claim, and the amount of the claim. If the reason for the claims is the same, two or more claims made by the same vendor, supplier, or claimant may be consolidated if the number of claims consolidated and the total consolidated claim amount are listed in the statement. However, the commission shall provide at its office upon request an unconsolidated list of all claims allowed. Salary claims must show the gross amount of the claim except that salaries paid to persons regularly employed by the com-

mission, for services regularly performed by the persons, shall be published once annually showing the gross amount of the salary.

9. A commission shall submit to the governing body of each participating county and city a de-

tailed annual report, including a complete financial statement.

2007 Acts, ch 143, §36  
Subsection 6 amended

## CHAPTER 29A

### MILITARY CODE

#### 29A.12 Powers and duties.

1. The adjutant general shall have command and control of the military division, and perform such duties as pertain to the office of the adjutant general under law and regulations, pursuant to the authority vested in the adjutant general by the governor. The adjutant general shall superintend the preparation of all letters and reports required by the United States from the state, and perform all the duties prescribed by law. The adjutant general shall have charge of the state military reservations, and all other property of the state kept or used for military purposes. The adjutant general may accept and expend nonappropriated funds in accordance with law and regulations. The adjutant general shall cause an inventory to be taken at least once each year of all military stores, property, and funds under the adjutant general's jurisdiction. In each year preceding a regular session of the general assembly, the adjutant general shall prepare a detailed report of the transactions of that office, its expenses, and other matters required by the governor for the period since the last preceding report, and the governor may at any time require a similar report.

2. The adjutant general may enter into an agreement with the secretary of defense to operate the water plant at Camp Dodge for the use and benefit of the United States, and the state of Iowa upon terms and conditions as approved by the governor. The adjutant general may also enter into an agreement with the national guard of another state for the use of Iowa national guard personnel and equipment.

3. The adjutant general may request activation of the civil air patrol to provide assistance to the national guard in accordance with section 29A.3A. The adjutant general is authorized to provide suitable space in national guard facilities to support the civil air patrol.

2007 Acts, ch 74, §1  
Subsection 1 amended

#### 29A.28 Leave of absence of civil employees.

1. All officers and employees of the state, a subdivision thereof, or a municipality, other than employees employed temporarily for six months or

less, who are members of the national guard, organized reserves or any component part of the military, naval, or air forces or nurse corps of this state or nation, or who are or may be otherwise inducted into the military service of this state or of the United States, or who are members of the civil air patrol, shall, when ordered by proper authority to state active duty, state military service, or federal service, or when performing a civil air patrol mission pursuant to section 29A.3A, be entitled to a leave of absence from such civil employment for the period of state active duty, state military service, federal service, or civil air patrol duty without loss of status or efficiency rating, and without loss of pay during the first thirty days of such leave of absence. Where state active duty, state military service, federal service, or civil air patrol duty is for a period of less than thirty days, a leave of absence under this section shall only be required for those days that the civil employee would normally perform services for the state, subdivision of the state, or a municipality. The provisions of this section shall also apply to a leave of absence by a member of the national disaster medical system of the United States when activated for federal service with the system.

2. A state agency, subdivision of the state, or municipality may hire a temporary employee to fill any vacancy created by such leave of absence. Temporary employees hired to fill a vacancy created by a leave of absence under this section shall not count against the number of full-time equivalent positions authorized for the state agency, subdivision of the state, or municipality.

3. Upon returning from a leave of absence under this section, an employee shall be entitled to return to the same position and classification held by the employee at the time of entry into state active duty, state military service, federal service, or civil air patrol duty, or to the position and classification that the employee would have been entitled to if the continuous civil service of the employee had not been interrupted by state active duty, state military service, federal service, or civil air patrol duty. Under this subsection, "position" includes the geographical location of the position.

2007 Acts, ch 126, §12; 2007 Acts, ch 218, §133 - 135  
See also §29A.43  
See Code editor's note  
Subsection 1 amended

**29A.57 Armory board.**

1. The governor shall appoint an armory board which consists of the adjutant general serving as chairperson, at least two officers from the active commissioned personnel of the national guard, and at least one other person, who is a citizen of the state of Iowa. One member of the board shall have at least five years' experience in the building construction trade. The board shall meet at times and places as ordered by the governor. The members shall serve at the pleasure of the governor. Members of the board shall receive actual expenses for each day in which they are actually employed under this chapter. Each member of the board may also be eligible to receive compensation as provided in section 7E.6.

2. The board may acquire land or real estate by purchase, contract for purchase, gift, or bequest and acquire, own, contract for the construction of, erect, purchase, maintain, alter, operate, and repair installations and facilities of the Iowa army national guard and the Iowa air national guard when funds for the installations and facilities are made available by the federal government, the state of Iowa, municipalities, corporations, or individuals. The title to the property so acquired shall be taken in the name of the state of Iowa and the real estate may be sold or exchanged by the executive council, upon recommendation of the board, when it is no longer needed for the purpose for which it was acquired. Income or revenue derived from the sale of the real estate shall be credited to the national guard facilities improvement fund and used for the purposes specified in section 29A.14, subsection 2.

3. In carrying out this section, the armory board may:

*a.* Borrow money.

*b.* Mortgage any real estate acquired and the improvements erected on the real estate when purchasing or improving the property, in order to secure necessary loans.

*c.* Pledge the sales, rents, profits and income received from the property for the discharge of obligations executed.

*d.* Grant a temporary or permanent easement with or without monetary consideration for utility, public highway, or other purposes if granting the easement will not adversely affect use of the real estate for military purposes.

*e.* Enter into a design-build contract with a successful bidder identified as a result of a competitive bidding process for a facility to be funded entirely with federal funds and to be used solely by the national guard or jointly by the national guard and other armed forces of the United States. A design-build contract may provide that design and construction of the project may be in sequential or concurrent phases. As used in this paragraph, "design-build contract" means a single contract providing for both design services and construc-

tion services that may include maintenance, operations, preconstruction, and other related services.

4. An obligation created under this section shall not be a charge against the state of Iowa, but all the obligations, including principal and interest, are payable solely from any of the following:

*a.* The sales, net rents, profits and income arising from the property so pledged or mortgaged.

*b.* The sales, net rents, profits and income which have not been pledged for other purposes arising from any other installation and facility or like improvement under the control and management of said board.

*c.* The income derived from gifts and bequests for installations and facilities under the control of the armory board.

5. All property, real or personal, acquired by, and all bonds, debentures or other written evidences of indebtedness, given as security by the board, are exempt from taxation.

6. When property acquired by the armory board, under this chapter, is free and clear of all indebtedness, the title of the property shall pass to the state of Iowa.

7. There is no liability to the state of Iowa under this section. Members of the armory board and of the state executive council shall not be held to any personal or individual liability for any action taken by them under this chapter.

8. The board shall fix the amount to be paid to commanding officers of each organization and unit of the national guard for headquarters expenses and shall provide by regulation how the amount shall be disbursed by the commanding officers. The governor may disapprove the actions of the armory board.

9. The allowances made by the armory board shall be paid from the funds appropriated for the support and maintenance of the national guard.

2007 Acts, ch 74, §2; 2007 Acts, ch 126, §13  
Subsection 2 amended  
Subsection 3, NEW paragraph e

**29A.101A Termination of lease by service member — penalty.**

1. For purposes of this section, unless the context otherwise requires:

*a.* "Premises lease" means a lease of premises occupied, or intended to be occupied, by a service member or a service member's dependents for a residential, professional, business, agricultural, or similar purpose if either of the following applies:

(1) The lease is executed by or on behalf of a person who thereafter and during the term of the lease enters military service.

(2) The service member, while in military service, executes the lease and thereafter receives military orders for a permanent change of station or to deploy with a military unit, or as an individual in support of a military operation, for a period



of not less than ninety days.

*b.* “*Vehicle lease*” means a lease of a motor vehicle used, or intended to be used, by a service member or a service member’s dependents for personal or business transportation if either of the following applies:

(1) The lease is executed by or on behalf of a person who thereafter and during the term of the lease enters military service under a call or order specifying a period of service of not less than ninety days, or who enters military service under a call or order specifying a period of ninety days of service or less and who, without a break in service, receives orders extending the period of military service to a period of not less than ninety days.

(2) The service member, while in military service, executes the lease and thereafter receives military orders to deploy with a military unit, or as an individual in support of a military operation, for a period of not less than ninety days.

2. A service member may terminate a premises lease or vehicle lease pursuant to the requirements of this section. Termination of a premises lease or vehicle lease shall be made as follows:

*a.* By delivery by the lessee of written notice of such termination, and a copy of the service member’s military orders, to the lessor or the lessor’s grantee, or to the lessor’s agent or the agent’s grantee. A lessee’s termination of a lease pursuant to this subsection shall terminate any obligation a dependent of the lessee may have under the lease. For purposes of this paragraph, written notice may be accomplished by hand delivery, by private business carrier, or by placing the written notice in an envelope with sufficient postage and with return receipt requested, and addressed as designated by the lessor or the lessor’s grantee or to the lessor’s agent or the agent’s grantee, and depositing the written notice in the United States mail.

*b.* In the case of a vehicle lease, by return of the motor vehicle by the lessee to the lessor or the lessor’s grantee, or to the lessor’s agent or the agent’s grantee, not later than fifteen days after the date of the delivery of written notice under paragraph “*a*”. A lessee’s termination of a lease pursuant to this subsection shall terminate any obligation a dependent of the lessee may have under the lease.

3. In the case of a premises lease that provides for monthly payment of rent, termination of the lease is effective thirty days after the first date on

which the next rental payment is due and payable after the date on which the notice is delivered. In the case of any other premises lease, termination of the lease is effective on the last day of the month following the month in which the notice is delivered.

4. In the case of a vehicle lease, termination of the lease is effective on the day on which the vehicle is delivered to the lessor or the lessor’s grantee.

5. Rents or lease amounts unpaid for the period preceding the effective date of the lease termination shall be paid on a prorated basis. In the case of a vehicle lease, the lessor shall not impose an early termination charge, but any taxes, summonses, and title and registration fees and any other obligation and liability of the lessee in accordance with the terms of the lease, including reasonable charges to the lessee for excess wear, use, and mileage, that are due and unpaid at the time of termination of the lease shall be paid by the lessee.

6. Rents or lease amounts paid in advance for a period after the effective date of the termination of the lease shall be refunded to the lessee by the lessor or the lessor’s assignee or the assignee’s agent within thirty days of the effective date of the termination of the lease.

7. Upon application by the lessor to a court before the termination date provided in the written notice, relief granted by this section to a service member may be modified as justice and equity require.

8. *a.* Any person who knowingly seizes, holds, or detains the personal effects, security deposit, or other property of a service member or a service member’s dependent who lawfully terminates a lease covered by this section, or who knowingly interferes with the removal of such property from premises covered by such lease, for the purpose of subjecting or attempting to subject any of such property to a claim for rent accruing subsequent to the date of termination of such lease, or attempts to do so, commits a simple misdemeanor.

*b.* The remedy and rights provided under this section are in addition to and do not preclude any remedy for wrongful conversion otherwise available under law to the person claiming relief under this section.

2007 Acts, ch 22, §12  
Subsection 5 amended

## CHAPTER 29B

### MILITARY JUSTICE

#### **29B.18 Jurisdiction of special or summary courts-martial.**

1. *a.* Subject to section 29B.16, special courts-

martial have jurisdiction to try persons subject to this code for any offense for which they may have been punished under this code and may, under

such limitations as the adjutant general may impose by rule, adjudge any one or a combination of the following punishments:

- (1) A fine not exceeding one hundred dollars.
- (2) Forfeiture of pay and allowances not exceeding one thousand dollars.
- (3) A reprimand.
- (4) Dismissal or dishonorable discharge.
- (5) Reduction of a noncommissioned officer to the ranks.

b. A special courts-martial shall not try a commissioned officer.

2. a. Subject to section 29B.16, summary courts-martial have jurisdiction to try persons subject to this code, for any offense made punishable by this code.

b. A person with respect to whom summary courts-martial have jurisdiction shall not be brought to trial before a summary court-martial if

the person objects, unless under section 29B.14 the person has been permitted and has elected to refuse punishment under that section. If objection to trial by summary court-martial is made by an accused who has not been permitted to refuse punishment under section 29B.14, trial shall be ordered by special or general court-martial, as appropriate.

c. A summary court-martial may, under limitations the adjutant general imposes by rule, adjudge any of the following punishments:

- (1) A fine of not more than fifty dollars for a single offense.
- (2) Forfeiture of not more than twenty days' pay and allowances.
- (3) Reduction of a noncommissioned officer to the ranks.

2007 Acts, ch 22, §13  
Subsection 1 amended

## CHAPTER 29C

### EMERGENCY MANAGEMENT AND SECURITY

#### **29C.9 Local emergency management commissions.**

1. The county boards of supervisors, city councils, and school district boards of directors in each county shall cooperate with the homeland security and emergency management division of the department of public defense to establish a local emergency management commission to carry out the provisions of this chapter.

2. The commission shall be composed of a member of the board of supervisors or its appointed representative, the sheriff or the sheriff's representative, and the mayor or the mayor's representative from each city within the county. The commission members shall be the operations liaison officers between their jurisdiction and the commission.

3. The name used by the commission shall be (county name) county emergency management commission. The name used by the office of the commission shall be (county name) county emergency management agency.

4. For the purposes of this chapter, the commission or joint commission is a municipality as defined in section 670.1.

5. The commission shall model its bylaws and conduct its business according to the guidelines provided in the state division's administrative rules.

6. The commission shall determine the mission of its agency and program and provide direction for the delivery of the emergency management services of planning, administration, coordination, training, and support for local governments and their departments. The commission

shall coordinate its services in the event of a disaster. The commission may also provide joint emergency response communications services through an agreement entered into under chapter 28E.

7. The commission shall delegate to the emergency management coordinator the authority to fulfill the commission duties as described in the division's administrative rules. Each commission shall appoint a county emergency management coordinator who shall meet the qualifications specified in the administrative rules by the administrator of the homeland security and emergency management division. Additional emergency management personnel may be appointed at the discretion of the commission.

8. The commission shall develop, adopt, and submit for approval by local governments within the county, a comprehensive countywide emergency operations plan which meets standards adopted by the division in accordance with chapter 17A. If an approved comprehensive countywide emergency operations plan has not been prepared according to established standards and the administrator of the homeland security and emergency management division finds that satisfactory progress is not being made toward the completion of the plan, or if the administrator finds that a local emergency management commission has failed to appoint a qualified emergency management coordinator as provided in this chapter, the administrator shall notify the governing bodies of the counties and cities affected by the failure and the governing bodies shall not appropriate any moneys to the local emergency management fund until the disaster plan is prepared and approved or a

qualified emergency management coordinator is appointed. If the administrator finds that a city or a county has appointed an unqualified emergency management coordinator, the administrator shall notify the governing body of the city or county citing the qualifications which are not met and the governing body shall not approve the payment of the salary or expenses of the unqualified emergency management coordinator.

9. The commission shall encourage local officials to support and participate in exercise programs which test proposed or established jurisdictional emergency plans and capabilities. During emergencies when lives are threatened and extensive damage has occurred to property, the county and all cities involved shall fully cooperate with the emergency management agency to provide assistance in order to coordinate emergency management activities including gathering of damage assessment data required by state and federal authorities for the purposes of emergency declarations and disaster assistance.

10. Two or more commissions may, upon review by the state administrator and with the approval of their respective boards of supervisors and cities, enter into agreements pursuant to chapter 28E for the joint coordination and administration of emergency management services throughout the multicounty area.

2007 Acts, ch 149, §1  
Subsection 6 amended

**29C.20A Disaster aid individual assistance grant fund.**

1. A disaster aid individual assistance grant fund is created in the state treasury for the use of the executive council. Moneys in the fund may be expended following the governor's proclamation of a state of disaster emergency. The executive council may make financial grants to meet disaster-related expenses or serious needs of individuals or families adversely affected by a disaster which cannot otherwise be met by other means of financial assistance. The aggregate total of grants awarded shall not be more than one million dollars

during a fiscal year. However, within the same fiscal year, additional funds may be specifically authorized by the executive council to meet additional needs.

2. The grant funds shall be administered by the department of human services. The department shall adopt rules to create the Iowa disaster aid individual assistance grant program. The rules shall specify the eligibility of applicants and eligible items for grant funding. The rules shall be adopted no later than January 1, 2008. The executive council shall use grant funds to reimburse the department of human services for its actual expenses associated with the administration of the grants.

3. To be eligible for a grant, an applicant shall have an annual household income that is less than one hundred thirty percent of the federal poverty level based on the number of people in the applicant's household as defined by the most recently revised poverty income guidelines published by the United States department of health and human services. The amount of a grant for a household shall not exceed twenty-five percent of one hundred thirty percent of the federal poverty level for a household of one. Expenses eligible for grant funding shall be limited to personal property, home repair, food assistance, and temporary housing assistance. An applicant for a grant shall sign an affidavit committing to refund any part of the grant that is duplicated by any other assistance, such as but not limited to insurance or assistance from community development groups, charities, the small business administration, and the federal emergency management agency.

4. The homeland security and emergency management division shall submit an annual report, by January 1 of each year, to the legislative fiscal committee and the legislative government oversight committee concerning the activities of the grant program in the previous fiscal year.

2007 Acts, ch 145, §1  
For initial disaster grants during the period of February 23, 2007, through June 30, 2007, see 2007 Acts, ch 7, §1, 2  
NEW section

## CHAPTER 30

### CHEMICAL EMERGENCIES — EMERGENCY RESPONSE COMMISSION

**30.5 Commission powers and duties.**

1. The commission has the powers necessary to carry out the functions and duties specified in state law and the Emergency Planning and Community Right-to-know Act, including the powers to solicit and accept gifts and grants, and to adopt rules pursuant to chapter 17A. All federal funds, grants, and gifts shall be deposited with the treasurer of state and used only for the purposes agreed upon as conditions for receipt of the funds,

grants, or gifts.

2. The commission may enter into agreements pursuant to chapter 28E to accomplish any duty imposed upon the commission by the Emergency Planning and Community Right-to-know Act, but the commission shall not compensate any governmental unit for the performance of duties pursuant to such an agreement. Funding for administering the duties of the commission under sections 30.7, 30.8, and 30.9 shall be included in the bud-

gets of the department of natural resources and the department of public defense.

3. The commission may request from any state agency or official the information and assistance necessary to perform the duties of the commission. All state departments, divisions, agencies, and offices shall make available upon request information which is requested and which is not by law confidential.

2007 Acts, ch 211, §31  
Subsection 2 amended

### **30.7 Duties to be allocated to department of natural resources — emergency and hazardous chemicals.**

Agreements negotiated by the commission and the department of natural resources shall provide for the allocation of duties to the department of natural resources as follows:

1. Material safety data sheets or a list for chemicals required to be submitted to the commission under section 311 of the Emergency Planning and Community Right-to-know Act, 42 U.S.C. § 11021, shall be submitted to the department of natural resources. Submission to that department constitutes compliance with the requirement for notification to the commission.

2. Emergency and hazardous chemical inventory forms required to be submitted to the commission under section 312 of the Emergency Planning and Community Right-to-know Act, 42 U.S.C. § 11022, shall be submitted to the department of natural resources. Submission to that department constitutes compliance with the requirement for notification to the commission.

3. The department of natural resources shall advise the commission of the failure of any facility owner or operator to submit information as required under sections 311 and 312 of the Emergency Planning and Community Right-to-know Act, 42 U.S.C. § 11021 and 11022.

4. The department of natural resources shall make available to the public upon request during normal working hours the information forms in its possession pursuant to sections 312 and 324 of the Emergency Planning and Community Right-to-know Act, 42 U.S.C. § 11022 and 11044.

5. The department of natural resources shall compile data or information from the emergency and hazardous chemical inventory forms required to be submitted to the commission under section 312 of the Emergency Planning and Community Right-to-know Act, 42 U.S.C. § 11022.

2007 Acts, ch 211, §32  
Section amended

## CHAPTER 34A

### ENHANCED 911 EMERGENCY TELEPHONE SYSTEMS

#### **34A.7A Wireless communications surcharge — fund established — distribution and permissible expenditures.**

1. *a.* Notwithstanding section 34A.6, the administrator shall adopt by rule a monthly surcharge of up to sixty-five cents to be imposed on each wireless communications service number provided in this state. The surcharge shall be imposed uniformly on a statewide basis and simultaneously on all wireless communications service numbers as provided by rule of the administrator.

*b.* The program manager shall provide no less than one hundred days' notice of the surcharge to be imposed to each wireless communications service provider. The program manager, subject to the sixty-five cent limit in paragraph "a", may adjust the amount of the surcharge as necessary, but no more than once in any calendar year.

*c.* (1) The surcharge shall be collected as part of the wireless communications service provider's periodic billing to a subscriber. The surcharge shall appear as a single line item on a subscriber's periodic billing indicating that the surcharge is for E911 emergency telephone service. In the case of prepaid wireless telephone service, this surcharge shall be remitted based upon the address associated with the point of purchase, the customer billing

address, or the location associated with the mobile telephone number for each active prepaid wireless telephone that has a sufficient positive balance as of the last days of the information, if that information is available.

(2) In compensation for the costs of billing and collection, the wireless communications service provider may retain one percent of the gross surcharges collected.

(3) The surcharges shall be remitted quarterly by the wireless communications service provider to the program manager for deposit into the fund established in subsection 2.

(4) A wireless communications service provider is not liable for an uncollected surcharge for which the wireless communications service provider has billed a subscriber but which has not been paid.

2. Moneys collected pursuant to subsection 1 shall be deposited in a separate wireless E911 emergency communications fund within the state treasury under the control of the program manager. Section 8.33 shall not apply to moneys in the fund. Moneys earned as income, including as interest, from the fund shall remain in the fund until expended as provided in this section. Moneys in the fund shall be expended and distributed in the

following priority order:

*a.* An amount as appropriated by the general assembly to the administrator shall be allocated to the administrator and program manager for implementation, support, and maintenance of the functions of the administrator and program manager and to employ the auditor of state to perform an annual audit of the wireless E911 emergency communications fund.

*b.* The program manager shall allocate twenty-one percent of the total amount of surcharge generated to wireless carriers to recover their costs to deliver E911 phase 1 services. If the allocation in this paragraph is insufficient to reimburse all wireless carriers for such carrier's eligible expenses, the program manager shall allocate a prorated amount to each wireless carrier equal to the percentage of such carrier's eligible expenses as compared to the total of all eligible expenses for all wireless carriers for the calendar quarter during which such expenses were submitted. When prorated expenses are paid, the remaining unpaid expenses shall no longer be eligible for payment under this paragraph.

*c.* The program manager shall reimburse wire-line carriers on a calendar quarter basis for carriers' eligible expenses for transport costs between the selective router and the public safety answering points related to the delivery of wireless E911 phase 1 services.

*d.* The program manager shall reimburse wire-line carriers and third-party E911 automatic location information database providers on a calendar quarterly basis for the costs of maintaining and upgrading the E911 components and functionalities beyond the input to the E911 selective router, including the E911 selective router and the automatic location information database.

*e.* The program manager shall apply an amount up to five hundred thousand dollars per calendar quarter to any outstanding wireless E911 phase 1 obligations incurred pursuant to this chapter prior to July 1, 2004.

*f.* (1) The program manager shall allocate an amount up to one hundred fifty-nine thousand dollars per calendar quarter equally to the joint E911 service boards and the department of public safety that have submitted an annual written request to the program manager in a form approved by the program manager by May 15 of each year. The program manager shall allocate to each joint E911 service board and to the department of public safety a minimum of one thousand dollars per calendar quarter for each public safety answering point within the service area of the department of public safety or joint E911 service board.

(2) Upon retirement of outstanding obligations referred to in paragraph "e", the amount allocated under this paragraph "f" shall be twenty-five percent of the total amount of surcharge generated per calendar quarter allocated as follows:

(a) Sixty-five percent of the total dollars avail-

able for allocation shall be allocated in proportion to the square miles of the service area to the total square miles in this state.

(b) Thirty-five percent of the total dollars available for allocation shall be allocated in proportion to the wireless E911 calls taken at the public safety answering point in the service area to the total number of wireless E911 calls originating in this state.

(c) Notwithstanding subparagraph subdivisions (a) and (b), the minimum amount allocated to each joint E911 service board and to the department of public safety shall be no less than one thousand dollars for each public safety answering point within the service area of the department of public safety or joint E911 service board.

(3) The funds allocated in this paragraph "f" shall be used for communication equipment located inside the public safety answering points for the implementation and maintenance of wireless E911 phase 2. The joint E911 service boards and the department of public safety shall provide an estimate of phase 2 implementation costs to the program manager by January 1, 2005.

*g.* If moneys remain in the fund after fully paying all obligations under paragraphs "a" through "f", the remainder may be accumulated in the fund as a carryover operating surplus. This surplus shall be used to fund future phase 2 network and public safety answering point improvements and wireless carriers' transport costs related to wireless E911 services, if those costs are not otherwise recovered by wireless carriers through customer billing or other sources and approved by the program manager. Notwithstanding section 8.33, any moneys remaining in the fund at the end of each fiscal year shall not revert to the general fund of the state but shall remain available for the purposes of the fund.

*h.* The administrator, in consultation with the program manager and the E911 communications council, shall adopt rules pursuant to chapter 17A governing the distribution of the surcharge collected and distributed pursuant to this subsection. The rules shall include provisions that all joint E911 service boards and the department of public safety which answer or service wireless E911 calls are eligible to receive an equitable portion of the receipts.

3. *a.* The program manager shall submit an annual report by January 15 of each year to the legislative government oversight committee advising the general assembly of the status of E911 implementation and operations, including both wire-line and wireless services, the distribution of surcharge receipts, and an accounting of the revenues and expenses of the E911 program.

*b.* The program manager shall submit a calendar quarter report of the revenues and expenses of the E911 program to the fiscal services division of the legislative services agency.

*c.* The legislative government oversight com-

mittee shall review the priorities of distribution of funds under this chapter at least every two years.

4. The amount collected from a wireless service provider and deposited in the fund, pursuant to section 22.7, subsection 6, information provided by a wireless service provider to the program manager consisting of trade secrets, pursuant to section 22.7, subsection 3, and other financial or commercial operations information provided by a wireless service provider to the program manager, shall be kept confidential as provided under section 22.7. This subsection does not prohibit the inclusion of information in any report providing aggregate amounts and information which does not identify numbers of accounts or customers, revenues, or expenses attributable to an individual wireless communications service provider.

5. For purposes of this section, “*wireless communications service*” means commercial mobile

radio service, as defined under sections 3(27) and 332(d) of the federal Telecommunications Act of 1996, 47 U.S.C. § 151 et seq.; federal communications commission rules; and the Omnibus Budget Reconciliation Act of 1993. “*Wireless communications service*” includes any wireless two-way communications used in cellular telephone service, personal communications service, or the functional or competitive equivalent of a radio-telephone communications line used in cellular telephone service, a personal communications service, or a network access line. “*Wireless communications service*” does not include services whose customers do not have access to 911 or a 911-like service, a communications channel utilized only for data transmission, or a private telecommunications system.

2007 Acts, ch 213, §21  
Subsection 2, paragraph f, subparagraph (2), unnumbered paragraph 1 amended

## CHAPTER 35

### VETERANS AFFAIRS

#### 35.12 Veterans counseling program.

1. The department shall coordinate with United States veterans administration hospitals, health care facilities, and clinics in this state and the department of public health to provide assistance to veterans and their families to reduce the incidence of alcohol and chemical dependency and suicide among veterans and to make mental health counseling available to veterans.

2. The assistance program shall include but not be limited to the following:

a. Public education and awareness programs

for veterans, health care professionals, and the public, relative to the needs of veterans.

b. Referral services to identify appropriate counseling and treatment programs for veterans in need of services.

3. Any assistance program established pursuant to this section shall be implemented in a manner that does not duplicate other services readily available to veterans.

2007 Acts, ch 202, §1  
Report to general assembly regarding administration of program by January 15, 2008; 2007 Acts, ch 202, §16  
NEW section

## CHAPTER 35A

### VETERANS AFFAIRS COMMISSION

#### 35A.2 Commission of veterans affairs.

1. A commission of veterans affairs is created consisting of nine persons who shall be appointed by the governor, subject to confirmation by the senate. Members shall be appointed to staggered terms of four years beginning and ending as provided in section 69.19. The governor shall fill a vacancy for the unexpired portion of the term. In addition to the members appointed by the governor, the director of the department and the commandant of the Iowa veterans home shall serve as nonvoting, ex officio members of the commission.

2. Eight commissioners shall be honorably discharged members of the armed forces of the United States. The American legion of Iowa, dis-

abled American veterans department of Iowa, veterans of foreign wars department of Iowa, American veterans of World War II, Korea, and Vietnam, the Vietnam veterans of America, and the military order of the purple heart, through their department commanders, shall submit two names respectively from their organizations to the governor. The adjutant general and the Iowa affiliate of the reserve officers association shall submit names to the governor of persons to represent the Iowa national guard and the association. The governor shall appoint from the group of names submitted by the adjutant general and reserve officers association two representatives and from each of the other organizations one representative

to serve as a member of the commission, unless the appointments would conflict with the bipartisan and gender balance provisions of sections 69.16 and 69.16A. In addition, the governor shall appoint one member of the public, knowledgeable in the general field of veterans affairs, to serve on the commission.

2007 Acts, ch 202, §2  
Confirmation, see §2.32  
For provisions effective May 17, 2004, relating to appointment and terms of two new members, see 2004 Acts, ch 1175, §286  
Subsection 1 amended

### 35A.3 Duties of the commission.

The commission shall do all of the following:

1. Organize and annually select a chairperson.
2. Review proposed rules submitted by the department concerning the management and operation of the department. Unless the commission votes to disapprove a proposed rule on a two-thirds vote at the earlier of the next regularly scheduled meeting of the commission or a special meeting of the commission called by the commission within thirty days of the date the proposed rule is submitted, the department may proceed to adopt the rule.

3. *a.* Advise and make recommendations to the department, the general assembly, and the governor concerning issues involving and impacting veterans in this state.

*b.* Advise and make recommendations to the general assembly and the governor concerning the management and operation of the department.

4. Supervise the commandant's administration of commission policy for the operations and conduct of the Iowa veterans home.

5. Conduct an equal number of meetings at Camp Dodge and the Iowa veterans home. The agenda for each meeting shall include a reasonable time period for public comment.

2007 Acts, ch 202, §3  
Subsections 2 and 3 stricken and rewritten

### 35A.5 Duties of the department.

The department shall do all of the following:

1. Maintain and disseminate information to veterans and the public regarding facilities, benefits, and services available to veterans and their families and assist veterans and their families in obtaining such benefits and services.

2. Maintain information and data concerning the military service records of Iowa veterans.

3. Assist county veteran affairs commissions established pursuant to chapter 35B. The department shall provide to county commissions suggested uniform benefits and administrative procedures for carrying out the functions and duties of the county commissions.

4. Permanently maintain the records including certified records of bonus applications for awards paid from the war orphans educational fund under chapter 35.

5. Collect and maintain information concern-

ing veterans affairs.

6. Conduct two service schools each year for the Iowa association of county commissioners and executive directors.

7. Assist the United States veterans administration, the Iowa veterans home, funeral directors, and federally chartered veterans service organizations in providing information concerning veterans service records and veterans affairs data.

8. Maintain alphabetically a permanent registry of the graves of all persons who served in the military or naval forces of the United States in time of war and whose mortal remains rest in Iowa.

9. After consultation with the commission, provide training to executive directors of county commissions of veteran affairs pursuant to section 35B.6. The department may adopt rules in accordance with chapter 17A to provide for training of county veteran affairs executive directors.

10. Establish and operate a state veterans cemetery and make application to the government of the United States or any subdivision, agency, or instrumentality thereof, for funds for the purpose of establishing such a cemetery. The state may enter into agreements with any subdivision of the state for assistance in operating the cemetery. The state shall own the land on which the cemetery is located.

The department shall have the authority to accept federal grant funds, funding from state subdivisions, donations from private sources, and federal "plot allowance" payments. The department through the director shall have the authority to accept suitable cemetery land, in accordance with federal veterans cemetery grant guidelines, from the federal government, state government, state subdivisions, private sources, and any other source wishing to transfer land for use as a veterans cemetery. The department may lease or use property received pursuant to this subsection for any purpose so long as such leasing or use does not interfere with the use of the property for cemetery purposes and is not contrary to federal or state guidelines. All funds received pursuant to this subsection, including lease payments or funds generated from any activity engaged in on any property accepted pursuant to this subsection, shall be deposited into an account dedicated to the establishment, operation, and maintenance of a veterans cemetery and these funds shall be expended only for those purposes.

Notwithstanding section 8.33, any moneys in the account for a state veterans cemetery shall not revert and, notwithstanding section 12C.7, subsection 2, interest or earnings on moneys deposited in the fund shall be credited to the account.

11. Authorize the sale, trade, or transfer of veterans commemorative property pursuant to chapter 37A.

12. Adopt rules pursuant to chapter 17A and

establish policy for the management and operation of the department. Prior to adopting rules, the department shall submit proposed rules to the commission for review pursuant to the requirements of section 35A.3.

13. Provide information requested by the commission concerning the management and operation of the department and the programs administered by the department.

14. Carry out the policies of the department.

2007 Acts, ch 202, §4, 5

Report to general assembly regarding regional coverage for veterans affairs services by January 1, 2008; 2007 Acts, ch 202, §17

NEW subsection 1 and former subsections 1 – 7 renumbered as 2 – 8

Former subsection 8 amended and renumbered as 9

Former subsections 9 and 10 renumbered as 10 and 11

NEW subsections 12 and 13 and former subsection 11 renumbered as 14

### **35A.8 Executive director — term — duties — veterans' bonuses.**

1. The governor shall appoint an executive director, subject to confirmation by the senate, who shall serve at the pleasure of the governor. The executive director is responsible for administering the duties of the department and the commission other than those related to the Iowa veterans home.

2. The executive director shall be a resident of the state of Iowa and an honorably discharged veteran who served in the armed forces of the United States during a conflict or war. As used in this section, the dates of service in a conflict or war shall coincide with the dates of service established by the Congress of the United States.

3. Except for the employment duties and responsibilities assigned to the commandant for the Iowa veterans home, the executive director shall employ such personnel as are necessary for the performance of the duties and responsibilities assigned to the department and the commission. All employees shall be selected on a basis of fitness for the work to be performed with due regard to training and experience and shall be subject to the provisions of chapter 8A, subchapter IV.

4. *a.* The executive director shall provide for the administration of the bonus authorized in this subsection. The department shall adopt rules, pursuant to chapter 17A, as necessary to administer this subsection including, but not limited to, application procedures, investigation, approval or disapproval, and payment of claims.

*b.* (1) Each person who served on active duty in the active, oceangoing merchant marine service of the United States, at any time between December 7, 1941, and December 31, 1946, both dates inclusive, and who served for a period of not less than one hundred twenty days on or before December 31, 1946, and who at the time of entering into the merchant marine service was a legal resident of the state of Iowa, and who had maintained the person's residence in this state for a period of at least six months immediately before entering the merchant marine service, and was honorably

discharged or separated from the merchant marine service, is entitled to receive from moneys appropriated for that purpose the sum of twelve dollars and fifty cents for each month that the person was on active duty in the merchant marine service, all before December 31, 1946, not to exceed a total sum of five hundred dollars. Compensation for a fraction of a month shall not be considered unless the fraction is sixteen days or more, in which case the fraction shall be computed as a full month.

(2) A person is not entitled to compensation pursuant to this subsection if the person received a bonus or compensation similar to that provided in this subsection from another state.

(3) A person is not entitled to compensation pursuant to this subsection if the person was on active duty in the merchant marine service after December 7, 1941, and the person refused on conscientious, political, religious, or other grounds, to be subject to military discipline.

(4) The surviving unremarried widow or widower, child or children, mother, father, or person standing in loco parentis, in the order named and none other, of any deceased person, shall be paid the compensation that the deceased person would be entitled to pursuant to this subsection, if living, but if any person has died or shall die, or is disabled, from service-connected causes incurred during the period and in the area from which the person is entitled to receive compensation pursuant to this subsection, the person or the first survivor as designated by this subsection, and in the order named, shall be paid five hundred dollars, regardless of the length of service.

*c.* A person who knowingly makes a false statement relating to a material fact in supporting an application under this subsection is guilty of a serious misdemeanor. A person convicted pursuant to this subsection shall forfeit all benefits to which the person may have been entitled under this subsection.

*d.* All payments and allowances made under this subsection shall be exempt from taxation and from levy and sale on execution.

*e.* The bonus compensation authorized under this subsection shall be paid from moneys appropriated for that purpose.

*f.* A merchant marine bonus fund is created in the state treasury. The merchant marine bonus fund shall consist of all moneys appropriated to the fund to pay the bonus compensation authorized in this subsection. Notwithstanding section 12C.7, interest or earnings on investments or time deposits of the moneys in the merchant marine bonus fund shall be credited to the merchant marine bonus fund. Section 8.33 does not apply to moneys appropriated to the merchant marine bonus fund.

5. *a.* The executive director shall provide for the administration of the bonus authorized in this subsection. The commission shall adopt rules,



pursuant to chapter 17A, as necessary to administer this subsection including but not limited to application procedures, investigation, approval or disapproval, and payment of claims.

*b.* (1) A person who served on active duty for not less than one hundred twenty days in the armed forces of the United States at any time between July 1, 1973, and May 31, 1975, both dates inclusive, and who at the time of entering into active duty service was a legal resident of the state of Iowa, and who had maintained the person's residence in this state for a period of at least six months immediately before entering into active duty service, and was honorably discharged or separated from active duty service, or is still in active service in an honorable status, or has been retired, or has been furloughed to a reserve, or has been placed on inactive status is entitled to receive from moneys appropriated for that purpose the sum of seventeen dollars and fifty cents for each month that the person was on active duty service in the Vietnam service area, within the dates specified in this subparagraph, if the veteran earned either a Vietnam service medal or an armed forces expeditionary medal-Vietnam or can otherwise establish service in the Vietnam service area during that period. Compensation under this subparagraph shall not exceed a total sum of five hundred dollars. Compensation for a fraction of a month shall not be considered unless the fraction is sixteen days or more, in which case the fraction shall be computed as a full month.

(2) A person otherwise qualified under this paragraph "b" except that the person did not earn either a Vietnam service medal or an armed forces expeditionary medal-Vietnam, and did not serve in the Vietnam service area during the period between July 1, 1973, and May 31, 1975, both dates inclusive, is entitled to receive from moneys appropriated for that purpose the sum of twelve dollars and fifty cents for each month that the person was on active duty service, within the dates specified in subparagraph (1). Compensation under this subparagraph shall not exceed a total sum of three hundred dollars. Compensation for a fraction of a month shall not be considered unless the fraction is sixteen days or more, in which case the fraction shall be computed as a full month.

(3) A person is not entitled to compensation pursuant to this subsection if the person received a bonus or compensation similar to that provided in this subsection from another state.

(4) A person is not entitled to compensation pursuant to this subsection if the person was on active duty service after July 1, 1973, and the person refused on conscientious, political, religious, or other grounds, to be subject to military discipline.

(5) The surviving unremarried widow or widower, child or children, mother, father, or person standing in loco parentis, in the order named and none other, of any deceased person shall be paid

the compensation that the deceased person would be entitled to pursuant to this subsection, if living. However, if any person has died or shall die, or is disabled, from service-connected causes incurred during the period and in the area from which the person is entitled to receive compensation pursuant to this subsection, the person or the first survivor as designated by this subparagraph, and in the order named, shall be paid five hundred dollars or three hundred dollars, whichever maximum amount would have applied pursuant to subparagraph (1) or (2), regardless of the length of service.

(6) The maximum compensation a person may receive pursuant to this subsection shall be reduced by the amount of any Vietnam veterans bonus received from the state by that person for service prior to July 1, 1973.\*

*c.* A person who knowingly makes a false statement relating to a material fact in supporting an application under this subsection is guilty of a serious misdemeanor. A person convicted pursuant to this subsection shall forfeit all benefits to which the person may have been entitled under this subsection.

*d.* All payments and allowances made under this subsection shall be exempt from taxation, levy, and sale on execution.

*e.* The bonus compensation authorized under this subsection shall be paid from moneys appropriated for that purpose.

*f.* A Vietnam Conflict veterans bonus fund is created in the state treasury. The Vietnam Conflict veterans bonus fund shall consist of all moneys appropriated to the fund to pay the bonus compensation authorized in this subsection. Notwithstanding section 12C.7, interest or earnings on investments or time deposits of the moneys in the Vietnam Conflict veterans bonus fund shall be credited to the bonus fund. Section 8.33 does not apply to moneys appropriated to the Vietnam Conflict veterans bonus fund.

2007 Acts, ch 176, §1, 3; 2007 Acts, ch 202, §6

Confirmation, see §2.32

\*See 1973 Iowa Acts, ch 64; codified at former chapter 35C, Code 1975

Subsection 4, paragraph a amended

NEW subsection 5

### **35A.10 Multiyear construction program — construction, repair, and improvement projects.**

1. The commission shall work with the department of administrative services to prepare and submit to the director of the department of management, as provided in section 8.23, a multiyear construction program including estimates of the expenditure requirements for the construction, repair, or improvement of buildings, grounds, or equipment at the commission of veterans affairs building at Camp Dodge and the Iowa veterans home in Marshalltown.

2. The commandant and the commission shall have plans and specifications prepared by the department of administrative services for autho-

rized construction, repair, or improvement projects in excess of the competitive bid threshold in section 26.3, or as established in section 314.1B. An appropriation for a project shall not be expended until the department of administrative services has adopted plans and specifications and has completed a detailed estimate of the cost of the project, prepared under the supervision of a registered architect or licensed professional engineer.

3. The director of the department of administrative services shall, in writing, let all contracts for authorized improvements in excess of the competitive bid threshold in section 26.3, or as established in section 314.1B in accordance with chapter 8A, subchapter III, and chapter 26. The director of the department of administrative services shall not authorize payment for construction purposes until satisfactory proof has been furnished by the proper officer or supervising architect that the parties have complied with the contract.

2007 Acts, ch 126, §14  
Subsection 2 amended

#### **35A.11 Veterans license fee fund.**

A veterans license fee fund is created in the state treasury under the control of the commission. Notwithstanding section 12C.7, interest or earnings on moneys in the veterans license fee fund shall be credited to the veterans license fee fund. Moneys in the fund are appropriated to the commission to be used to fulfill the responsibilities of the commission. The fund shall include the fees credited by the treasurer of state from the sale of the following special motor vehicle registration plates:

1. Veteran special plates issued pursuant to section 321.34, subsection 13, paragraph "d".
2. National guard special plates issued pursuant to section 321.34, subsection 16.
3. Pearl Harbor special plates issued pursuant to section 321.34, subsection 17.
4. Purple heart special plates issued pursuant to section 321.34, subsection 18.
5. United States armed forces retired special plates issued pursuant to section 321.34, subsection 19.
6. Silver star and bronze star special plates issued pursuant to section 321.34, subsection 20.
7. Distinguished service cross, navy cross, and air force cross special plates issued pursuant to section 321.34, subsection 20A.
8. Soldier's medal, navy and marine corps medal, and airman's medal special plates issued pursuant to section 321.34, subsection 20B.
9. Gold star special plates issued pursuant to section 321.34, subsection 24.

2007 Acts, ch 178, §1, 3; 2007 Acts, ch 184, §1, 7  
Subsections 7 - 9 are effective January 1, 2008; 2007 Acts, ch 178, §3;  
2007 Acts, ch 184, §7  
See Code editor's note to §29A.28  
Section amended

#### **35A.13 Veterans trust fund.**

1. For the purposes of this section, "veteran" means the same as defined in section 35.1 or a resident of this state who served in the armed forces of the United States, completed a minimum aggregate of ninety days of active federal service, and was discharged under honorable conditions.

2. A veterans trust fund is created in the state treasury under the control of the commission.

3. The trust fund shall consist of all of the following:

*a.* Moneys in the form of a devise, gift, bequest, donation, federal or other grant, reimbursement, repayment, judgment, transfer, payment, or appropriation from any source intended to be used for the purposes of the trust fund.

*b.* Interest attributable to investment of moneys in the fund or an account of the trust fund. Notwithstanding section 12C.7, subsection 2, interest or earnings on moneys in the trust fund shall be credited to the trust fund.

4. Moneys credited to the trust fund shall not be transferred, used, obligated, appropriated, or otherwise encumbered, except as provided in this section. Moneys in the trust fund may be used for cash flow purposes during a fiscal year provided that any moneys so allocated are returned to the trust fund by the end of that fiscal year.

5. The minimum balance of the trust fund required prior to expenditure of moneys from the trust fund is fifty million dollars. However, for the fiscal period beginning July 1, 2006, and ending June 30, 2009, the minimum balance of the trust fund required prior to expenditure of moneys from the trust fund is five million dollars. Once the minimum balance is reached, the interest and earnings on the fund and any moneys received under subsection 3, paragraph "a", are appropriated to the commission to be used to achieve the purposes of this section.

6. It is the intent of the general assembly that beginning with the fiscal year beginning July 1, 2008, appropriations be made annually to the veterans trust fund. Prior to any additional appropriations to this fund, the department shall provide the general assembly with information identifying immediate and long-term veteran services throughout the state and a plan for delivering those services.

7. Moneys appropriated to the commission under this section shall not be used to supplant funding provided by other sources. The moneys may be expended upon a majority vote of the commission membership for the benefit of veterans and the spouses and dependents of veterans, for any of the following purposes:

*a.* Travel expenses for wounded veterans directly related to follow-up medical care.

*b.* Job training or college tuition assistance for job retraining.

c. Unemployment assistance during a period of unemployment due to prolonged physical or mental illness or disability resulting from military service.

d. Expenses related to nursing facility or at-home care.

e. Benefits provided to children of disabled or deceased veterans.

f. Individual counseling or family counseling programs.

g. Family support group programs or programs for children of members of the military.

h. Honor guard services.

8. If the commission identifies other purposes for which the moneys appropriated under this section may be used for the benefit of veterans and the spouses and dependents of veterans, the commission shall submit recommendations for the addition of such purposes to the general assembly for review.

9. The commission shall submit an annual report to the general assembly by January 15 of each year concerning the veterans trust fund created by this section. The annual report shall include financial information concerning the moneys in the trust fund and shall also include information on the number, amount, and type of expenditures, if any, from the fund during the prior calendar year for the purposes described in subsection 7.

2007 Acts, ch 202, §7  
FY 2007-2008 appropriation from veterans trust fund to Vietnam Conflict veterans bonus fund; 2007 Acts, ch 176, §3  
Subsection 6 amended

### **35A.14 Injured veterans grant program.**

1. For the purposes of this section, “*veteran*” means any of the following:

a. A resident of this state who is or was a member of the national guard, reserve, or regular component of the armed forces of the United States who has served on active duty at any time after September 11, 2001, and, if discharged, was discharged under honorable conditions.

b. A nonresident of this state who is or was a member of a national guard unit located in this state prior to alert for mobilization who has served on active duty at any time after September 11, 2001, was injured while serving in the national guard unit located in this state, is not eligible to receive a similar grant from another state for that injury, and, if discharged, was discharged under honorable conditions.

2. An injured veterans grant program is created under the control of the department for the purpose of providing grants to eligible injured veterans. Providing grants to eligible injured veterans pursuant to this section is deemed to serve a vital and valid public purpose of the state by assisting injured veterans and their families.

3. The department may receive and accept donations, grants, gifts, and contributions from any public or private source for the purpose of pro-

viding grants under this section. Moneys received by the department pursuant to this subsection shall be deposited in an injured veterans trust fund which shall be created in the state treasury under the control of the department. Moneys credited to the trust fund are appropriated to the department for the purpose of providing injured veterans grants under this section and shall not be transferred, used, obligated, appropriated, or otherwise encumbered, except as provided in this section. Notwithstanding section 12C.7, subsection 2, interest or earnings on moneys in the trust fund shall be credited to the trust fund.

4. Moneys appropriated to or received by the department for providing injured veterans grants under this section may be expended for grants of up to ten thousand dollars to a seriously injured veteran to provide financial assistance to the veteran so that family members of the veteran may be with the veteran during the veteran’s recovery from an injury received in the line of duty in a combat zone or in a zone where the veteran was receiving hazardous duty pay after September 11, 2001.

5. The department shall adopt rules governing the distribution of grants under this section in accordance with the following:

a. Grants shall be paid in increments of two thousand five hundred dollars, up to a maximum of ten thousand dollars upon proof that the veteran has been evacuated from the operational theater in which the veteran was injured to a military hospital for an injury received in the line of duty and shall continue to be paid, at thirty-day intervals, up to the maximum amount, so long as the veteran is hospitalized or receiving medical care or rehabilitation services authorized by the military.

b. Proof of continued medical care or rehabilitation services may include any reasonably reliable documentation showing that the veteran is receiving continued medical or rehabilitative care as a result of qualifying injuries. Proof that the injury occurred in the line of duty shall be made based upon the circumstances of the injury known at the time of evacuation from the combat zone or zone in which the veteran was receiving hazardous duty pay.

c. Grants for veterans injured after September 11, 2001, but prior to May 8, 2006, shall be payable, upon a showing that the veteran would have been eligible for payment had the injury occurred on or after May 8, 2006.

2007 Acts, ch 22, §112, 116; 2007 Acts, ch 142, §1, 2  
Section is effective May 8, 2006, and applies retroactively on or after September 11, 2001, to veterans seriously injured after that date; 2006 Acts, ch 1106, §4  
Subsection 1 amended  
Subsection 5, paragraph a amended

### **35A.15 Home ownership assistance program.**

1. For the purposes of this section, “*eligible member of the armed forces of the United States*”

means a resident of this state who is or was a member of the national guard, reserve, or regular component of the armed forces of the United States who has served at least ninety days of active duty service during the period beginning September 11, 2001, and ending June 30, 2008, or other period designated by law.

2. The home ownership assistance program is established to continue the program implemented pursuant to 2005 Iowa Acts, ch. 161, section 1, as amended by 2005 Iowa Acts, ch. 115, section 37, and continued in accordance with 2006 Iowa Acts, ch. 1167, sections 3 and 4, and other appropriations.

3. The program shall provide loans, grants, or other assistance to persons who are or were eligible members of the armed forces of the United

States. In the event an eligible member is deceased, the surviving spouse of the eligible member shall be eligible for assistance under the program, subject to the surviving spouse meeting the program's eligibility requirements other than the military service requirement.

4. The program shall be administered by the Iowa finance authority. Implementation of the program shall be limited to the extent of the amount appropriated or otherwise made available for purposes of the program.

5. The department shall support the program by providing eligibility determinations and other program assistance requested by the Iowa finance authority.

2007 Acts, ch 87, §1; 2007 Acts, ch 215, §241  
NEW section

## CHAPTER 36

### EXPOSURE TO CHEMICALS — VETERANS

#### 36.1 Definitions.

As used in this chapter unless the context otherwise provides:

1. “*Agent Orange*” means the herbicide composed primarily of trichlorophenoxyacetic acid and dichlorophenoxyacetic acid.

2. “*Chemicals*” means chemical defoliants, herbicides, or other causative agents, including but not limited to Agent Orange.

3. “*Department*” means the department of veterans affairs established in section 35A.4.

4. “*Veteran*” means a person who was a resident of this state at the time of the person's induction into the armed forces of the United States or who is a resident of this state July 1, 1983, and served in Vietnam, Cambodia, or Laos during the Vietnam Conflict.

2007 Acts, ch 202, §8  
Subsection 3 stricken and former subsections 4 and 5 renumbered as 3 and 4

#### 36.3 Duties of the department.

The department shall:

1. Provide the forms for the reports required in section 36.2. The report form shall require the doctor to provide all of the following:

a. Symptoms of the veteran which may be related to exposure to chemicals.

b. Diagnosis of the veteran.

c. Methods of treatment prescribed.

2. Annually compile and evaluate the information submitted in the reports pursuant to subsection 1, in consultation and cooperation with a certified medical toxicologist selected by the depart-

ment. The department shall submit the report to the governor, the general assembly, and the United States veterans administration. The report shall include current research data on the effects of exposure to chemicals, statistical information received from individual physicians' reports, and statistical information from the epidemiological investigations pursuant to subsection 3.

3. Conduct epidemiological investigations of veterans who have cancer or other medical problems or who have children born with birth defects associated with exposure to chemicals, in consultation and cooperation with a certified medical toxicologist selected by the department. The department shall obtain consent from a veteran before conducting the investigations. The department shall cooperate with local and state agencies during the course of an investigation.

2007 Acts, ch 22, §14  
Subsection 3 amended  
Unnumbered paragraph 2 stricken

#### 36.8 Rules.

The department shall adopt rules pursuant to chapter 17A to implement this chapter.

2007 Acts, ch 202, §9  
Section amended

#### 36.9 Appropriations.

This chapter shall be implemented by the department each fiscal year that appropriations are made to the department for the implementation.

2007 Acts, ch 202, §10  
Section amended

## CHAPTER 37

### MEMORIAL HALLS AND MONUMENTS

#### **37.9 Commissioners appointed — vacancies — request for appropriation.**

1. When the proposition to erect a building or monument under this chapter has been carried by a majority vote, the board of supervisors or the city council, as the case may be, shall appoint a commission consisting of not less than five and not more than eleven members, in the manner and with the qualifications provided in this chapter, which shall have charge and supervision of the erection of the building or monument, and when erected, the management and control of the building or monument.

2. On or before January 15 of each year, a commission which manages and controls a county memorial hospital shall prepare and submit to the county auditor a request for an appropriation for the next fiscal year from the general fund for the operation and maintenance of the county memorial hospital. On or before January 20, the county auditor shall submit the request to the county board of supervisors. The board of supervisors may adjust the commission's request and may make an appropriation for the county memorial hospital as provided in section 331.427, subsection 3, paragraph "b". For the purposes of public notice, the commission is a certifying board and is subject to the requirements of sections 24.3 through 24.5, sections 24.9 through 24.12, and section 24.16.

3. The term of office of each member shall be three years, and any vacancies occurring in the membership shall be filled in the same manner as the original appointment.

4. Commencing with the commissioners appointed to take office after January 1, 1952, the terms of office of the commissioners shall be stag-

gered so that all commissioners' terms will not end in the same year. Thereafter, the successors in each instance shall hold office for a term of three years or until a successor is appointed and qualified.

5. The commissioners having the management and control of a memorial hospital shall, within ten days after their appointment, qualify by taking the usual oath of office, but no bonds shall be required of them except as hereinafter provided. The commissioners shall organize by electing a chairperson, secretary, and treasurer. The secretary and treasurer shall each file with the chairperson of the commission a surety bond in such sum as the commission may require, with sureties approved by the commission, for the use and benefit of the memorial hospital. The reasonable costs of such bonds shall be paid from operating funds of the hospital. The secretary shall immediately report to the county auditor and county treasurer the names of the chairperson, secretary, and treasurer of the commission. The commission shall meet at least once each month. A majority of the commission members shall constitute a quorum for the transaction of business. The secretary shall keep a complete record of its proceedings.

6. Memorial hospital funds shall be received, disbursed, and accounted for in the same manner and by the same procedure as provided by section 347.12.

2007 Acts, ch 21, §1

Unnumbered paragraph 1 amended and editorially numbered as subsection 1

Unnumbered paragraph 2 stricken and former unnumbered paragraphs 3 - 5 editorially numbered as subsections 2 - 4

Former unnumbered paragraph 6 amended and editorially numbered as subsection 5

Former unnumbered paragraph 7 editorially numbered as subsection 6

## CHAPTER 39

### ELECTIONS, ELECTORS, APPOINTMENTS, TERMS, AND OFFICERS

#### **39.22 Township officers.**

The offices of township trustee and township clerk shall be filled by appointment or election as follows:

1. *By appointment.* The county board of supervisors may pass a resolution in favor of filling the offices of trustee and clerk within a township by appointment by the board, and may direct the county commissioner of elections to submit the question to the registered voters of the township at the next general election. In a township which does not include a city, the voters of the entire township are eligible to vote on the question. In a

township which includes a city, only those voters who reside outside the corporate limits of a city are eligible to vote on the question. The resolution shall apply to all townships which have not approved a proposition to fill township offices by appointment. If the proposition to fill the township offices by appointment is approved by a majority of those voting on the question, the board shall fill the offices by appointment as the terms of office of the incumbent township officers expire.

The election of the trustees and clerk of a township may be restored after approval of the appointment process under this subsection by a resolution

of the board of supervisors submitting the question to the registered voters who are eligible to vote for township officers of the township at the next general election. If the proposition to restore the election process is approved by a majority of those voting on the question, the election of the township officers shall commence with the next general election. A resolution submitting the question of restoring the election of township officers at the next general election shall be adopted by the board of supervisors upon receipt of a petition signed by eligible electors residing in the township equal in number to at least ten percent of the registered voters of a township. The initial terms of the trustees shall be determined by lot, one for two years, and two for four years. However, if a proposition to change the method of selecting township officers is adopted by the electorate, a resolution to change the method shall not be submitted to the electorate for four years.

2. *By election.* If the county board of supervisors does not have the power provided under subsection 1 to fill the offices of trustee and clerk within a township by appointment, then the offices of township trustee and township clerk shall be filled by election on a nonpartisan basis. Township trustees and the township clerk, in townships which do not include a city, shall be elected by the

voters of the entire township. In townships which include a city, the officers shall be elected by the voters of the township who reside outside the corporate limits of the city, but a township officer may be a resident of the city.

*a. Township officers.* The election of township officers shall take place at the general election on ballots which shall not reflect a nominee's political affiliation. A person seeking election as township officer shall file an affidavit of candidacy with the county commissioner of elections pursuant to section 45.3. A plurality is sufficient to elect the township officers.

*b. Township trustees.* Township trustees shall be elected biennially to succeed those whose terms of office expire on the first day of January following the election which is not a Sunday or legal holiday. The term of office of each elected township trustee is four years, except as provided in subsection 1 for initial terms following restoration of the election process.

*c. Township clerk.* At the general election held in the year 1990 and every four years thereafter, in each civil township one township clerk shall be elected who shall hold office for the term of four years.

2007 Acts, ch 25, §1  
Subsection 2, paragraph a amended

## CHAPTER 39A

### ELECTION MISCONDUCT

#### **39A.2 Election misconduct in the first degree.**

1. A person commits the crime of election misconduct in the first degree if the person willfully commits any of the following acts:

*a. Registration fraud.*

(1) Produces, procures, submits, or accepts a voter registration application that is known by the person to be materially false, fictitious, forged, or fraudulent.

(2) Falsely swears to an oath required pursuant to section 48A.7A.

*b. Vote fraud.*

(1) Destroys, delivers, or handles an application for a ballot or an absentee ballot with the intent of interfering with the voter's right to vote.

(2) Produces, procures, submits, or accepts a ballot or an absentee ballot, or produces, procures, casts, accepts, or tabulates a ballot that is known by the person to be materially false, fictitious, forged, or fraudulent.

(3) Votes or attempts to vote more than once at the same election, or votes or attempts to vote at an election knowing oneself not to be qualified.

(4) Makes a false or untrue statement in an application for an absentee ballot or makes or signs

a false certification or affidavit in connection with an absentee ballot.

(5) Otherwise deprives, defrauds, or attempts to deprive or defraud the citizens of this state of a fair and impartially conducted election process.

*c. Duress.* Intimidates, threatens, or coerces, or attempts to intimidate, threaten, or coerce, a person to do any of the following:

(1) To register to vote, to vote, or to attempt to register to vote.

(2) To urge or aid a person to register to vote, to vote, or to attempt to register to vote.

(3) To exercise a right under chapters 39 through 53.

*d. Bribery.*

(1) Pays, offers to pay, or causes to be paid money or any other thing of value to a person to influence the person's vote.

(2) Pays, offers to pay, or causes to be paid money or any other thing of value to an election official conditioned on some act done or omitted to be done contrary to the person's official duty in relation to an election.

(3) Receives money or any other thing of value knowing that it was given in violation of subparagraph (1) or (2).

*e. Conspiracy.* Conspires with or acts as an accessory with another to commit an act in violation of paragraphs “a” through “d”.

2. Election misconduct in the first degree is a class “D” felony.

2007 Acts, ch 35, §1, 7  
2007 amendment to subsection 1, paragraph a, applies to elections held on or after January 1, 2008; 2007 Acts, ch 35, §7  
Subsection 1, paragraph a amended

### 39A.4 Election misconduct in the third degree.

1. A person commits the crime of election misconduct in the third degree if the person willfully commits any of the following acts:

*a. Election day acts.* Any of the following on election day:

(1) Loitering, congregating, electioneering, posting signs, treating voters, or soliciting votes, during the receiving of the ballots, either on the premises of a polling place or within three hundred feet of an outside door of a building affording access to a room where the polls are held, or of an outside door of a building affording access to a hallway, corridor, stairway, or other means of reaching the room where the polls are held. This subparagraph does not apply to the posting of signs on private property not a polling place, except that the placement of a sign that is more than ninety square inches in size on a motor vehicle, trailer, or semitrailer, or its attachment to a motor vehicle, trailer, or semitrailer parked on public property within three hundred feet of a polling place is prohibited.

(2) Interrupting, hindering, or opposing a voter while in or approaching the polling place for the purpose of voting.

(3) As a voter, submitting a false statement as to the voter’s ability to mark a ballot.

(4) Interfering or attempting to interfere with a voter when the voter is inside the enclosed voting space, or when the voter is marking a ballot.

(5) Endeavoring to induce a voter to show how the voter marks or has marked a ballot.

(6) Marking, or causing in any manner to be marked, on a ballot, any character for the purpose of identifying such ballot.

*b. Actions by election official.* As an election official:

(1) Serving as a member of a challenging committee or observer under section 49.104, subsection 2, 5, or 6, while serving as a precinct election official at the polls.

(2) Failing to perform duties prescribed by chapters 39 through 53, or performing those duties in such a way as to hinder the object of the law.

(3) Disclosing the manner in which a person’s ballot has been voted to anyone except as ordered by a court.

(4) Failing to carry out a duty with regard to access under chapter 22 to a public record that relates to an election or voter registration.

(5) Furnishing a voter with a ballot other than the proper ballot to be used at an election.

(6) Making or consenting to a false entry on the list of voters or poll books.

(7) Placing or permitting another election official to place anything other than a ballot into a ballot box as provided in section 49.85, or permitting a person other than an election official to place anything into a ballot box.

(8) Taking or permitting to be taken out of a ballot box a ballot deposited in the ballot box, except in the manner prescribed by law.

(9) Destroying or altering a ballot that has been given to a voter.

(10) Permitting a person to vote in a manner prohibited by law.

(11) Refusing or rejecting the vote of a voter qualified to vote.

(12) Wrongfully acting or refusing to act for the purpose of avoiding an election, or of rendering invalid a ballot cast from a precinct or other voting district.

(13) Having been deputized to carry the poll books of an election to the place where they are to be canvassed, failing to deliver them to such place, safe, with seals unbroken, and within the time specified by law.

*c. Miscellaneous offenses.*

(1) As a party committee member or a primary election officer or public officer upon whom a duty is imposed by chapter 43 or by a statute applicable to chapter 43, neglecting to perform any such duty, or performing any such duty in such a way as to hinder the object of the statute, or by disclosing to anyone, except as may be ordered by a court, the manner in which a ballot may have been voted.

(2) As a person who is designated pursuant to section 43.4 to report the results of a precinct caucus as it relates to the selection and reporting of delegates selected as part of the presidential nominating process or who is designated pursuant to section 43.4 to tabulate and report the number of persons attending the caucus favoring each presidential candidate, failing to perform those duties, falsifying the information, or omitting information required to be reported under section 43.4.

(3) Making a false answer under chapter 43 relative to a person’s qualifications and party affiliations.

(4) Paying, offering to pay, or receiving compensation for voter registration assistance in violation of section 48A.25.

(5) Using voter registration information in violation of section 48A.39.

(6) As a candidate, making a promise to name or appoint another person to a position or to secure a position for another person in violation of section 49.120.

(7) Soliciting the use of influence from a candidate in violation of section 49.121.

(8) As a public official or employee, or a person

acting under color of a public official or employee, knowingly requiring a public employee to act in connection with an absentee ballot in violation of section 53.7.

(9) As a person designated by the county commissioner of elections or by the voter casting an absentee ballot, failing to return an absentee ballot in violation of section 53.35A.

(10) As an incumbent officeholder of, or a candidate for, an office being voted for at the election in progress, serving as a member of a challenging committee or observer under section 49.104, subsection 2, 5, or 6, or section 53.23, subsection 4.

(11) Returning a voted absentee ballot, by mail or in person, to the commissioner's office and the person returning the ballot is not the voter, the voter's designee, or a special precinct election official designated pursuant to section 53.22, subsection 1.

(12) Making a false or untrue statement reporting that a voted absentee ballot was returned to the commissioner's office, by mail or in person, by a person other than the voter, the voter's designee, or a special precinct election official designated pursuant to section 53.22, subsection 1.

2. Election misconduct in the third degree is a serious misdemeanor.

2007 Acts, ch 59, §20, 38; 2007 Acts, ch 215, §222  
2007 amendments to subsection 1, paragraph c, subparagraph (10) apply to elections held on or after January 1, 2008; 2007 Acts, ch 59, §38  
Subsection 1, paragraph c, subparagraphs (10) – (12) amended

**39A.5 Election misconduct in the fourth degree.**

1. A person commits the crime of election misconduct in the fourth degree if the person willfully commits any of the following acts:

*a. Election day acts.*

(1) As an employer, denying an employee the privilege conferred by section 49.109, or subjecting an employee to a penalty or reduction of wages because of the exercise of that privilege.

(2) Failing or refusing to comply with an order or command of an election official made pursuant to chapter 49 for which another penalty is not provided.

(3) Circulating, communicating, or attempting to circulate or communicate information with reference to the result of the counted ballots or making a compilation of vote subtotals before the polls are closed in violation of section 51.11 or 53.23.

(4) Destroying, defacing, tearing down, or removing a list of candidates, card of instruction, or sample ballot posted as provided by law prior to the closing of the polls.

(5) Removing or destroying the supplies or articles furnished for the purpose of enabling voters to prepare their ballots.

(6) Violating or attempting to violate any of the provisions or requirements of chapter 49 to which another penalty does not apply.

*b. Miscellaneous offenses.*

(1) As a public employee, acting in connection with an absentee ballot in violation of section 53.7.

(2) Violating any provision of chapter 53 for which another penalty is not provided.

(3) Filing a challenge containing false information under section 48A.14.

2. Election misconduct in the fourth degree is a simple misdemeanor.

2007 Acts, ch 59, §21, 38; 2007 Acts, ch 190, §14  
2007 amendment to subsection 1, paragraph b, subparagraph (2) applies to elections held on or after January 1, 2008; 2007 Acts, ch 59, §38  
Subsection 1, paragraph a, subparagraph (3) amended  
Subsection 1, paragraph b, subparagraph (2) amended

**CHAPTER 42**

**REDISTRICTING GENERAL ASSEMBLY AND CONGRESSIONAL DISTRICTS**

**42.2 Preparations for redistricting.**

1. The legislative services agency shall acquire appropriate information, review and evaluate available facilities, and develop programs and procedures in preparation for drawing congressional and legislative redistricting plans on the basis of each federal census. Funds shall be expended for the purchase or lease of equipment and materials only with prior approval of the legislative council.

2. By December 31 of each year ending in zero, the legislative services agency shall obtain from the United States bureau of the census information regarding geographic and political units in this state for which federal census population data

has been gathered and will be tabulated. The legislative services agency shall use the data so obtained to:

*a.* Prepare necessary descriptions of geographic and political units for which census data will be reported, and which are suitable for use as components of legislative districts.

*b.* Prepare maps of counties, cities and other geographic units within the state, which may be used to illustrate the locations of legislative district boundaries proposed in plans drawn in accordance with section 42.4.

3. As soon as possible after January 1 of each year ending in one, the legislative services agency shall obtain from the United States bureau of the



census the population data needed for legislative districting which the census bureau is required to provide this state under United States Pub. L. No. 94-171, and shall use that data to assign a population figure based upon certified federal census data to each geographic or political unit described pursuant to subsection 2, paragraph “a”. Upon completing that task, the legislative services agency shall begin the preparation of congressional and legislative districting plans as required by section 42.3.

4. Upon each delivery by the legislative services agency to the general assembly of a bill embodying a plan, pursuant to section 42.3, the legislative services agency shall at the earliest feasible time make available to the public the following information:

- a. Copies of the bill delivered by the legislative services agency to the general assembly.
- b. Maps illustrating the plan.
- c. A summary of the standards prescribed by section 42.4 for development of the plan.
- d. A statement of the population of each district included in the plan, and the relative deviation of each district population from the ideal district population.

2007 Acts, ch 78, §1  
NEW subsection 4

#### **42.3 Timetable for preparation of plan.**

1. a. Not later than April 1 of each year ending in one, the legislative services agency shall deliver to the secretary of the senate and the chief clerk of the house of representatives identical bills embodying a plan of legislative and congressional districting prepared in accordance with section 42.4. It is the intent of this chapter that the general assembly shall bring the bill to a vote in either the senate or the house of representatives expeditiously, but not less than three days after the report of the commission required by section 42.6 is received and made available to the members of the general assembly, under a procedure or rule permitting no amendments except those of a purely corrective nature. It is further the intent of this chapter that if the bill is approved by the first house in which it is considered, it shall expeditiously be brought to a vote in the second house under a similar procedure or rule. If the bill embodying the plan submitted by the legislative services agency under this subsection fails to be approved by a constitutional majority in either the senate or the house of representatives, the secretary of the senate or the chief clerk of the house, as the case may be, shall at once, but in no event later than seven days after the date the bill failed to be approved, transmit to the legislative services agency information which the senate or house may direct by resolution regarding reasons why the plan was not approved.

b. However, if the population data for legislative districting which the United States census bureau is required to provide this state under Pub. L. No. 94-171 and, if used by the legislative services agency, the corresponding topologically integrated geographic encoding and referencing data file for that population data are not available to the legislative services agency on or before February 15 of the year ending in one, the dates set forth in this subsection shall be extended by a number of days equal to the number of days after February 15 of the year ending in one that the federal census population data and the topologically integrated geographic encoding and referencing data file for legislative districting become available.

2. If the bill embodying the plan submitted by the legislative services agency under subsection 1 fails to be enacted, the legislative services agency shall prepare a bill embodying a second plan of legislative and congressional districting. The bill shall be prepared in accordance with section 42.4, and, insofar as it is possible to do so within the requirements of section 42.4, with the reasons cited by the senate or house of representatives by resolution, or the governor by veto message, for the failure to approve the plan. If a second plan is required under this subsection, the bill embodying it shall be delivered to the secretary of the senate and the chief clerk of the house of representatives not later than thirty-five days after the date of the vote by which the senate or the house of representatives fails to approve the bill submitted under subsection 1, or the date the governor vetoes or fails to approve the bill. If it is necessary to submit a bill under this subsection, the bill shall be brought to a vote not less than seven days after the bill is submitted and made available to the members of the general assembly, under a procedure or rule permitting no amendments except those of a purely corrective nature. It is further the intent of this chapter that if the bill is approved by the first house in which it is considered, it shall expeditiously be brought to a vote in the second house under a similar procedure or rule. If the bill embodying the plan submitted by the legislative services agency under this subsection fails to be approved by a constitutional majority in either the senate or the house of representatives, the secretary of the senate or the chief clerk of the house, as the case may be, shall transmit to the legislative services agency information which the senate or house may direct by resolution regarding reasons why the plan was not approved in the same manner as described in subsection 1.

3. If the bill embodying the plan submitted by the legislative services agency under subsection 2 fails to be enacted, the same procedure as prescribed by subsection 2 shall be followed. If a third plan is required under this subsection, the bill embodying it shall be delivered to the secretary of the senate and the chief clerk of the house of represen-

tatives not later than thirty-five days after the date of the vote by which the senate or the house of representatives fails to approve the bill submitted under subsection 2, or the date the governor vetoes or fails to approve the bill. The legislative services agency shall submit a bill under this subsection sufficiently in advance of September 1 of the year ending in one to permit the general assembly to consider the plan prior to that date. If it is necessary to submit a bill under this subsection, the bill shall be brought to a vote within the same time period after its delivery to the secretary of the senate and the chief clerk of the house of representatives as is prescribed for the bill submitted under subsection 2, but shall be subject to amendment in the same manner as other bills.

2007 Acts, ch 78, §2 – 5  
Subsections 1 – 3 amended  
Subsection 4 stricken

#### 42.4 Redistricting standards.

1. Legislative and congressional districts shall be established on the basis of population.

*a.* Senatorial and representative districts, respectively, shall each have a population as nearly equal as practicable to the ideal population for such districts, determined by dividing the number of districts to be established into the population of the state reported in the federal decennial census. Senatorial districts and representative districts shall not vary in population from the respective ideal district populations except as necessary to comply with one of the other standards enumerated in this section. In no case shall the quotient, obtained by dividing the total of the absolute values of the deviations of all district populations from the applicable ideal district population by the number of districts established, exceed one percent of the applicable ideal district population. No senatorial district shall have a population which exceeds that of any other senatorial district by more than five percent, and no representative district shall have a population which exceeds that of any other representative district by more than five percent.

*b.* Congressional districts shall each have a population as nearly equal as practicable to the ideal district population, derived as prescribed in paragraph “*a*” of this subsection. No congressional district shall have a population which varies by more than one percent from the applicable ideal district population, except as necessary to comply with Article III, section 37 of the Constitution of the State of Iowa.

*c.* If a challenge is filed with the supreme court alleging excessive population variance among districts established in a plan adopted by the general assembly, the general assembly has the burden of justifying any variance in excess of one percent between the population of a district and the applicable ideal district population.

2. To the extent consistent with subsection 1,

district boundaries shall coincide with the boundaries of political subdivisions of the state. The number of counties and cities divided among more than one district shall be as small as possible. When there is a choice between dividing local political subdivisions, the more populous subdivisions shall be divided before the less populous, but this statement does not apply to a legislative district boundary drawn along a county line which passes through a city that lies in more than one county.

3. Districts shall be composed of convenient contiguous territory. Areas which meet only at the points of adjoining corners are not contiguous.

4. Districts shall be reasonably compact in form, to the extent consistent with the standards established by subsections 1, 2, and 3. In general, reasonably compact districts are those which are square, rectangular, or hexagonal in shape, and not irregularly shaped, to the extent permitted by natural or political boundaries. If it is necessary to compare the relative compactness of two or more districts, or of two or more alternative districting plans, the tests prescribed by paragraphs “*a*” and “*b*” shall be used.

*a. Length-width compactness.* The compactness of a district is greatest when the length of the district and the width of the district are equal. The measure of a district’s compactness is the absolute value of the difference between the length and the width of the district. In general, the length-width compactness of a district is calculated by measuring the distance from the northernmost point or portion of the boundary of a district to the southernmost point or portion of the boundary of the same district and the distance from the westernmost point or portion of the boundary of the district to the easternmost point or portion of the boundary of the same district. The absolute values computed for individual districts under this paragraph may be cumulated for all districts in a plan in order to compare the overall compactness of two or more alternative districting plans for the state, or for a portion of the state.

*b. Perimeter compactness.* The compactness of a district is greatest when the distance needed to traverse the perimeter boundary of a district is as short as possible. The total perimeter distance computed for individual districts under this paragraph may be cumulated for all districts in a plan in order to compare the overall compactness of two or more alternative districting plans for the state, or for a portion of the state.

5. No district shall be drawn for the purpose of favoring a political party, incumbent legislator or member of Congress, or other person or group, or for the purpose of augmenting or diluting the voting strength of a language or racial minority group. In establishing districts, no use shall be made of any of the following data:

*a.* Addresses of incumbent legislators or mem-

bers of Congress.

- b. Political affiliations of registered voters.
- c. Previous election results.
- d. Demographic information, other than population head counts, except as required by the Constitution and the laws of the United States.

6. In order to minimize electoral confusion and to facilitate communication within state legislative districts, each plan drawn under this section shall provide that each representative district is wholly included within a single senatorial district and that, so far as possible, each representative and each senatorial district shall be included within a single congressional district. However, the standards established by subsections 1 through 5 shall take precedence where a conflict arises between these standards and the requirement, so far as possible, of including a senatorial or representative district within a single congressional district.

7. Each bill embodying a plan drawn under this section shall provide that any vacancy in the general assembly which takes office in the year ending in one, occurring at a time which makes it necessary to fill the vacancy at a special election held pursuant to section 69.14, shall be filled from the same district which elected the senator or representative whose seat is vacant.

8. Each bill embodying a plan drawn under this section shall include provisions for election of senators to the general assemblies which take office in the years ending in three and five, which shall be in conformity with Article III, section 6, of the Constitution of the State of Iowa. With respect to any plan drawn for consideration in a year ending in one, those provisions shall be substantially as follows:

a. Each senatorial district in the plan which is not a holdover senatorial district shall elect a senator in the year ending in two for a four-year term commencing in January of the year ending in three. If an incumbent senator who was elected to a four-year term which commenced in January of the year ending in one, or was subsequently elected to fill a vacancy in such a term, is residing in a senatorial district in the plan which is not a holdover senatorial district on the first Wednesday in February of the year ending in two, that senator's term of office shall be terminated on January 1 of the year ending in three.

b. Each holdover senatorial district in the plan shall elect a senator in the year ending in four for a four-year term commencing in January of the year ending in five.

(1) If one and only one incumbent state senator is residing in a holdover senatorial district in the plan on the first Wednesday in February of the year ending in two, and that senator meets all of the following requirements, the senator shall represent the district in the senate for the general assembly commencing in January of the year ending in three:

(a) The senator was elected to a four-year term which commenced in January of the year ending in one or was subsequently elected to fill a vacancy in such a term.

(b) The senatorial district in the plan which includes the place of residence of the state senator on the date of the senator's last election to the senate is the same as the holdover senatorial district in which the senator resides on the first Wednesday in February of the year ending in two, or is contiguous to such holdover senatorial district. Areas which meet only at the points of adjoining corners are not contiguous.

(2) Each holdover senatorial district to which subparagraph (1) is not applicable shall elect a senator in the year ending in two for a two-year term commencing in January of the year ending in three. However, if more than one incumbent state senator is residing in a holdover senatorial district on the first Wednesday in February of the year ending in two, and, on or before the first Wednesday in February of the year ending in two, all but one of the incumbent senators resigns from office effective no later than January of the year ending in three, the remaining incumbent senator shall represent the district in the senate for the general assembly commencing in January of the year ending in three. A copy of the resignation must be filed in the office of the secretary of state no later than five p.m. on the third Wednesday in February of the year ending in two.

c. For purposes of this subsection:

(1) "*Holdover senatorial district*" means a senatorial district in the plan which is numbered with an even or odd number in the same manner as senatorial districts, which were required to elect a senator in the year ending in zero, were numbered.

(2) "*Incumbent state senator*" means a state senator who holds the office of state senator on the first Wednesday in February of the year ending in two, and whose declared residence on that day is within the district from which the senator was last elected.

d. The secretary of state shall prescribe a form to be completed by all senators to declare their residences as of the first Wednesday in February of the year ending in two. The form shall be filed with the secretary of state no later than five p.m. on the first Wednesday in February of the year ending in two.

2007 Acts, ch 78, §6, 7  
Subsections 4 and 8 amended

#### **42.6 Duties of commission.**

The functions of the commission shall be as follows:

1. If, in preparation of plans as required by this chapter, the legislative services agency is confronted with the necessity to make any decision for which no clearly applicable guideline is provided by section 42.4, the legislative services agency

may submit a written request for direction to the commission.

2. Prior to delivering any plan and the bill embodying that plan to the secretary of the senate and the chief clerk of the house of representatives in accordance with section 42.3, the legislative services agency shall provide to persons outside the legislative services agency staff only such information regarding the plan as may be required by policies agreed upon by the commission. This subsection does not apply to population data furnished to the legislative services agency by the United States bureau of the census.

3. Upon the delivery by the legislative services agency to the general assembly of a bill embodying an initial plan, as required by section 42.3, subsection 1, the commission shall:

a. As expeditiously as reasonably possible, schedule and conduct at least three public hearings, in different geographic regions of the state,

on the plan embodied in the bill delivered by the legislative services agency to the general assembly.

b. Following the hearings, promptly prepare and submit to the secretary of the senate and the chief clerk of the house a report summarizing information and testimony received by the commission in the course of the hearings. The commission's report shall include any comments and conclusions which its members deem appropriate on the information and testimony received at the hearings, or otherwise presented to the commission. The report shall be submitted no later than fourteen days after the date the bill embodying an initial plan of congressional and legislative redistricting is delivered to the general assembly.

2007 Acts, ch 78, §§, 9  
Subsection 3 stricken and former subsection 4 renumbered as 3  
Subsection 3, paragraph b amended

## CHAPTER 43

### PARTISAN NOMINATIONS — PRIMARY ELECTION

#### 43.6 Nomination of U.S. senators, state and county officers.

Candidates for the office of senator in the Congress of the United States, the offices listed in section 39.9, county supervisor, and the offices listed in section 39.17 shall be nominated in the year preceding the expiration of the term of office of the incumbent.

1. When a vacancy occurs in the office of senator in the Congress of the United States, secretary of state, auditor of state, treasurer of state, secretary of agriculture, or attorney general and section 69.13 requires that the vacancy be filled for the balance of the unexpired term at a general election, candidates for the office shall be nominated in the preceding primary election if the vacancy occurs eighty-nine or more days before the date of that primary election. If the vacancy occurs less than one hundred four days before the date of that primary election, the state commissioner shall accept nomination papers for that office only until five o'clock p.m. on the seventy-fourth day before the primary election, the provisions of section 43.11 notwithstanding. If the vacancy occurs later than eighty-nine days before the date of that primary election, but not less than eighty-nine days before the date of the general election, the nominations shall be made in the manner prescribed by this chapter for filling vacancies in nominations for offices to be voted for at the general election.

2. When a vacancy occurs in the office of county supervisor or any of the offices listed in section 39.17 and more than seventy days remain in the term of office following the next general election,

the office shall be filled for the balance of the unexpired term at that general election unless the vacancy has been filled by a special election called more than seventy-three days before the primary election. If the vacancy occurs more than seventy-three days before the primary election, political party candidates for that office at the next general election shall be nominated at the primary election. If an appointment to fill the vacancy in office is made eighty-eight or more days before the primary election and a petition requesting a special election has not been received within fourteen days after the appointment is made, candidates for the office shall be nominated at the primary election.

2007 Acts, ch 59, §2, 19  
Vacancies filled by governor, §69.8(1, 2)  
2007 amendment to subsection 2 applies to elections held on or after January 1, 2008; 2007 Acts, ch 59, §19  
Subsection 2 amended

#### 43.14 Form of nomination papers.

1. Nomination papers shall include a petition and an affidavit of candidacy. All nomination petitions shall be eight and one-half by eleven inches in size and in substantially the form prescribed by the state commissioner of elections. They shall include or provide spaces for the following information:

a. A statement identifying the signers of the petition as eligible electors of the appropriate county or legislative district and of the state.

b. The name of the candidate nominated by the petition.

c. For nomination petitions for candidates for

the general assembly, a statement that the residence of the candidate is within the appropriate legislative district, or if that is not true, that the candidate will reside there within sixty days before the election. For other offices, a statement of the name of the county where the candidate resides.

*d.* The political party with which the candidate is a registered voter.

*e.* The office sought by the candidate, including the district number, if any.

*f.* The date of the primary election for which the candidate is nominated.

2. Signatures on a petition page shall be counted only if the information required in subsection 1 is written or printed at the top of the page. Nomination papers on behalf of candidates for seats in the general assembly need only designate the number of the senatorial or representative district, as appropriate, and not the county or counties, in which the candidate and the petitioners reside. A signature line shall not be counted if the line lacks the signature of the eligible elector and the signer's address and city. A signature line shall not be counted if the signer's address is obviously outside the boundaries of the district.

3. The person examining the petition shall mark any deficiencies on the petition and affidavit. Signed nomination petitions and the signed and notarized affidavit of candidacy shall not be altered to correct deficiencies noted during examination. If the nomination petition lacks a sufficient number of acceptable signatures, the nomination petition shall be rejected and shall be returned to the candidate.

4. The nomination papers shall be rejected if the affidavit lacks any of the following:

*a.* The candidate's name.

*b.* The name of the office sought, including the district, if any.

*c.* The political party name.

*d.* The signature of the candidate.

*e.* The signature of a notary public or other officer empowered to witness oaths.

5. The candidate may replace a deficient affidavit with a corrected affidavit only if the replacement affidavit is filed before the filing deadline. The candidate may resubmit a nomination petition that has been rejected by adding a sufficient number of pages or signatures to correct the deficiency. A nomination petition and affidavit filed to replace rejected nomination papers shall be filed together before the deadline for filing.

2007 Acts, ch 59, §3, 19

Oaths, see chapter 63A

2007 amendment to this section applies to elections held on or after January 1, 2008; 2007 Acts, ch 59, §19

Section amended

election officials shall immediately publicly canvass the vote. The canvass shall be conducted using the procedures established in this section which are appropriate for the voting system used in the precinct.

2. In precincts where paper ballots are used, precinct election officials shall do all of the following:

*a.* Place the ballots of the several political parties in separate piles.

*b.* Separately count the ballots of each party, and make the correct entries thereof on the tally sheets.

*c.* Certify the number of votes cast upon the ticket of each political party for each candidate for each office.

*d.* Place the ballots cast on behalf of each of the parties in separate envelopes. Seal each envelope and place the signature of all board members of the precinct across the seal of the envelope so that it cannot be opened without breaking the seal.

*e.* On the outside of each envelope enter the number of ballots cast by each party in the precinct and contained in the envelope.

*f.* Seal the tally sheets and certificates of the precinct election officials in an envelope on the outside of which are written or printed the names of the several political parties with the names of the candidates for the different offices under their party name, and opposite each candidate's name enter the number of votes cast for such candidate in the precinct.

*g.* Enter on the envelope the total number of voters of each party who cast ballots in the precinct.

*h.* Communicate the results in the manner required by section 50.11, to the commissioner of the county in which the polls are located, who shall remain on duty until the results are communicated to the commissioner from each polling place in the county.

3. In precincts where voting machines are used, precinct election officials shall do all of the following:

*a.* Close the machines to prevent additional voting, and print the results for the precinct.

*b.* Tabulate all write-in votes. If necessary, add the votes, including write-in votes, from all machines to obtain the total number of votes cast in the precinct by the members of each political party for each office on the ballot.

*c.* Put any forms used by voters to cast write-in votes in an envelope with one copy of the printed results from each voting machine. Seal the envelope and place the signature of all board members of the precinct across the seal of the envelope so that it cannot be opened without breaking the seal.

*d.* On the outside of the envelope enter the number of voters from each party in the precinct.

#### **43.45 Canvass of votes.**

1. Upon the closing of the polls the precinct

Report the number of votes cast for each office by the voters of each political party. A copy of the printed tape from the voting machine may be used to report vote totals.

e. Communicate the results to the commissioner in the manner required by section 50.11. The commissioner shall remain on duty until the results are communicated to the commissioner from each polling place in the county.

4. In precincts where optical scan voting systems are used and ballots are counted in the precinct, precinct election officials shall do all of the following:

- a. Close and secure the ballot reader to prevent the insertion of additional ballots.
- b. Print the results for the precinct.
- c. Open the ballot container. Secure all ballots counted by the vote-tabulating device. Sort the re-

maining ballots by party. Tally all write-in votes and any other ballots not yet counted. Record the results in the tally list.

d. Put all ballots in an envelope or other package and seal it. All members of the board shall sign their names across the seal of the envelope. The seal shall be placed so that the envelope or package cannot be opened without breaking the seal.

2007 Acts, ch 190, §15, 16  
Subsection 4, unnumbered paragraph 1 amended  
Subsection 5 stricken

**43.48 Precinct counts publicly available.**

The commissioner shall make available to the public the precinct counts produced by the voting equipment.

2007 Acts, ch 190, §17  
Section stricken and rewritten

**CHAPTER 45**

**NOMINATIONS BY PETITION**

**45.1 Nominations by petition.**

1. Nominations for candidates for president and vice president, governor and lieutenant governor, and for other statewide elected offices may be made by nomination petitions signed by not less than one thousand five hundred eligible electors residing in not less than ten counties of the state.

2. Nominations for candidates for a representative in the United States house of representatives may be made by nomination petitions signed by not less than the number of eligible electors equal to the number of signatures required in subsection 1 divided by the number of congressional districts.

3. Nominations for candidates for the state senate may be made by nomination petitions signed by not less than one hundred eligible electors of the senate district.

4. Nominations for candidates for the state house of representatives may be made by nomination petitions signed by not less than fifty eligible electors of the representative district.

5. Nominations for candidates for offices filled by the voters of a whole county may be made by nomination petitions signed by eligible electors of the county equal in number to at least one percent of the number of registered voters in the county on July 1 in the year preceding the year in which the office will appear on the ballot, or by at least two hundred fifty eligible electors of the county, whichever is less.

6. Nominations for candidates for the office of county supervisor elected by the voters of a supervisor district may be made by nomination petitions signed by eligible electors of the supervisor district equal in number to at least one percent of

the number of registered voters in the supervisor district on July 1 in the year preceding the year in which the office will appear on the ballot, or by at least one hundred fifty eligible electors of the supervisor district, whichever is less.

7. Nomination papers for the offices of president and vice president shall include the names of the candidates for both offices on each page of the petition. A certificate listing the names of the candidates for presidential electors, one from each congressional district and two from the state at large, shall be filed in the state commissioner's office at the same time the nomination papers are filed.

Nomination papers for the offices of governor and lieutenant governor shall include the names of candidates for both offices on each page of the petition. Nomination papers for other statewide elected offices and all other offices shall include the name of the candidate on each page of the petition.

8. Nominations for candidates for elective offices in cities where the council has adopted nominations under this chapter may be submitted as follows:

a. Except as otherwise provided in subsection 9, in cities having a population of three thousand five hundred or greater according to the most recent federal decennial census, nominations may be made by nomination papers signed by not less than twenty-five eligible electors who are residents of the city or ward.

b. In cities having a population of one hundred or greater, but less than three thousand five hundred, according to the most recent federal decennial census, nominations may be made by nomina-

tion papers signed by not less than ten eligible electors who are residents of the city or ward.

c. In cities having a population less than one hundred according to the most recent federal decennial census, nominations may be made by nomination papers signed by not less than five eligible electors who are residents of the city.

9. Nominations for candidates, other than partisan candidates, for elective offices in special charter cities subject to section 43.112 may be submitted as follows:

a. For the office of mayor and alderman at large, nominations may be made by nomination papers signed by eligible electors residing in the city equal in number to at least two percent of the total vote received by all candidates for mayor at the last preceding city election.

b. For the office of ward alderman, nominations may be made by nomination papers signed by eligible electors residing in the ward equal in number to at least two percent of the total vote received by all candidates for ward alderman in that ward at the last preceding city election.

2007 Acts, ch 25, §2  
Subsection 10 stricken

#### 45.5 Form of nomination papers.

1. Nomination papers shall include a petition and an affidavit of candidacy. All nomination petitions shall be eight and one-half by eleven inches in size and shall be in substantially the form prescribed by the state commissioner of elections. They shall provide spaces for the following information:

a. A statement identifying the signers of the petition as eligible electors of the appropriate ward, city, county, school district or school district director district, or legislative district and of the state of Iowa.

b. The name of the candidate nominated by the petition.

c. A statement that the candidate is or will be a resident of the appropriate ward, city, county, school district, or legislative or other district as required by section 39.27.

d. The office sought by the candidate, including the district number, if any.

e. The name and date of the election for which the candidate is nominated.

2. Signatures on a petition page shall be counted only if the information required in subsection 1 is written or printed at the top of the page. Nomination papers on behalf of candidates for seats in the general assembly need only designate the number of the senatorial or representative district, as appropriate, and not the county or counties, in which the candidate and the petitioners reside. A signature line in a nomination petition shall not be counted if the line lacks the signature of the eligible elector and the signer's address and city. A signature line shall not be counted if the signer's address is obviously outside the bound-

aries of the appropriate ward, city, school district or school district director district, legislative district, or other district.

3. The pages of the petition shall be securely fastened together to form a single bundle. Nomination petitions that are not bound shall be returned without further examination. The state commissioner shall prescribe by rule the acceptable methods for binding nomination petitions.

4. The person examining the petition shall mark any deficiencies on the petition. Signed nomination petitions and the signed and notarized affidavit of candidacy shall not be altered to correct deficiencies noted during the examination. If the nomination petition lacks a sufficient number of acceptable signatures, the nomination papers shall be rejected and returned to the candidate.

5. The nomination papers shall be rejected if the affidavit lacks any of the following:

a. The candidate's name.

b. The name of the office sought, including the district, if any.

c. The signature of the candidate.

d. The signature of a notary public or other officer empowered to witness oaths.

6. The candidate may replace a deficient affidavit with a corrected one only if the replacement is filed before the filing deadline. The candidate may resubmit a nomination petition that has been rejected by adding a sufficient number of pages or signatures to correct the deficiency. A nomination petition and affidavit filed to replace rejected nomination papers shall be filed together before the deadline for filing.

2007 Acts, ch 59, §4, 19  
Oaths, see chapter 63A  
2007 amendment to this section applies to elections held on or after January 1, 2008; 2007 Acts, ch 59, §19  
Section amended

#### 45.6 Requirements in signing.

The following requirements shall be observed in the signing and preparation of nomination petitions:

1. A signer may sign nomination petitions for more than one candidate for the same office, and the signature is not invalid solely because the signer signed nomination petitions for one or more other candidates for the office.

2. Each signer shall add the signer's residence, with street and number.

3. All signers, for all nominations, of each separate part of a nomination petition, shall reside in the appropriate ward, city, county, school district or school district director district, legislative district, or other district as required by section 45.1.

4. When more than one sheet is used, the sheets shall be neatly arranged and securely fastened together before filing, and shall be considered one nomination petition. Nomination petitions which are not securely fastened together shall be returned to the candidate or the candi-

date's designee without examination. The state commissioner shall prescribe by rule the acceptable methods for binding nomination petitions.

5. Only one candidate shall be petitioned for or nominated in the same nomination petition, ex-

cept for the offices of governor and lieutenant governor, and president and vice president.

2007 Acts, ch 59, §5, 19  
 2007 amendment to subsection 3 applies to elections held on or after January 1, 2008; 2007 Acts, ch 59, §19  
 Subsection 3 amended

## CHAPTER 46

### NOMINATION AND ELECTION OF JUDGES

#### 46.14A Court of appeals — nominees.

Vacancies in the court of appeals shall be filled by appointment by the governor from a list of nominees submitted by the state judicial nominating commission. Three nominees shall be submitted for each vacancy. Nominees to the court of appeals shall have the qualifications prescribed for nominees to the supreme court.

2007 Acts, ch 86, §1  
 NEW section

#### 46.15 Appointments to be from nominees.

1. All appointments to the supreme court and court of appeals shall be made from the nominees of the state judicial nominating commission, and all appointments to the district court shall be made from the nominees of the district judicial nominating commission.

2. If the governor fails to make an appointment within thirty days after a list of nominees

has been submitted, the appointment shall be made from the list of nominees by the chief justice of the supreme court.

2007 Acts, ch 86, §2  
 Section amended

#### 46.22 Voting.

Voting at judicial elections shall be by separate paper ballot, optical scan ballot, or by voting machine in the space provided for public measures. If separate paper ballots are used, the election judges shall offer a ballot to each voter. If optical scan ballots are used, either a separate ballot or a distinct heading may be used to distinguish the judicial ballot. Separate ballot boxes for the general election ballots and the judicial election ballots are not required. The general election ballot and the judicial election ballot may be voted in the same voting booth.

2007 Acts, ch 190, §18  
 Section amended

## CHAPTER 47

### ELECTION COMMISSIONERS

#### 47.9 Voting machine reimbursement fund.

A voting machine reimbursement fund is established in the office of the treasurer of state. Moneys in the fund shall be expended to reimburse counties for the costs of complying with section 52.7, subsection 1, paragraph "l". The office of secretary of state shall establish, by ad-

ministrative rule, a procedure for reimbursing counties for such costs. Notwithstanding section 8.33, moneys in the voting machine reimbursement fund shall not revert but shall remain available indefinitely for expenditure under this section.

2007 Acts, ch 219, §34  
 NEW section

## CHAPTER 48A

### VOTER REGISTRATION

#### 48A.2 Definitions.

The definitions established by this section and section 39.3 shall apply wherever the terms so defined appear in this chapter, unless the context in which any such term is used clearly requires otherwise.

1. "Commissioner of registration" means the

county commissioner of elections as defined in section 47.2.

2. "Homeless person" means a person who lacks a fixed, regular, and adequate nighttime residence and who has a primary nighttime residence that is one of the following:

a. A supervised publicly or privately operated



shelter designed to provide temporary living accommodations.

b. An institution that provides a temporary residence for persons intended to be institutionalized.

c. A public or private place not designed for, or ordinarily used as, a regular sleeping accommodation for human beings.

3. “*Person who is incompetent to vote*” means a person described in section 222.2, subsection 5, who has been found to lack the mental capacity to vote in a proceeding held pursuant to section 222.31 or 633.556.

4. “*Voter registration agency*” means an agency designated to conduct voter registration under section 48A.19. Offices of the office of driver services of the state department of transportation are not voter registration agencies.

5. “*Voter registration form*” means an application to register to vote which must be completed by any person registering to vote.

6. “*Voter registration list*” means a compilation of voter registration records produced, upon request, from the electronic voter registration file or by viewing, upon request, the original, completed voter registration applications and forms.

2007 Acts, ch 59, §39, 43

New subsection 6 applies to elections held on or after January 1, 2008;

2007 Acts, ch 59, §43

NEW subsection 6

#### 48A.5 Voter qualifications.

1. An eligible elector wishing to vote in elections in Iowa shall register to vote as required by this chapter.

2. To be qualified to register to vote an eligible elector shall:

a. Be a citizen of the United States.

b. Be an Iowa resident. A person’s residence, for voting purposes only, is the place which the person declares is the person’s home with the intent to remain there permanently or for a definite, or indefinite or indeterminable length of time. A person who is homeless or has no established residence may declare residence in a precinct by describing on the voter registration form a place to which the person often returns.

c. Be at least eighteen years of age. Completed registration forms shall be accepted from registrants who are at least seventeen and one-half years of age; however, the registration shall not be effective until the registrant reaches the age of eighteen. The commissioner of registration shall ensure that the birth date shown on the registration form is at least seventeen and one-half years earlier than the date the registration is processed.

d. Not claim the right to vote in more than one place. A registrant shall be presumed to revoke any earlier claim of residence for voter registration purposes.

3. If a person who meets the requirements set forth in subsection 2 moves to a new residence, ei-

ther in Iowa or outside Iowa, and does not meet the voter requirements at the person’s new residence, the person may vote at the person’s former precinct in Iowa until the person meets the voter requirements of the person’s new residence. However, a person who has moved to a new residence and fails to register to vote at the person’s new residence after becoming eligible to do so shall not be entitled to vote at the person’s former precinct in Iowa.

4. A citizen of the United States who lives outside of the United States has the right to register and vote as if the person were a resident of a precinct in Iowa if the citizen was an eligible elector of Iowa immediately before leaving the United States. A citizen who was not old enough to register to vote before leaving the United States but who met all of the other requirements for voter registration at that time also has the right to register and vote as if the person were a resident of a precinct in Iowa. This right applies even though while living outside the United States the citizen does not have a residence or other address in the precinct, and the citizen has not determined whether to return to Iowa. To qualify to vote in Iowa a United States citizen living outside the United States shall:

a. Comply with all applicable requirements of sections 53.37 to 53.53 relating to absentee ballots for members of the armed forces and other citizens living outside the United States.

b. Not maintain a residence, shall not be registered to vote, and shall not vote in any other state, territory, or possession of the United States.

c. Possess a valid passport or identity card and registration issued under authority of the United States secretary of state, or, if the citizen does not possess a valid passport or card of identity or registration, an alternative form of identification consistent with the provisions of applicable federal and state requirements.

5. If a United States citizen living outside the United States meets the requirements for voting, except for residence, has never lived in the United States, and has a parent who meets the definition of a member of the armed forces of the United States under section 53.37, the citizen is eligible to register to vote and vote at the same voting residence claimed by the citizen’s parent.

6. The deadlines for voter registration shall not apply to a person who has been discharged from military service within thirty days preceding the date of an election. The person shall present to the precinct election official a copy of the person’s discharge papers. The person shall complete a voter registration form and give it to the official before being permitted to vote.

2007 Acts, ch 59, §40, 43

Iowa Constitution, Art. II, §1

2007 amendment to subsection 2, paragraph c applies to elections held on or after January 1, 2008; 2007 Acts, ch 59, §43

Subsection 2, paragraph c amended

**48A.7A Election day and in-person absentee registration.**

1. a. A person who is eligible to register to vote and to vote may register on election day by appearing in person at the polling place for the precinct in which the individual resides and completing a voter registration application, making written oath, and providing proof of identity and residence.

b. (1) For purposes of this section, a person may establish identity and residence by presenting to the appropriate precinct election official a current and valid Iowa driver's license or Iowa nonoperator's identification card or by presenting any of the following current and valid forms of identification if such identification contains the person's photograph and a validity expiration date:

- (a) An out-of-state driver's license or nonoperator's identification card.
- (b) A United States passport.
- (c) A United States military identification card.
- (d) An identification card issued by an employer.
- (e) A student identification card issued by an Iowa high school or an Iowa postsecondary educational institution.

(2) If the photographic identification presented does not contain the person's current address in the precinct, the person shall also present one of the following documents that shows the person's name and address in the precinct:

- (a) Residential lease.
- (b) Property tax statement.
- (c) Utility bill.
- (d) Bank statement.
- (e) Paycheck.
- (f) Government check.
- (g) Other government document.

c. In lieu of paragraph "b", a person wishing to vote may establish identity and residency in the precinct by written oath of a person who is registered to vote in the precinct. The registered voter's oath shall attest to the stated identity of the person wishing to vote and that the person is a current resident of the precinct. The oath must be signed by the attesting registered voter in the presence of the appropriate precinct election official. A registered voter who has signed an oath on election day attesting to a person's identity and residency as provided in this paragraph is prohibited from signing any further oaths as provided in this paragraph on that day.

2. The oath required in subsection 1, paragraph "a", and in paragraph "c", if applicable, shall be attached to the voter registration application.

3. At any time before election day, a person who appears in person at the commissioner's office or at a satellite absentee voting station after the deadline for registration in section 48A.9, may

register to vote and vote an absentee ballot by following the procedure in this section for registering to vote on election day. A person who wishes to vote in person at the polling place on election day and who has not registered to vote before the deadline for registering in section 48A.9, is required to register to vote at the polling place on election day following the procedure in this section. However, the person may complete the voter registration application at the commissioner's office and, after the commissioner has reviewed the completed application, may present the application to the appropriate precinct election official along with proof of identity and residency.

4. a. The form of the written oath required of the person registering under this section shall read as follows:

I, . . . . . (name of registrant), do solemnly swear or affirm all of the following:

I am a resident of the . . . . . precinct, . . . . . ward or township, city of . . . . . , county of . . . . . , Iowa.

I am the person named above.

I live at the address listed below.

I do not claim the right to vote anywhere else.

I have not voted and will not vote in any other precinct in this election.

I understand that any false statement in this oath is a class "D" felony punishable by no more than five years in confinement and a fine of at least seven hundred fifty dollars but not more than seven thousand five hundred dollars.

.....

Signature of Registrant

.....

Address

.....

Telephone (optional to provide)

Subscribed and sworn before me on . . . . (date).

.....

Signature of Precinct Election Official

b. The form of the written oath required of a person attesting to the identity and residency of the registrant shall read as follows:

I, . . . . . (name of registered voter), do solemnly swear or affirm all of the following:

I am a preregistered voter in this precinct or I registered to vote in this precinct today, and a registered voter did not sign an oath on my behalf.

I am a resident of the . . . . . precinct, . . . . . ward or township, city of . . . . . , county of . . . . . , Iowa.

I reside at . . . . . (street address) in . . . . . (city or township).

I personally know . . . . . (name of registrant), and I personally know that . . . . . (name of registrant) is a resident of the . . . . . precinct, . . . . . ward or township, city of . . . . . , county of . . . . . , Iowa.

I understand that any false statement in this oath is a class "D" felony punishable by no more than five years in confinement and a fine of at least seven hundred fifty dollars but not more than seven thousand five hundred dollars.

.....  
Signature of Registered Voter

Subscribed and sworn before me on . . . . (date).

.....  
Signature of Precinct Election Official

2007 Acts, ch 35, §2, 7; 2007 Acts, ch 215, §242  
Section applies to elections held on or after January 1, 2008; 2007 Acts, ch 35, §7  
NEW section

**48A.9 Voter registration deadlines.**

1. Registration closes at five p.m. eleven days before each election except primary and general elections. For primary and general elections, registration closes at five p.m. ten days before the election. An eligible elector may register during the time registration is closed in the elector's precinct but the registration shall not become effective until registration opens again in the elector's precinct, except as otherwise provided in section 48A.7A.

2. The commissioner's office shall be open from eight a.m. until at least five p.m. on the day registration closes before each regularly scheduled election. However, if the last day to register to vote for a regularly scheduled election falls on the day after Thanksgiving, the deadline shall be the following Monday.

3. A registration form submitted by mail shall be considered on time if it is postmarked no later than the fifteenth day before the election, even if it is received by the commissioner after the deadline, or if the registration form is received by the commissioner no later than five p.m. on the last day to register to vote for an election, even if it is postmarked after the fifteenth day before the election.

4. Registration forms submitted to voter registration agencies, to motor vehicle driver's license stations, and to county treasurer's offices participating in county issuance of driver's licenses under chapter 321M shall be considered on time if they are received no later than five p.m. on the day registration closes for that election. Offices or agencies other than the county commissioner's office are not required to be open for voter registration purposes at times other than their usual office hours.

2007 Acts, ch 35, §3, 7  
2007 amendment to subsection 1 applies to elections held on or after January 1, 2008; 2007 Acts, ch 35, §7  
Subsection 1 amended

**48A.11 Voter registration form.**

1. Each voter registration form shall provide space for the registrant to provide the following information:

- a. The county where the registrant resides.
  - b. The registrant's name, including first name and any family forename or surname.
  - c. The address at which the registrant resides and claims as the registrant's residence for voting purposes.
  - d. The registrant's mailing address if it is different from the residence address.
  - e. Iowa driver's license number if the registrant has a current and valid Iowa driver's license, Iowa nonoperator's identification card if the registrant has a current and valid Iowa nonoperator's identification card, or the last four numerals of the registrant's social security number. If the registrant does not have an Iowa driver's license number, an Iowa nonoperator's identification card number, or a social security number, the form shall provide space for a number to be assigned as provided in subsection 8.
  - f. Date of birth, including month, date, and year.
  - g. Sex.
  - h. Residential telephone number (optional to provide).
  - i. Political party registration.
  - j. The name and address appearing on the registrant's previous voter registration.
  - k. A space for a rural resident to provide township and section number, and such additional information as may be necessary to describe the location of the rural resident's home.
  - l. A space for a registrant who is homeless or who has no established residence to provide such information as may be necessary to describe a place to which the person often returns.
  - m. A statement that lists each eligibility requirement, contains an attestation that the registrant meets all of the requirements, and requires the signature of the registrant under penalty of perjury.
  - n. A space for the registrant's signature and the date signed.
2. The voter registration form shall include, in print that is identical to the attestation portion of the form, the following:
- a. Each voter eligibility requirement.
  - b. The penalty provided by law for submission of a false voter registration form, which shall be the penalty for perjury as provided by section 902.9, subsection 5.
3. The following questions and statement regarding eligibility shall be included on forms that may be used for registration by mail:
- a. Are you a citizen of the United States of America?
  - b. Will you be eighteen years of age on or before election day?
  - c. If you checked "no" in response to either of these questions, do not complete this form.
4. Voter registration forms used by voter registration agencies under section 48A.19 shall in-

clude the following statements:

a. If a person declines to register to vote, the fact that the person has declined to register will remain confidential and will be used only for voter registration purposes.

b. If a person does register to vote, the office at which the registrant submits a voter registration form will remain confidential and the information will be used only for voter registration purposes.

5. Voter registration forms may be on paper or electronic media.

6. All forms for voter registration shall be prescribed by the state voter registration commission.

7. A person who has been designated to have power of attorney by a registrant does not have authority to sign a voter registration form, except as otherwise provided in section 39.3, subsection 17.

8. A voter registration application lacking the registrant's name, sex, date of birth, residence address or description, or signature shall not be processed. A voter registration application lacking the registrant's Iowa driver's license number, Iowa nonoperator's identification card number, or the last four digits of the registrant's social security number shall not be processed. A registrant whose registration is not processed pursuant to this subsection shall be notified pursuant to section 48A.26, subsection 3. A registrant who does not have an Iowa driver's license number, an Iowa nonoperator's identification number, or a social security number and who notifies the registrar of such shall be assigned a unique identifying number that shall serve to identify the registrant for voter registration purposes.

2007 Acts, ch 59, §41, 43  
2007 amendment to subsection 8 applies to elections held on or after January 1, 2008; 2007 Acts, ch 59, §43  
Subsection 8 amended

**48A.25A Verification of voter registration information.**

1. Upon receipt of an application for voter registration by mail, the state registrar of voters shall compare the Iowa driver's license number, the Iowa nonoperator's identification card number, or the last four numerals of the social security number provided by the registrant with the records of the state department of transportation. To be verified, the voter registration record shall contain the same name, date of birth, and Iowa driver's license number or Iowa nonoperator's identification card number or whole or partial social security number as the records of the state department of transportation. If the information cannot be verified, the application shall be rejected and the registrant shall be notified of the reason for the rejection. If the information can be verified, a record shall be made of the verification and the application shall be accepted.

2. The voter registration commission shall adopt rules in accordance with chapter 17A to pro-

vide procedures for processing registration applications if the state department of transportation does not, before the close of registration for an election for which the voter registration would be effective, if verified, provide a report that the information on the application has matched or not matched the records of the department.

3. This section does not apply to persons described in section 53.37 who are entitled to register to vote and to vote.

2007 Acts, ch 59, §42, 43  
2007 amendments to subsection 3 apply to elections held on or after January 1, 2008; 2007 Acts, ch 59, §43  
Unnumbered paragraphs 1 and 2 designated as subsections 1 and 2  
Unnumbered paragraph 3 amended and designated as subsection 3

**48A.26A Acknowledgment of election day and in-person absentee registration form.**

1. Within forty-five days of receiving a voter registration form completed under section 48A.7A, the commissioner shall send an acknowledgment to the registrant, in the manner provided in section 48A.26, subsections 2 through 5, as applicable, at the mailing address shown on the registration form. The acknowledgment shall be sent by nonforwardable mail.

2. If the acknowledgment is returned as undeliverable by the postal service, the commissioner shall attempt to contact the voter by forwardable mail. If a response is not received from the voter within fourteen days after the notice is mailed, the commissioner shall change the status of the registration to inactive status and shall immediately notify the state registrar of voters and the county attorney.

2007 Acts, ch 35, §4, 7  
Section applies to elections held on or after January 1, 2008; 2007 Acts, ch 35, §7  
NEW section

**48A.37 Electronic registration records.**

1. Voter registration records shall be maintained in an electronic medium. A history of local election participation shall be maintained as part of the electronic record for at least two general, primary, school, and city elections. Absentee voting shall be recorded for the previous two general and primary elections. After each election, the county commissioner shall update telephone numbers provided by registered voters pursuant to section 49.77.

2. Electronic records shall include a status code designating whether the records are active, inactive, local, or pending. Inactive records are records of registered voters to whom notices have been sent pursuant to section 48A.28, subsection 3, and who have not returned the card or otherwise responded to the notice, and those records have been designated inactive pursuant to section 48A.29. Inactive records are also records of registered voters to whom notices have been sent pursuant to section 48A.26A and who have not responded to the notice. Local records are records of applicants who did not answer either "yes" or "no"

to the question in section 48A.11, subsection 3, paragraph "a". Pending records are records of applicants whose applications have not been verified pursuant to section 48A.25A. All other records are active records. An inactive record shall be made active when the registered voter votes at an election, registers again, or reports a change of name, address, telephone number, or political party affiliation. A pending record shall be made active upon verification. A local record shall be valid for any

election for which no candidates for federal office appear on the ballot. A registrant with only a local record shall not vote in a federal election unless the registrant submits a new voter registration application before election day indicating that the applicant is a citizen of the United States.

2007 Acts, ch 35, §5, 7  
2007 amendment to subsection 2 applies to elections held on or after January 1, 2008; 2007 Acts, ch 35, §7  
Subsection 2 amended

## CHAPTER 49

### METHOD OF CONDUCTING ELECTIONS

#### 49.8 Changes in precincts.

After any required changes in precinct boundaries have been made following each federal decennial census, at the time established by or pursuant to section 49.7, the county board or city council shall make no further changes in precinct boundaries until after the next federal decennial census, except in the following circumstances:

1. When deemed necessary by the board of supervisors of any county because of a change in the location of the boundaries, dissolution or establishment of any civil township, the boundaries of precincts actually affected may be changed as necessary to conform to the new township boundaries.

2. When territory is annexed to a city the city council may attach all or any part of the annexed territory to any established precinct or precincts which are contiguous to the annexed territory, however this subsection shall not prohibit establishment of one or more new precincts in the annexed territory.

3. A city may have one special federal census taken each decade and the population figures obtained may be used to revise precinct boundaries in accordance with the requirements of sections 49.3 and 49.5.

4. When the boundaries of a county supervisor, city council, or school director district, or any other district from which one or more members of any public representative body other than the general assembly are elected by the voters thereof, are changed by annexation or other means other than reprecincting, the change shall not result in the term of any officer elected from the former district being terminated before or extended beyond the expiration of the term to which the officer was last elected, except as provided under section 275.23A and section 331.209, subsection 1. If more than one incumbent officeholder resides in a district redrawn during reprecincting, their terms of office shall expire after the next election in the political subdivision.

When a vacancy occurs in the office of county supervisor, city council, or school director following

the effective date of new district boundaries, the vacancy shall be filled using the new boundaries.

5. When a city is changing its form of government from one which has council members elected at large to one which has council members elected from wards, or is changing its number of council members elected from wards, the city council may redraw the precinct boundaries in accordance with sections 49.3 and 49.5 to coincide with the new ward boundaries.

6. Precinct boundaries established by or pursuant to section 49.4, and not changed under subsection 1 since the most recent federal decennial census, may be changed once during the period beginning January 1 of the second year following a year in which a federal decennial census is taken and ending June 30 of the year immediately following the year in which the next succeeding federal decennial census is taken, if the commissioner recommends and the board of supervisors finds that the change will effect a substantial savings in election costs. Changes made under this subsection shall be made not later than ninety-nine days before a primary election, unless the changes will not take effect until January 1 of the next even-numbered year.

7. Precinct boundaries established by a city council pursuant to section 49.5 or 49.6 and not changed under subsections 1 through 5 since the most recent federal decennial census, may be redrawn by the city council in accordance with sections 49.3 and 49.5 once during the period beginning January 1 of the second year following a year in which a federal decennial census is taken and ending June 30 of the year immediately following the year in which the next succeeding federal decennial census is taken, if the commissioner recommends that the change will effect a substantial savings in election costs. Changes made under this subsection shall be made not later than ninety-nine days before a city primary or runoff election, unless the changes will not take effect until January 1 of the next odd-numbered year.

8. When territory contiguous to the Indian set-

tlement is added to the Indian settlement land held in trust by the secretary of the interior of the United States.

2007 Acts, ch 59, §6, 19  
New subsection 7 takes effect April 10, 2007, and applies to elections held on or after January 1, 2008; 2007 Acts, ch 59, §19  
NEW subsection 7 and former subsection 7 renumbered as 8

### **49.13 Commissioner to appoint members, chairperson.**

1. The membership of each precinct election board shall be appointed by the commissioner, not less than fifteen days before each election held in the precinct, from the election board panel drawn up as provided in section 49.15. Precinct election officials shall be registered voters of the county, or other political subdivision within which precincts have been merged across county lines pursuant to section 49.11, subsection 1, in which they are appointed. Preference shall be given to appointment of residents of a precinct to serve as precinct election officials for that precinct, but the commissioner may appoint other residents of the county where necessary.

2. To the extent necessary, election boards shall include members of the two political parties whose candidates for president of the United States or for governor, as the case may be, received the largest and next largest number of votes in the county at the last general election. Election boards may also include persons not members of either of these parties. However, persons who are not members of either of these political parties shall not comprise more than one-third of the membership of an election board.

3. In appointing the election board to serve for any election in which candidates' names do appear under the heading of these political parties, the commissioner shall give preference to the persons designated by the respective county chairpersons of these political parties for placement on the election board panel, as provided by section 49.15, in the order that they were so designated. However, the commissioner may for good cause decline to appoint a designee of a county chairperson if that chairperson is notified and allowed two working days to designate a replacement.

4. The commissioner shall designate one member of each precinct election board as chairperson of that board. If a counting board authorized by chapter 51 is appointed, the chairperson shall have authority over the mechanics of the work of both boards. At the discretion of the commissioner, two people who are members of different political parties may be appointed as co-chairpersons. The co-chairpersons shall have joint authority over the work of the precinct election board.

5. The commissioner may appoint high school students who are not yet qualified to be registered voters to serve as precinct election board members.

a. To qualify to serve as a precinct election board member, a high school student shall:

(1) Be a United States citizen.  
(2) Be at least seventeen years of age and a student in good standing enrolled in a public or private secondary school in Iowa.

(3) Receive credit in at least four subjects, each of one period or hour, or the equivalent thereof, at all times. The eligible subjects are language arts, social studies, mathematics, science, health, physical education, fine arts, foreign language, and vocational education. Coursework taken as a post-secondary enrollment option for which a school district or accredited nonpublic school grants academic credit toward high school graduation shall be used in determining eligibility. A student shall not be denied eligibility if the student's school program deviates from the traditional two-semester school year. Each student wishing to participate under this subsection shall be passing all coursework for which credit is given and shall be making adequate progress toward graduation requirements at the end of each grading period. At the end of a grading period that is the final grading period in a school year, a student who receives a failing grade in any course for which credit is awarded is ineligible to participate under this subsection. A student who is eligible at the close of a semester is academically eligible to participate under this subsection until the beginning of the subsequent semester. A student with a disability who has an individualized education program shall not be denied eligibility to participate under this subsection on the basis of scholarship if the student is making adequate progress, as determined by school officials, towards the goals and objectives on the student's individualized education program.

(4) At the time of appointment, have the written approval of the principal of the secondary school the student attends.

(5) Have the written approval of the student's parent or legal guardian.

(6) Have satisfactorily completed the training course for election officials.

(7) Meet all other qualifications for appointment and service as an election board member except the requirement of being a registered voter.

b. No more than one student precinct election board member may serve on each precinct election board.

c. Student precinct election board members shall not serve as the chairperson of a precinct election board.

d. Before serving at a partisan election, the student precinct election board member must certify in writing to the commissioner the political party with which the student is affiliated.

e. Student precinct election board members shall not be allowed to work more hours than allowed under the applicable labor laws.

*f.* A student who serves on a precinct election board is not eligible to receive class credit for such service unless such service qualifies as meeting the requirements of a class assignment imposed on all students in the class.

*g.* No later than fourteen days after the date of the election, the commissioner shall report to the appropriate secondary school the following information:

(1) The name of each student attending the school who served as a precinct election board member on election day.

(2) The number of hours the student served as a precinct election board member.

(3) The precinct number and polling place location where the student served as a precinct election board member.

(4) Any other information the commissioner deems appropriate or that is requested by the school.

2007 Acts, ch 34, §1; 2007 Acts, ch 138, §1  
Child labor restrictions, see chapter 92  
Subsection 2 amended  
NEW subsection 5

#### **49.14 Substitute precinct election officials.**

1. The commissioner may appoint substitute precinct election officials as alternates for election board members. The responsibilities and duties of a precinct election official, other than the chairperson, present at the time the polling place was opened on the day of an election may be assumed at any later time that day by a substitute appointed as an alternate. The substitute shall serve either for the balance of that election day or for any shorter period of time the commissioner may designate. At partisan elections, a substitute precinct election official assuming the duties of a precinct election official shall be a member of the same political party as the precinct election official whose duties are being assumed.

2. Substitute precinct election officials shall be appointed and shall serve in accordance with sections 49.12, 49.13, 49.15, and 49.16, and shall receive compensation as provided by sections 49.19, 49.20, and 49.125. Upon arriving at the polling place and prior to performing any official duty, a substitute precinct election official shall take the oath required by section 49.75.

3. The commissioner shall not employ substitute precinct election officials in a partisan election unless:

*a.* The election board panel drawn up pursuant to section 49.15 contains the names of a sufficient number of political party designees to permit appointment of both the regular precinct election officials and any substitute precinct election officials from that panel; or

*b.* The commissioner has informed the county chairpersons of the political parties referred to in section 49.13, subsection 2, thirty days prior to the

date of the election, of intent to appoint substitute precinct election officials and has allowed ten days thereafter for the respective county chairpersons to provide additional names of persons from whom the substitute precinct election officials shall be appointed. If a county chairperson fails to provide additional names after being so notified, the commissioner may appoint persons known to be members of the appropriate political party or parties.

2007 Acts, ch 59, §7, 19  
2007 amendment to subsection 1 applies to elections held on or after January 1, 2008; 2007 Acts, ch 59, §19  
Subsection 1 amended

#### **49.15 Commissioner to draw up election board panel.**

1. Not less than twenty days before each primary election, the commissioner shall draw up for each precinct an election board panel from which members of the precinct election board shall be appointed for each election held in the precinct during the ensuing two years.

2. *a.* Each panel shall include members of each of the political parties referred to in section 49.13, whose names may be designated by the county chairpersons of each of these political parties not less than thirty days prior to each primary election. The commissioner may place on the election board panel names of persons known by the commissioner to be members of these political parties, if the respective county chairpersons fail to designate a sufficient number of names, and may also add names of persons, whether or not they are members of either of these political parties, who have advised the commissioner they are willing to serve on the election board.

*b.* The commissioner may also place on the election board panel names of persons whom either the city council of a city of three thousand five hundred or less population or a school board has advised the commissioner at least thirty days before each primary election are willing to serve without pay at elections conducted for that school district or city, as the case may be, during the tenure of the election board panel on which these names are included.

3. In drawing up precinct election board panels, the commissioner may use student precinct election board members appointed pursuant to section 49.13, subsection 5.

2007 Acts, ch 34, §2; 2007 Acts, ch 138, §2  
Unnumbered paragraph 1 amended and editorially divided and designated as subsection 1 and subsection 2, paragraphs a and b  
NEW subsection 3

#### **49.25 Equipment required at polling places.**

1. In any county or portion of a county for which voting machines have been acquired under section 52.2 the commissioner shall determine pursuant to section 49.26, in advance of each election conducted for a city of three thousand five hundred or less population, or any school district, and individually for each precinct, whether voting

in that election shall be by machine or by paper ballot.

2. The commissioner shall furnish to each precinct, in advance of each election, voting machines meeting the requirements of chapter 52 or voting booths, as the case may be, in the following number:

a. At each regularly scheduled election, at least one for every three hundred fifty voters who voted in the last preceding similar election held in the precinct.

b. At any special election at which the ballot contains only a single public measure or only candidates for a single office or position, the number determined by the commissioner.

3. The commissioner shall furnish to each precinct where voting is to be by paper ballot or optical scan ballot, rather than by voting machine, the necessary ballot boxes, suitably equipped with seals or locks and keys, and voting booths. The voting booths shall be approved by the board of examiners for voting machines and optical scan voting systems and shall provide for voting in secrecy. At least one voting booth in each precinct shall be accessible to persons with disabilities. If the lighting in the polling place is inadequate, the voting booths used in that precinct shall include lights. Ballot boxes shall be locked or sealed before the polls open and shall remain locked or sealed until the polls are closed, except as provided in section 51.7 or to provide necessary service to a malfunctioning portable vote tallying device. If a ballot box is opened prior to the closing of the polls, two precinct election officials not of the same party shall be present and observe the ballot box being opened.

4. Secrecy folders or sleeves shall be provided for use at any precinct where ballots are used which cannot be folded to obscure the marks made by the voters.

2007 Acts, ch 190, §19  
Subsection 3 amended

**49.27** Reserved.

**49.28 Commissioner to furnish registers and supplies.**

1. The commissioner shall prepare and furnish to each precinct an election register and all other books, forms, materials, equipment, and supplies necessary to conduct the election.

2. a. After the registration deadline and before election day the commissioner shall prepare an election register for each precinct in which voting will occur on the day of the election. The precinct election register shall be a list of the names and addresses of all registered voters of the precinct. Inactive records listed in the election register shall be clearly identified with a special mark or symbol.

b. When a precinct is divided by a district boundary, and some, but not all, registered voters

of the precinct may vote on an issue or office from that district, the election register shall clearly indicate which of the registered voters are entitled to vote in the district.

3. a. The commissioner shall furnish a supply of printed ballots to each precinct where voting machines are to be used for any election.

b. In any precinct in which voting machines are designated as the only method of voting for an election, a paper ballot shall be furnished to any person offering to vote under the provisions of section 49.81 or 49.90 or to any person offering to vote if any of the following apply:

(1) A power failure prevents use of the voting machines.

(2) A malfunction occurs that prevents the use of one or more voting machines.

(3) A malfunction occurs preventing one or more voting machines from producing the paper record required in section 52.7, subsection 2.

(4) Any other conditions existing due to a fault of one or more voting machines that prevents a person offering to vote from casting the person's ballot.

c. The ballots furnished by the commissioner shall be the same as the ballots used for voters casting ballots pursuant to sections 49.81 and 49.90, and voting shall be in accordance with statutory provisions relating to conventional paper ballots. After a paper ballot has been voted under this subsection, the precinct election official shall place the voted ballot in a closed container to be kept in a secure manner in a secure place.

2007 Acts, ch 190, §1  
Section amended

**49.30 All candidates and issues on one ballot — exceptions.**

All constitutional amendments, all public measures, and the names of all candidates, other than presidential electors, to be voted for in each election precinct, shall be printed on one ballot, except that separate ballots are authorized under the following circumstances:

1. Where optical scan ballots are used, if it is not possible to include all offices and public measures on a single ballot, separate ballots may be provided for nonpartisan offices, judges, or public measures.

2. Where conventional paper ballots are used, separate paper ballots shall be used:

a. For the election of township officers in precincts including both incorporated and unincorporated areas or more than one township.

b. For public measures.

c. For judges.

2007 Acts, ch 190, §20 – 22  
Subsection 1 amended

Former subsection 2 stricken and former subsection 3 renumbered as 2  
Subsection 2, unnumbered paragraph 1 amended

**49.41 More than one office prohibited.**

1. a. A person shall not be a candidate for more than one office to be filled at the same elec-



tion. A person who has been nominated for more than one office shall file a written notice declaring the office for which the person wishes to appear on the ballot.

b. If the nomination papers for all offices for which the candidate has been nominated are required to be filed with the same commissioner of elections, the candidate shall file a written notice with that commissioner no later than five p.m. on the final date upon which nomination papers may be filed for the election. The notice shall state the office for which the person wishes to appear on the ballot. If the required notice is not filed, the candidate's name shall not be certified by the state commissioner for any office for which nomination papers are filed with the state commissioner and the county commissioner of elections shall not include the candidate's name on the ballot for any office in any county.

c. If a person is a candidate for one or more offices for which nomination papers are required to be filed with the state commissioner and one or more offices for which nomination papers are required to be filed with the county commissioner, the candidate shall notify the state commissioner and the county commissioner in writing. The notice shall state the office for which the person chooses to remain a candidate. The notice shall be filed no later than the last day to file nomination papers with the commissioner. If the required notice is not filed, the candidate's name shall not appear on the ballot for any office in any county.

2. a. If necessary, the county commissioner shall certify to the state commissioner the name of any person who is a candidate for more than one office which will appear on the ballot for the election. The certification of dual candidacy shall be made no later than five p.m. on the day following the final day to file nomination papers in the office of the commissioner.

b. When the state commissioner receives notice from the county commissioner that a candidate for a state or federal office has also been nominated for a county or township office, the state commissioner shall amend the certificate issued pursuant to section 43.73 and notify the commissioners of any other counties to whom the candidate's name was originally certified and instruct them to remove the candidate's name from the ballot in those counties.

3. This section does not apply to the county agricultural extension council or the soil and water conservation district commission.

4. For purposes of township office, "nomination papers" as used in this section means the affidavit of candidacy required in section 45.3.

2007 Acts, ch 25, §3  
Former unnumbered paragraphs 1 – 3 designated as subsection 1, paragraphs a – c  
Former unnumbered paragraphs 4 and 5 designated as subsection 2, paragraphs a and b  
Former unnumbered paragraph 6 designated as subsection 3  
NEW subsection 4

#### 49.43 Constitutional amendment or other public measure.

If possible, all public measures and constitutional amendments to be voted upon by an elector shall be included on a single ballot which shall also include all offices to be voted upon. However, if it is necessary, a separate ballot may be used as provided in section 49.30, subsection 1.

In precincts using paper ballots all public measures to be voted upon by a voter at a given election shall be printed upon one ballot of some color other than white. In precincts using voting machines all public measures shall be placed on the machine.

Constitutional amendments and other public measures may be summarized by the commissioner as provided in sections 49.44 and 52.25.

2007 Acts, ch 190, §23  
Iowa Constitution, Art. X, §1  
See also §52.24  
Unnumbered paragraphs 1 and 2 amended

#### 49.44 Summary.

When a proposed constitutional amendment or other public measure to be decided by the voters of the entire state is to be voted upon, the state commissioner shall prepare a written summary of the amendment or measure including the number of the amendment or statewide public measure assigned by the state commissioner. The summary shall be printed immediately preceding the text of the proposed amendment or measure on the paper ballot or optical scan ballot referred to in section 49.43. If the complete text of the public measure will not fit on the ballot it shall be posted inside the voting booth. A copy of the full text shall be included with any absentee ballots.

In precincts where the amendment or measure will be voted on by machine, the summary shall be placed on the machine as required by section 52.25.

The commissioner may prepare a summary for public measures if the commissioner finds that a summary is needed to clarify the question to the voters.

2007 Acts, ch 190, §24  
Iowa Constitution, Art. X, §1  
Unnumbered paragraphs 1 and 2 amended

#### 49.53 Publication of ballot and notice.

1. The commissioner shall not less than four nor more than twenty days before the day of each election, except those for which different publication requirements are prescribed by law, publish notice of the election. The notice shall contain a facsimile of the portion of the ballot containing the first rotation as prescribed by section 49.31, subsection 2, and shall show the names of all candidates or nominees and the office each seeks, and all public questions, to be voted upon at the election. The sample ballot published as a part of the notice may at the discretion of the commissioner be reduced in size relative to the actual ballot but such reduction shall not cause upper case letters

appearing in candidates' names or in summaries of public measures on the published sample ballot to be less than ninety percent of the size of such upper case letters appearing on the actual ballot. The notice shall also state the date of the election, the hours the polls will be open, the location of each polling place at which voting is to occur in the election, the location of the polling places designated as early ballot pick-up sites, and the names of the precincts voting at each polling place, but the statement need not set forth any fact which is apparent from the portion of the ballot appearing as a part of the same notice. The notice shall include the full text of all public measures to be voted upon at the election.

2. The notice shall be published in at least one newspaper, as defined in section 618.3, which is published in the county or other political subdivision in which the election is to occur or, if no newspaper is published there, in at least one newspaper of substantial circulation in the county or political subdivision. For the general election or the primary election the foregoing notice shall be published in at least two newspapers published in the county. However, if there is only one newspaper published in the county, publication in one newspaper shall be sufficient.

2007 Acts, ch 190, §2  
 Publication of ballot, city elections, §376.5  
 Unnumbered paragraph 1 amended and designated as subsection 1  
 Unnumbered paragraph 2 designated as subsection 2

**49.57 Method and style of printing ballots.**

Ballots shall be prepared as follows:

1. They shall be on paper uniform in color, through which the printing or writing cannot be read.

2. In the area of the general election ballot for straight party voting, the party or organization names shall be printed in upper case and lower case letters using a uniform font size for each political party or nonparty political organization. The font size shall be not less than twelve point type. After the name of each candidate for a partisan office the name of the candidate's political party shall be printed in at least six point type. The names of political parties and nonparty political organizations may be abbreviated on the remainder of the ballot if both the full name and the abbreviation appear in the "Straight Party" and "Other Political Party" areas of the ballot.

3. The names of candidates shall be printed in upper case and lower case letters using a uniform font size throughout the ballot. The font size shall be not less than ten point type.

4. In no case shall the font size for public measures, constitutional amendments, and constitutional convention questions, and summaries thereof, be less than ten point type.

5. On ballots that will be counted by electronic tabulating equipment, ballots shall include a vot-

ing target next to the name of each candidate. The position, shape, and size of the targets shall be appropriate for the equipment to be used in counting the votes. Where paper ballots are used, a square may be printed at the beginning of each line in which the name of a candidate is printed, except as otherwise provided.

6. A portion of the ballot, which can be shown to the precinct officials without revealing any of the marks made by the voter, shall include the words "Official ballot", the unique identification number or name assigned by the commissioner to the ballot style, the date of the election, and a facsimile of the signature of the commissioner who has caused the ballot to be printed pursuant to section 49.51.

7. The office title of any office which appears on the ballot to fill a vacancy before the end of the usual term of the office shall include the words "To Fill Vacancy".

2007 Acts, ch 59, §§ - 10, 19  
 Single voting target for certain paired offices, §49.33  
 Signature in primary elections, §43.36  
 2007 amendments to this section apply to elections held on or after January 1, 2008; 2007 Acts, ch 59, §19  
 Subsections 2 and 3 amended  
 NEW subsection 4 and former subsection 4 renumbered as 5  
 Former subsection 5 amended and renumbered as 6  
 Former subsection 6 renumbered as 7

**49.63 Time of printing — inspection and correction.**

Ballots shall be printed and in the possession of the commissioner in time to enable the commissioner to furnish ballots to absent voters as provided by sections 53.8, 53.10, and 53.11. The printed ballots shall be subject to the inspection of candidates and their agents. If mistakes are discovered, they shall be corrected without delay, in the manner provided in this chapter.

2007 Acts, ch 59, §22, 38  
 Ballot to absent voter, §53.2  
 Correction of primary ballots, §43.25  
 2007 amendment to this section applies to elections held on or after January 1, 2008; 2007 Acts, ch 59, §38  
 Section amended

**49.71 Posting instruction cards and sample ballots.**

The precinct election officials, before the opening of the polls, shall cause the instructions for voters required pursuant to section 49.70 to be securely posted as follows:

1. One copy in each voting booth.
2. Not less than four copies, with an equal number of sample ballots, in and about the polling place.

Sample primary ballots, §43.30  
 Section not amended; footnote deleted

**49.73 Time of opening and closing polls.**

1. At all elections, except as otherwise permitted by this section, the polls shall be opened at seven o'clock a.m., or as soon thereafter as vacancies on the precinct election board have been filled. On the basis of voter turnout for recent similar elections and factors considered likely to so affect

voter turnout for the forthcoming election as to justify shortened voting hours for that election, the commissioner may direct that the polls be opened at twelve o'clock noon for:

- a. Any school district election.
- b. Any election conducted for a city of three thousand five hundred or less population, including a local option sales and services tax election conducted pursuant to section 423B.1. At elections conducted pursuant to chapter 423B, all polling places shall have the same voting hours.
- c. Any election conducted for a city of more than three thousand five hundred population if there is no contest for any office on the ballot and no public question is being submitted to the voters at that election.
- d. Any election conducted for a benefited district.
- e. Any election conducted for the unincorporated area of a county.

2. The commissioner shall not shorten voting hours for any election if there is filed in the commissioner's office, at least twenty-five days before the election, a petition signed by at least fifty eligible electors of the school district or city, as the case may be, requesting that the polls be opened not later than seven o'clock a.m. All polling places where the candidates of or any public question submitted by any one political subdivision are being voted upon shall be opened at the same hour, except that this requirement shall not apply to merged areas established under chapter 260C. The hours at which the respective precinct polling places are to open shall not be changed after publication of the notice required by section 49.53. The polling places shall be closed at nine o'clock p.m. for state primary and general elections and other partisan elections, and for any other election held concurrently therewith, and at eight o'clock p.m. for all other elections.

2007 Acts, ch 59, §11, 19  
2007 amendment to subsection 1, paragraph e, applies to elections held on or after January 1, 2008; 2007 Acts, ch 59, §19  
Subsection 1, paragraph e amended

**49.77 Ballot furnished to voter.**

1. The board members of their respective precincts shall have charge of the ballots and furnish them to the voters. Any person desiring to vote shall sign a voter's declaration provided by the officials, in substantially the following form:

**VOTER'S DECLARATION  
OF ELIGIBILITY**

I do solemnly swear or affirm that I am a resident of the . . . . . precinct, . . . . . ward or township, city of . . . . . , county of . . . . . , Iowa.

I am a registered voter. I have not voted and will not vote in any other precinct in said election.

I understand that any false statement in this declaration is a criminal offense punishable as provided by law.

.....  
Signature of Voter  
.....  
Address  
.....  
Telephone

Approved:

.....  
Board Member

At the discretion of the commissioner, this declaration may be printed on each page of the election register and the voter shall sign the election register next to the voter's printed name. The voter's signature in the election register shall be considered the voter's signed declaration of eligibility affidavit. The state commissioner of elections shall prescribe by rule an alternate method for providing the information in subsection 2 for those counties where the declaration of eligibility is printed in the election register. The state voter registration system shall be designed to allow for the affidavit to be printed on each page of the election register and to allow sufficient space for the voter's signature.

2. One of the precinct election officials shall announce the voter's name aloud for the benefit of any persons present pursuant to section 49.104, subsection 2, 3, or 5. If the declaration of eligibility is not printed on each page of the election register, any of those persons may upon request view the signed declarations of eligibility and may review the signed declarations on file so long as the person does not interfere with the functions of the precinct election officials. If the declaration of eligibility is printed on the election register, the precinct election official shall make available for viewing a listing of those voters who have signed declarations of eligibility. Any of those persons present pursuant to section 49.104, subsection 2, 3, or 5, may upon request view the listing of those voters who have signed declarations of eligibility, so long as the person does not interfere with the functions of the precinct election officials.

3. A precinct election official shall require any person whose name does not appear on the election register as an active voter to show identification. Specific documents which are acceptable forms of identification shall be prescribed by the state commissioner.

A precinct election official may require of the voter unknown to the official, identification upon which the voter's signature or mark appears. If identification is established to the satisfaction of the precinct election officials, the person may then be allowed to vote.

4. a. A person whose name does not appear on the election register of the precinct in which that

person claims the right to vote shall not be permitted to vote, unless the person affirms that the person is currently registered in the county and presents proof of identity, or the commissioner informs the precinct election officials that an error has occurred and that the person is a registered voter of that precinct. If the commissioner finds no record of the person's registration but the person insists that the person is a registered voter of that precinct, the precinct election officials shall allow the person to cast a ballot in the manner prescribed by section 49.81.

b. If the voter informs the precinct election official that the voter resides in the precinct and is not registered to vote, the voter may register to vote pursuant to section 48A.7A and cast a ballot. If such a voter is unable to establish identity and residency in the manner provided in section 48A.7A, subsection 1, paragraph "b" or "c", the voter shall be allowed to cast a ballot in the manner prescribed by section 49.81.

c. A person who has been sent an absentee ballot by mail but for any reason has not received it shall be permitted to cast a ballot in person pursuant to section 53.19 and in the manner prescribed by section 49.81.

5. The request for the telephone number in the declaration of eligibility in subsection 1 is not mandatory and the failure by the voter to provide the telephone number does not affect the declaration's validity.

2007 Acts, ch 35, §6, 7  
Subsection 4, paragraph b, applies to elections held on or after January 1, 2008; 2007 Acts, ch 35, §7  
Subsection 4 amended

**49.79 Challenges.**

1. Any person offering to vote may be challenged as unqualified by any precinct election official or registered voter. It is the duty of each official to challenge any person offering to vote whom the official knows or suspects is not duly qualified. A ballot shall be received from a voter who is challenged, but only in accordance with section 49.81.

2. A person may be challenged for any of the following reasons:

a. The challenged person is not a citizen of the United States.

b. The challenged person is less than eighteen years of age as of the date of the election at which the person is offering to vote.

c. The challenged person is not a resident at the address where the person is registered. However, a person who is reporting a change of address at the polls on election day pursuant to section 48A.27, subsection 2, paragraph "a", subparagraph (3), shall not be challenged for this reason.

d. The challenged person is not a resident of the precinct where the person is offering to vote.

e. The challenged person has falsified information on the person's registration form or on the person's declaration of eligibility.

f. The challenged person has been convicted of a felony, and the person's voting rights have not been restored.

g. The challenged person has been adjudged by a court of law to be a person who is incompetent to vote and no subsequent proceeding has reversed that finding.

2007 Acts, ch 59, §12, 19  
2007 amendment to this section applies to elections held on or after January 1, 2008; 2007 Acts, ch 59, §19  
Section amended

**49.90 Assisting voter.**

Any voter who may declare upon oath that the voter is blind, cannot read the English language, or is, by reason of any physical disability other than intoxication, unable to cast a vote without assistance, shall, upon request, be assisted by the two officers as provided in section 49.89, or alternatively by any other person the voter may select in casting the vote. The officers, or the person selected by the voter, shall cast the vote of the voter requiring assistance, and shall thereafter give no information regarding the vote cast. If any elector because of a disability cannot enter the building where the polling place for the elector's precinct of residence is located, the two officers shall take a paper ballot to the vehicle occupied by the elector with a disability and allow the elector to cast the ballot in the vehicle. If an elector with a disability cannot cast a ballot on a voting machine, the elector shall be allowed to cast a paper ballot, which shall be opened immediately after the closing of the polling place by the two precinct election officials designated under section 49.89, who shall register the votes cast thereon on a voting machine in the polling place before the votes cast there are tallied pursuant to section 50.16. To preserve so far as possible the confidentiality of each ballot of an elector with a disability, the two officers shall proceed substantially in the same manner as provided in section 53.24. In precincts where all voters use paper ballots, those cast by voters with disabilities shall be deposited in the regular ballot box and counted in the usual manner.

2007 Acts, ch 190, §25  
Section amended

**49.99 Writing name on ballot.**

1. The voter may also write on the line provided for write-in votes the name of any person for whom the voter desires to vote and mark the voting target opposite the name. If the voter is using a voting system other than an optical scan voting system, as defined in section 52.1, the writing of the name shall constitute a valid vote for the person whose name has been written on the ballot without regard to whether the voter has made a mark opposite the name. However, when a write-in vote is cast using an optical scan voting system, the ballot must also be marked in the corresponding space in order to be counted. Marking the vot-

ing target opposite a write-in line without writing a name on the line shall not affect the validity of the remainder of the ballot.

2. If a voter writes the name of a person more than once in the proper places on a ballot or on a voting machine for an office to which more than

one person is to be elected, all but one of those votes for that person for that office are void and shall not be counted.

2007 Acts, ch 190, §26  
Unnumbered paragraph 1 amended and designated as subsection 1  
Unnumbered paragraph 2 designated as subsection 2

## CHAPTER 50

### CANVASS OF VOTES

#### 50.16 Tally list of board.

The tally list shall be prepared in writing by the election board giving, in legibly printed numerals, the total number of people who cast ballots in the precinct, the total number of ballots cast for each office, except those rejected, the name of each person voted for, and the number of votes given to each person for each different office. The tally list shall be signed by the precinct election officials, and be substantially as follows:

At an election at . . . . . in . . . . . township, or in . . . . . precinct of . . . . . city or township, in . . . . . county, state of Iowa, on the . . . . . day of . . . . ., there were . . . . . ballots cast for the office of . . . . . of which (Candidate's name) . . . . . had . . . . . votes. (Candidate's name) . . . . . had . . . . . votes. (and in the same manner for any other officer).

A true tally list:

(Name) . . . . . Election Board  
(Name) . . . . . Members.  
(Name) . . . . .

Attest:

(Name) . . . . . Designated  
(Name) . . . . . Tally Keepers.

2007 Acts, ch 59, §13, 19  
2007 amendment to this section applies to elections held on or after January 1, 2008; 2007 Acts, ch 59, §19  
Section amended

#### 50.25 Abstract of votes in the general election.

1. At the canvass of the general election, the abstract of the votes for each of the following classes shall be made on a different sheet:

- a. President and vice president of the United States.
- b. Senator in the Congress of the United States.
- c. Representative in the Congress of the United States.
- d. Governor and lieutenant governor.
- e. A state officer not otherwise provided for.
- f. Senator or representative in the general assembly by districts.

2. The abstract of the votes for each county of-

office is not required to be made on a different sheet.

2007 Acts, ch 59, §14, 15, 19  
New subsection 2 and 2007 amendment striking former subsection 7 apply to elections held on or after January 1, 2008; 2007 Acts, ch 59, §19  
Unnumbered paragraph 1 redesignated as subsection 1  
Former subsections 1 – 6 redesignated as paragraphs a – f of subsection 1

1  
Former subsection 7 stricken  
NEW subsection 2

#### 50.48 General recount provisions.

1. The county board of canvassers shall order a recount of the votes cast for a particular office or nomination in one or more specified election precincts in that county if a written request therefor is made not later than five o'clock p.m. on the third day following the county board's canvass of the election in question. The request shall be filed with the commissioner of that county, or with the commissioner responsible for conducting the election if section 47.2, subsection 2 is applicable, and shall be signed by either of the following:

- a. A candidate for that office or nomination whose name was printed on the ballot of the precinct or precincts where the recount is requested.
- b. Any other person who receives votes for that particular office or nomination in the precinct or precincts where the recount is requested and who is legally qualified to seek and to hold the office in question.

Immediately upon receipt of a request for a recount, the commissioner shall send a copy of the request to the apparent winner by certified mail. The commissioner shall also attempt to contact the apparent winner by telephone. If the apparent winner cannot be reached within four days, the chairperson of the political party or organization which nominated the apparent winner shall be contacted and shall act on behalf of the apparent winner, if necessary. For candidates for state or federal offices, the chairperson of the state party shall be contacted. For candidates for county offices, the county chairperson of the party shall be contacted.

2. The candidate requesting a recount under this section shall post a bond, unless the abstracts prepared pursuant to section 50.24, or section 43.49 in the case of a primary election, indicate that the difference between the total number of votes cast for the apparent winner and the total number of votes cast for the candidate requesting

the recount is less than the greater of fifty votes or one percent of the total number of votes cast for the office or nomination in question. If a recount is requested for an office to which more than one person was elected, the vote difference calculations shall be made using the difference between the number of votes received by the person requesting the recount and the number of votes received by the apparent winner who received the fewest votes. Where votes cast for that office or nomination were canvassed in more than one county, the abstracts prepared by the county boards in all of those counties shall be totaled for purposes of this subsection. If a bond is required, it shall be filed with the state commissioner for recounts involving a state office, including a seat in the general assembly, or a seat in the United States Congress, and with the commissioner responsible for conducting the election in all other cases, and shall be in the following amount:

- a. For an office filled by the electors of the entire state, one thousand dollars.
- b. For United States representative, five hundred dollars.
- c. For senator in the general assembly, three hundred dollars.
- d. For representative in the general assembly, one hundred fifty dollars.
- e. For an office filled by the electors of an entire county having a population of fifty thousand or more, two hundred dollars.
- f. For any elective office to which paragraphs "a" to "e" of this subsection are not applicable, one hundred dollars.

After all recount proceedings for a particular office are completed and the official canvass of votes cast for that office is corrected or completed pursuant to subsections 5 and 6, if necessary, any bond posted under this subsection shall be returned to the candidate who requested the recount if the apparent winner before the recount is not the winner as shown by the corrected or completed canvass. In all other cases, the bond shall be deposited in the general fund of the state if filed with the state commissioner or in the election fund of the county with whose commissioner it was filed.

3. The recount shall be conducted by a board which shall consist of:

- a. A designee of the candidate requesting the recount, who shall be named in the written request when it is filed.
- b. A designee of the apparent winning candidate, who shall be named by that candidate at or before the time the board is required to convene.
- c. A person chosen jointly by the members designated under paragraphs "a" and "b" of this subsection.

The commissioner shall convene the persons designated under paragraphs "a" and "b" of this subsection not later than nine o'clock a.m. on the seventh day following the county board's canvass

of the election in question. If those two members cannot agree on the third member by eight o'clock a.m. on the ninth day following the canvass, they shall immediately so notify the chief judge of the judicial district in which the canvass is occurring, who shall appoint the third member not later than five o'clock p.m. on the eleventh day following the canvass.

4. When all members of the recount board have been selected, the board shall undertake and complete the required recount as expeditiously as reasonably possible. The commissioner or the commissioner's designee shall supervise the handling of ballots or voting machine documents to ensure that the ballots and other documents are protected from alteration or damage. The board shall open only the sealed ballot containers from the precincts specified to be recounted in the request or by the recount board. The board shall recount only the ballots which were voted and counted for the office in question, including any disputed ballots returned as required in section 50.5. If an electronic tabulating system was used to count the ballots, the recount board may request the commissioner to retabulate the ballots using the electronic tabulating system. The same program used for tabulating the votes on election day shall be used at the recount unless the program is believed or known to be flawed. If a voting machine was used, the paper record required in section 52.7, subsection 2, shall be the official record used in the recount. However, if the commissioner believes or knows that the paper records produced from a machine have been compromised due to damage, mischief, malfunction, or other cause, the printed ballot images produced from the internal audit log for that machine shall be the official record used in the recount.

Any member of the recount board may at any time during the recount proceedings extend the recount of votes cast for the office or nomination in question to any other precinct or precincts in the same county, or from which the returns were reported to the commissioner responsible for conducting the election, without the necessity of posting additional bond.

The ballots or voting machine documents shall be resealed by the recount board before adjournment and shall be preserved as required by section 50.12. At the conclusion of the recount, the recount board shall make and file with the commissioner a written report of its findings, which shall be signed by at least two members of the recount board. The recount board shall complete the recount and file its report not later than the eighteenth day following the county board's canvass of the election in question.

5. If the recount board's report is that the abstracts prepared pursuant to the county board's canvass were incorrect as to the number of votes cast for the candidates for the office or nomination

in question, in that county or district, the commissioner shall at once so notify the county board. The county board shall reconvene within three days after being so notified, and shall correct its previous proceedings.

6. The commissioner shall promptly notify the state commissioner of any recount of votes for an office to which section 50.30 or section 43.60 in the case of a primary election, is applicable. If necessary, the state canvass required by section 50.38, or by section 43.63, as the case may be, shall be delayed with respect to the office or the nomination to which the recount pertains. The commissioner shall subsequently inform the state commissioner at the earliest possible time whether any change

in the outcome of the election in that county or district resulted from the recount.

7. If the election is an election held by a city which is not the final election for the office in question, the recount shall progress according to the times provided by this subsection. If this subsection applies the canvass shall be held by the second day after the election, the request for a recount must be made by the third day after the election, the board shall convene to conduct the recount by the sixth day after the election, and the report shall be filed by the eleventh day after the election.

2007 Acts, ch 190, §3  
Subsection 4, unnumbered paragraph 1 amended

## CHAPTER 51

### DOUBLE ELECTION BOARDS

#### 51.2 Appointment.

The members of the election counting board shall be appointed by the commissioner from the election board panel drawn up as provided by section 49.15. The requirements of section 49.13 relative to political party affiliation of members of the election board shall apply to the membership of the election counting board.

2007 Acts, ch 138, §3  
Section amended

#### 51.9 Manner of counting.

Whenever the counting board receives from the receiving board the ballot box, they shall also be furnished a statement from the receiving board giving the number of voters' declarations of eligi-

bility signed up to that time, which shall equal the number of votes in the ballot box. The counting board shall on opening the ballot box first count the ballots therein. If the number of ballots found in the ballot box exceeds the number as shown by the statement received from the receiving board the counting board members shall proceed to examine the official endorsement of said ballots, and, if any ballots are found that do not bear proper official endorsement, said ballots shall be kept separate and a record of such ballots shall be made and returned under the head of excess ballots. The counting board shall then proceed to count the ballots as now provided by law.

Counting general election ballots, chapter 50  
Section not amended; footnote deleted

## CHAPTER 52

### ALTERNATIVE VOTING SYSTEMS

#### 52.1 Alternative voting systems — definitions.

1. At all elections conducted under chapter 49, and at any other election unless specifically prohibited by the statute authorizing the election, votes may be cast, registered, recorded, and counted by means of either voting machines or optical scan voting systems, in accordance with this chapter.

2. As used in this chapter, unless the context otherwise requires:

a. "Automatic tabulating equipment" means apparatus, including but not limited to electronic data processing machines, that are utilized to ascertain the manner in which optical scan ballots have been marked by voters or by electronic ballot marking devices, and count the votes marked on

the ballots.

b. "Ballot" includes paper ballots designed to be read by automatic tabulating equipment. In appropriate contexts, "ballot" also includes conventional paper ballots.

c. "Ballot marking device" means a pen, pencil, or similar writing tool, or an electronic device, all designed for use in marking an optical scan ballot, and so designed or fabricated that the mark it leaves may be detected and the vote so cast counted by automatic tabulating equipment.

d. "Optical scan ballot" means a printed ballot designed to be marked by a voter with a ballot marking device.

e. "Optical scan voting system" means a system employing paper ballots under which votes are cast by voters by marking paper ballots with

a ballot marking device and thereafter counted by use of automatic tabulating equipment.

*f.* “*Program*” means the written record of the set of instructions defining the operations to be performed by a computer in examining, counting, tabulating, and printing votes.

*g.* “*Voting machine*” means a direct recording electronic device meeting the requirements of section 52.7, subsections 1 and 2, and designated for use in casting, registering, recording, and counting votes at an election.

2007 Acts, ch 190, §4, 5  
Subsection 1 amended  
Subsection 2 stricken and rewritten

### 52.2 Purchase.

1. Except as otherwise provided in subsection 2, the board of supervisors of a county may, by a majority vote, authorize, purchase, and order the use of voting machines or an optical scan voting system in any one or more voting precincts within the county until otherwise ordered by the board of supervisors. Voting machines and an optical scan voting system may be used concurrently at the same precinct.

2. Notwithstanding any provision to the contrary:

*a.* On or after July 1, 2007, a county whose voting system primarily utilizes voting machines, as defined in section 52.1, shall, when seeking to replace the voting system, replace the voting system with an optical scan voting system only. The requirements of the federal Help America Vote Act relating to disabled voters shall be met by a county through the use of electronic ballot marking devices that are compatible with an optical scan voting system.

*b.* On or after July 1, 2007, a county that utilizes a voting machine, as defined in section 52.1, and an optical scan voting system concurrently at the same precinct shall, when seeking to replace the voting machine, replace the voting machine with an electronic ballot marking device that is compatible with an optical scan voting system in order to ensure that each precinct in the county shall have at least one electronic ballot marking device.

2007 Acts, ch 190, §6  
Section amended

### 52.3 Terms of purchase — tax levy.

The county board of supervisors, on the adoption and purchase of a voting machine or an optical scan voting system, may issue bonds under section 331.441, subsection 2, paragraph “*b*”, subparagraph (1).

2007 Acts, ch 190, §27  
Section amended

### 52.4 Examiners — term — removal.

The state commissioner of elections shall appoint three members to a board of examiners for

voting systems, not more than two of whom shall be from the same political party. The examiners shall hold office for staggered terms of six years, subject to removal at the pleasure of the state commissioner of elections.

At least one of the examiners shall have been trained in computer programming and operations. The other two members shall be directly involved in the administration of elections and shall have experience in the use of voting machines and optical scan voting systems.

2007 Acts, ch 190, §28  
Section amended

### 52.5 Testing and examination of voting equipment.

1. A person or corporation owning or being interested in a voting machine or optical scan voting system may request that the state commissioner call upon the board of examiners to examine and test the machine or system. Within seven days of receiving a request for examination and test, the state commissioner shall notify the board of examiners of the request in writing and set a time and place for the examination and test.

2. The state commissioner shall formulate, with the advice and assistance of the examiners, and adopt rules governing the testing and examination of any voting machine or optical scan voting system by the board of examiners. The rules shall prescribe the method to be used in determining whether the machine or system is suitable for use within the state and performance standards for voting equipment in use within the state. The rules shall provide that all optical scan voting systems and voting machines approved for use by the examiners after April 9, 2003, shall meet voting systems performance and test standards, as adopted by the federal election commission on April 30, 2002, and as deemed adopted by Pub. L. No. 107-252, § 222. The rules shall include standards for determining when recertification is necessary following modifications to the equipment or to the programs used in tabulating votes, and a procedure for rescinding certification if a system or machine is found not to comply with performance standards adopted by the state commissioner.

3. The state commissioner may employ a competent person or persons to assist the examiners in their evaluation of the equipment and to advise the examiners as to the sufficiency of the equipment. Consultant fees shall be paid by the person who requested the certification. Following the examination and testing of the voting machine or system, the examiners shall report to the state commissioner describing the testing and examination of the machine or system and upon the capacity of the machine or system to register the will of voters, its accuracy and efficiency, and with respect to its mechanical perfections and imperfections. Their report shall be filed in the office of the



state commissioner and shall state whether in their opinion the kind of machine or system so examined can be safely used by voters at elections under the conditions prescribed in this chapter. If the report states that the machine or system can be so used, it shall be deemed approved by the examiners, and machines or systems of its kind may be adopted for use at elections as provided in this section. Any form of voting machine or system not so approved cannot be used at any election. Before actual use by a county of a particular optical scan voting system which has been approved for use in this state, the state commissioner shall formulate, with the advice and assistance of the examiners, and adopt rules governing the development of vote counting programs and all procedures used in actual counting of votes by means of that system.

2007 Acts, ch 190, §29  
Section amended and editorially renumbered

### 52.7 Construction of machine approved — requirements.

1. A voting machine approved by the state board of examiners for voting machines and optical scan voting systems shall be so constructed as to do all of the following:

*a.* Permit straight party voting, pursuant to section 49.94, for all political parties and nonparty political organizations on the ballot.

*b.* Permit a voter to vote for any person for any office, whether or not the person is nominated as a candidate by any party or organization.

*c.* Permit voting in absolute secrecy.

*d.* Prevent voting for more than one person for the same office, except where a voter is lawfully entitled to vote for more than one person for that office.

*e.* Afford a voter an opportunity to vote for any or all persons for that office as the voter is by law entitled to vote for and no more, at the same time preventing a voter from voting for the same person twice.

*f.* Provide a voter with an opportunity to change a vote before the ballot is recorded and counted.

*g.* Present together the names of each team of candidates for president and vice president and for governor and lieutenant governor. The votes for a team shall be counted as a vote for both candidates of the team.

*h.* Provide a voter with a method for casting write-in votes for paired offices so that the voter can specify one person as a candidate for president or for governor and one person as a candidate for vice president or for lieutenant governor.

*i.* Accurately account for every vote cast upon it.

*j.* If the machine is to be used for provisional or absentee voting, remove information from the ballot identifying the voter before the ballot is recorded and counted.

*k.* Maintain an internal audit log that will

store each ballot cast separate from the ballot tabulation function, which ballot may be reproduced on paper in the case of a recount or machine malfunction. The printed ballot image produced from an internal audit log shall be sealed in the manner, and for the time period, prescribed in section 50.12. The state commissioner of elections shall adopt rules to implement this paragraph “k”.

*l.* For all elections held on or after November 4, 2008, provide a paper record for review by the voter as provided in subsection 2.

2. A voting machine shall be capable of producing a paper record that the voter may review before the voter casts the voter’s ballot. The paper record shall meet all of the following requirements:

*a.* Be printed on paper separate from all other paper records.

*b.* Be readable by the voter without the use of an electronic device. It may also be machine-readable.

*c.* Not contain any information that will identify the person who cast the ballot.

*d.* Be stored at the polling place in a secure container, such that the voter is incapable of removing the paper record from the polling place.

3. After the polls close, the precinct election officials shall seal all paper records required by subsection 2 in the manner, and for the time period, prescribed in section 50.12.

2007 Acts, ch 190, §7  
Section stricken and rewritten

### 52.8 Experimental use.

The board of supervisors of any county may provide for the experimental use at an election in one or more districts, of a voting machine or optical scan voting system which it might lawfully adopt, without a formal adoption thereof; and its use at such election shall be as valid for all purposes as if it had been lawfully adopted.

2007 Acts, ch 190, §30  
Section amended

### 52.9 Duties of local authorities — certificate of test.

1. The commissioner having jurisdiction of any precinct for which the board of supervisors has adopted voting by machine shall, as soon as practicable thereafter, provide for the precinct polling place one or more voting machines in complete working order, and shall thereafter keep them in repair, and shall have the custody thereof and of the furniture and equipment of the polling place when not in use at an election. The machines shall be used for voting at all elections unless the commissioner directs otherwise pursuant to section 49.26. If it shall be impracticable to supply each and every election precinct for which machine voting has been adopted with a voting machine or voting machines at any election following such adoption, as many may be supplied as it is practicable to procure, and the same may be used

in such election precincts as the commissioner may direct.

2. It shall be the duty of the commissioner or the commissioner's duly authorized agents to examine and test the voting machines to be used at any election, after the machines have been prepared for the election and not less than twelve hours before the opening of the polls on the morning of the election. For any election to fill a partisan office, the county chairperson of each political party referred to in section 49.13 shall be notified in writing of the date, time, and place the machines shall be examined and tested so that they may be present, or have a representative present. For every election, the commissioner shall publish notice of the date, time, and place the examination and testing will be conducted. The commissioner may include such notice in the notice of the election published pursuant to section 49.53. Those present for the examination and testing shall sign a certificate which shall read substantially as follows:

The Undersigned Hereby Certify that, having duly qualified, we were present and witnessed the testing and preparation of the following voting machines; that we believe the same to be in proper condition for use in the election of . . . . . (date); that each registering counter of the machine is set at 000; that the public counter is set at 000; that the seal numbers and the protective counter numbers are as indicated below.

Signed:
. . . . .
Republican (if applicable)
. . . . .
Democrat (if applicable)
. . . . .
Voting machine custodian
Dated . . . . .

Table with 3 columns: Machine Number, Protective Counter Number, Seal Number. Each column contains a series of dots representing data points.

3. On those voting machines presently equipped with an after-election latch and on all machines placed in use after January 1, 1961, in this state, the after-election latch shall be fully used by the election officials.

2007 Acts, ch 190, §8
Unnumbered paragraph 1 designated as subsection 1
Unnumbered paragraph 2 amended and designated as subsection 2, unnumbered paragraph 1
Unnumbered paragraph 3 designated as subsection 2, unnumbered paragraph 2
Unnumbered paragraph 4 designated as subsection 3

52.11 Locking of unused party row. Repealed by 2007 Acts, ch 190, § 13.

52.12 Exception — straight party voting. Repealed by 2007 Acts, ch 190, § 13. See § 52.7(1).

52.13 Sample ballots. Repealed by 2007 Acts, ch 190, § 13.

52.14 Two sets of ballots. Repealed by 2007 Acts, ch 190, § 13.

52.15 Delivery of ballots and supplies. Repealed by 2007 Acts, ch 190, § 13. See § 49.28(3).

52.16 Duties of election officers — independent ballots. Repealed by 2007 Acts, ch 190, § 13.

52.21 Canvass of vote — tally sheet. Repealed by 2007 Acts, ch 190, § 13.

52.22 Locking machine. Repealed by 2007 Acts, ch 190, § 13.

52.23 Written statements of election — other papers.

1. After the total vote for each candidate has been ascertained, and before leaving the room or voting place, the precinct election officials shall make and sign the tally list required in section 50.16.

2. The inspection sheets from each machine used in the election and one copy of the printed results from each machine shall be signed by all precinct election officials and, with any paper or papers upon which write-in votes were recorded by voters, shall be securely sealed in an envelope marked with the name and date of the election, the precinct, and the serial numbers of the machines from which the enclosed results were removed. This envelope shall be preserved, unopened, for twenty-two months following elections for federal offices and for six months following elections for all other offices unless a recount is requested pursuant to section 50.48 or an election contest is pending. The envelope shall be destroyed in the same manner as ballots pursuant to section 50.13. Additional copies of the results, if any, shall be delivered to the commissioner with the other supplies from the election pursuant to section 50.17.

2007 Acts, ch 190, §31
Unnumbered paragraph 1 amended and designated as subsection 1
Unnumbered paragraph 2 designated as subsection 2

52.25 Summary of amendment or public measure.

The question of a constitutional convention, amendments, and public measures including bond

issues may be voted on voting machines and on ballots in the following manner:

The entire convention question, amendment, or public measure shall be printed and displayed prominently in at least four places within the voting precinct, and inside each voting booth, the printing to be in conformity with the provisions of chapter 49. The question, amendment, or measure, and summaries thereof, shall be printed on the special paper\* ballots or on the inserts used in\* the voting machines. In no case shall the font size be less than ten point type. The public measure shall be summarized by the commissioner, except that:

1. In the case of the question of a constitutional convention, or of an amendment or measure to be voted on in the entire state, the summary shall be worded by the state commissioner of elections as required by section 49.44.

2. In the case of a public question to be voted on in a political subdivision lying in more than one county, the summary shall be worded by the commissioner responsible under section 47.2 for conducting that election.

2007 Acts, ch 59, §16, 19; 2007 Acts, ch 190, §32

\*The words "special paper" and "the inserts used in" probably not intended; corrective legislation is pending

See Code editor's note

2007 amendment to unnumbered paragraph 2 by 2007 Acts, ch 59, §16, applies to elections held on or after January 1, 2008; 2007 Acts, ch 59, §19 Unnumbered paragraphs 1 and 2 amended

## OPTICAL SCAN VOTING SYSTEMS

### 52.26 Authorized optical scan voting system.

1. Every optical scan voting system approved by the state board of examiners for voting systems shall:

*a.* Provide for voting in secrecy, except as to persons entitled by sections 49.90 and 49.91 to assistance. The state board of examiners for voting systems shall determine whether the systems' voting booths provide for voting in secrecy.

*b.* Permit each voter to vote at any election for any candidate for each office and upon each public question with respect to which the voter is entitled by law to vote, while preventing the voter from voting more than once upon any public question or casting more votes for any office than there are persons to be elected to that office.

*c.* Permit a voter to vote for any person for any office on the ballot at that election, whether or not the person's name is printed on the ballot.

*d.* Be so constructed or designed that, when voting in a primary election in which candidates are nominated by political parties, a voter is limited to the candidates for the nominations of the political party with which that voter is affiliated.

*e.* Be so constructed or designed that in presidential elections the voter casts a vote for the presidential electors of any party or political orga-

nization by a single mark made opposite the name of the candidates of that party or organization for the offices of both president and vice president of the United States, and so that the voter is also provided the opportunity to write in the name of any person for whom the voter desires to vote for president or vice president of the United States.

*f.* Be so constructed or designed as to permit voting for candidates for nomination or election of at least seven different political parties or organizations, and to permit voting for all of the candidates of any one political party or organization by a single mark, at any one election.

2. A punch card voting system shall not be approved for use.

2007 Acts, ch 190, §33, 34

Subsection 1, unnumbered paragraph 1 amended

Subsection 1, paragraph a amended

### 52.27 Commissioner to provide optical scan voting equipment.

The commissioner having jurisdiction of any precinct for which the board of supervisors has adopted voting by means of an optical scan voting system shall, as soon as practicable thereafter, provide for use at each election held in the precinct optical scan ballots and ballot marking devices in appropriate numbers. The commissioner shall have custody of all equipment required for use of the optical scan voting system, and shall be responsible for maintaining it in good condition and for storing it between elections. All provisions of chapter 49 relative to times and circumstances under which voting machines are to be used in any election and the number of voting machines to be provided shall also govern the use of optical scan voting systems, when applicable.

2007 Acts, ch 190, §35

Section amended

### 52.28 Optical scan voting system ballot forms.

The commissioner of each county in which the use of an optical scan voting system in one or more precincts has been authorized shall determine the arrangement of candidates' names and public questions upon the ballot or ballots used with the system. The ballot information shall be arranged as required by chapters 43 and 49, and by any relevant provisions of any statutes which specify the form of ballots for special elections, so far as possible within the constraints of the physical characteristics of the optical scan voting system in use in that county. The state commissioner may adopt rules requiring a reasonable degree of uniformity among counties in arrangement of optical scan voting system ballots.

2007 Acts, ch 190, §36

Section amended

### 52.29 Optical scan voting system sample ballots.

The commissioner shall provide for each pre-

cinct where an optical scan voting system is in use at least four sample optical scan ballots which shall be exact copies of the official ballots as printed for that precinct. The sample ballots shall be arranged in the form of a diagram showing the optical scan ballot as it will appear to the voter in that precinct on election day. The sample ballots shall be posted prominently within the polling place, and shall be open to public inspection during the hours the polls are open on election day.

2007 Acts, ch 190, §37  
Section amended

**52.31 Procedure where votes cast on optical scan ballots.**

Preparations for voting and voting at any election in a precinct where votes are to be received on optical scan ballots shall be in accordance with the provisions of chapter 49 governing voting upon conventional paper ballots with the following exceptions:

1. Before entering the voting booth each voter shall be cautioned to mark the ballot only with a ballot marking device provided in the booth or by the precinct election officials.

2. In each precinct where portable automatic tabulating equipment is used, the voter may personally insert the ballot into the tabulating device.

2007 Acts, ch 190, §38  
Section amended

**52.32 Procedure upon closing polls.** Repealed by 2007 Acts, ch 190, § 13.

**52.33 Absentee voting by optical scan voting system.**

1. In any county in which the board of supervisors has adopted voting by means of an optical scan voting system, the commissioner shall also conduct absentee voting by use of such a system. In any other county, the commissioner may with approval of the board of supervisors conduct absentee voting by use of an optical scan voting system. All provisions of chapter 53 shall apply to such absentee voting, so far as applicable. In counties where absentee voting is conducted by use of an optical scan voting system, the special precinct counting board shall, at the time required by chapter 53, prepare absentee ballots for tabulation in the manner prescribed by this chapter.

2. The absentee and special precinct board shall follow the process prescribed in section 52.37, subsection 1, in handling damaged or defective ballots and in counting write-in votes on optical scan ballots.

2007 Acts, ch 190, §9  
Section amended and numbered editorially as subsections 1 and 2

**52.34 Counting center established.** Repealed by 2007 Acts, ch 190, § 13.

**52.35 Equipment tested.**

Before the date of any election at which votes are to be cast by means of an optical scan voting system, the commissioner shall have the automatic tabulating equipment, including the portable tabulating devices, tested to ascertain that it will correctly count the votes cast for all offices and on all public questions. Testing shall be completed not later than twelve hours before the opening of the polls on the morning of the election. The procedure for conducting the test shall be as follows:

1. For any election to fill a partisan office, the county chairperson of each political party shall be notified in writing of the date, time, and place the test will be conducted, so that they may be present or have a representative present. For every election, the commissioner shall publish notice of the date, time, and place the test will be conducted. The commissioner may include such notice in the notice of the election published pursuant to section 49.53. The test shall be open to the public.

2. The test shall be conducted by processing a preaudited group of ballots marked so as to record a predetermined number of valid votes for each candidate, and on each public question, on the ballot. The test group shall include for each office and each question one or more ballots having votes in excess of the number allowed by law for that office or question, in order to test the ability of the automatic tabulating equipment to reject such votes. Any observer may submit an additional test group of ballots which, if so submitted, shall also be tested. The state commissioner shall promulgate administrative rules establishing procedures for any additional test group of ballots submitted by an observer. If any error is detected, its cause shall be ascertained and corrected and an errorless count obtained before the automatic tabulating equipment is approved. When so approved, a statement attesting to the fact shall be signed by the commissioner and kept with the records of the election.

3. The test group of ballots used for the test shall be clearly labeled as such, and retained in the commissioner's office. The test group of ballots and the programs used for the counting procedure shall be sealed, retained for the time required for and disposed of in the same manner as ballots cast in the election.

4. Those present for the test shall sign a certificate which shall read substantially as follows:

The undersigned certify that we were present and witnessed the testing of the following tabulating devices; that we believe the devices are in proper condition for use in the election of . . . . . (date); that following the test the vote totals were erased from the memory of each tabulating device and a report was produced showing that all vote totals in the memory were

set at 0000; that the devices were securely locked or sealed; and that the serial numbers and locations of the devices which were tested are listed below.

Signed .....  
(name and political party affiliation, if applicable)  
.....  
(name and political party affiliation, if applicable)  
.....  
Voting equipment custodian  
Dated .....

Precinct	Location	Serial Number
.....	.....	.....
.....	.....	.....
.....	.....	.....

2007 Acts, ch 190, §10 – 12  
Unnumbered paragraph 1 amended  
Subsections 1 and 3 amended  
NEW subsection 4

**52.36 Commissioner in charge of counting center — appointment of resolution board.** Repealed by 2007 Acts, ch 190, § 13.

**52.37 Special precinct tabulation procedure.**

The tabulation of absentee and provisional ballots cast by means of an optical scan voting system shall be conducted as follows:

1. If any ballot is found damaged or defective, so that it cannot be counted properly by the automatic tabulating equipment, a true duplicate shall be made by the resolution board team and substituted for the damaged or defective ballot, or, as an alternative, the valid votes on a defective ballot may be manually counted by the special precinct election board, whichever method is best suited to the system being used. All duplicate ballots shall be clearly labeled as such, and shall bear a serial number which shall also be recorded on the dam-

aged or defective ballot.

The special precinct election board shall also tabulate any write-in votes which were cast. Write-in votes cast for a candidate whose name appears on the ballot for the same office shall be counted as a vote for the candidate indicated, if the vote is otherwise properly cast.

Ballots which are rejected by the tabulating equipment as blank because they have been marked with an unreadable marker shall be duplicated or tabulated as required by this subsection for damaged or defective ballots. The commissioner may instruct the special precinct election board to mark over voters' unreadable marks using a marker compatible with the tabulating equipment. The special precinct election board shall take care to leave part of the original mark made by the voter. If it is impossible to mark over the original marks made by the voter without completely obliterating them, the ballot shall be duplicated.

2. The record printed by the automatic tabulating equipment, with the addition of a record of any write-in or other votes manually counted pursuant to this chapter, shall constitute the official return of the absentee ballot and special voter's precinct. Upon completion of the tabulation of the votes, the result shall be announced and reported in substantially the manner required by section 50.11.

3. If for any reason it becomes impracticable to count all or any part of the ballots with the automatic tabulating equipment, the commissioner may direct that they be counted manually, in accordance with chapter 50 so far as applicable.

2007 Acts, ch 190, §39  
Section amended

**52.38 Testing portable tabulating devices.** Repealed by 2007 Acts, ch 190, § 13. See § 52.35.

**52.40 Early pick-up sites established — procedure.** Repealed by 2007 Acts, ch 190, § 13.

CHAPTER 53

ABSENT VOTERS

**53.2 Application for ballot.**

1. a. Any registered voter, under the circumstances specified in section 53.1, may on any day, except election day, and not more than seventy days prior to the date of the election, apply in person for an absentee ballot at the commissioner's of-

fice or at any location designated by the commissioner. However, for those elections in which the commissioner directs the polls be opened at noon pursuant to section 49.73, a voter may apply in person for an absentee ballot at the commissioner's office from eight a.m. until eleven a.m. on elec-

tion day.

b. A registered voter may make written application to the commissioner for an absentee ballot. A written application for an absentee ballot must be received by the commissioner no later than five p.m. on the Friday before the election. A written application for an absentee ballot delivered to the commissioner and received by the commissioner more than seventy days prior to the date of the election shall be retained by the commissioner and processed in the same manner as a written application received not more than seventy days before the date of the election.

2. The state commissioner shall prescribe a form for absentee ballot applications. Absentee ballot applications may include instructions to send the application directly to the county commissioner of elections. However, no absentee ballot application shall be preaddressed or printed with instructions to send the applications to anyone other than the appropriate commissioner.

No absentee ballot application shall be preaddressed or printed with instructions to send the ballot to anyone other than the voter.

3. This section does not require that a written communication mailed to the commissioner's office to request an absentee ballot, or any other document be notarized as a prerequisite to receiving or marking an absentee ballot or returning to the commissioner an absentee ballot which has been voted.

4. Each application shall contain the name and signature of the registered voter, the registered voter's date of birth, the address at which the voter is registered to vote, and the name or date of the election for which the absentee ballot is requested, and such other information as may be necessary to determine the correct absentee ballot for the registered voter. If insufficient information has been provided, the commissioner shall, by the best means available, obtain the additional necessary information.

5. An application for a primary election ballot which specifies a party different from that recorded on the registered voter's voter registration record shall be accepted as a change or declaration of party affiliation. The commissioner shall approve the change or declaration and enter a notation of the change on the registration records. A notice shall be sent with the ballot requested informing the voter that the voter's registration record will be changed to show that the voter is now affiliated with the party whose ballot the voter requested.

6. If an application for an absentee ballot is received from an eligible elector who is not a registered voter the commissioner shall send a registration form under section 48A.8 and an absentee ballot to the eligible elector. If the application is received so late that it is unlikely that the registration form can be returned in time to be effective on

election day, the commissioner shall enclose with the absentee ballot a notice to that effect, informing the voter of the registration time limits in section 48A.9. The commissioner shall record on the elector's application that the elector is not currently registered to vote. If the registration form is properly returned by the time provided by section 48A.9, the commissioner shall record on the elector's application the date of receipt of the registration form and enter a notation of the registration on the registration records.

7. A registered voter who has not moved from the county in which the elector is registered to vote may submit a change of name, telephone number, or address on the form prescribed in section 48A.8 when casting an absentee ballot. Upon receipt of a properly completed form, the commissioner shall enter a notation of the change on the registration records.

8. An application for an absentee ballot that is returned to the commissioner by a person acting as an actual or implied agent for a political party, candidate, or committee, all as defined by chapter 68A, shall be returned to the commissioner within seventy-two hours of the time the completed application was received from the applicant or no later than five p.m. on the Friday before the election, whichever is earlier.

2007 Acts, ch 59, §23, 38  
2007 amendments to subsections 1 and 4 apply to elections held on or after January 1, 2008; 2007 Acts, ch 59, §38  
Subsections 1 and 4 amended

### **53.7 Solicitation by public employees.**

1. It shall be unlawful for any employee of the state or any employee of a political subdivision to solicit any application or request for application for an absentee ballot, or to take an affidavit in connection with any absentee ballot while the employee is on the employer's premises or otherwise in the course of employment. However, any such employee may take such affidavit in connection with an absentee ballot which is cast by the registered voter in person in the office where such employee is employed in accordance with section 53.10 or 53.11. This subsection shall not apply to any elected official.

2. It is unlawful for any public officer or employee, or any person acting under color of a public officer or employee, to knowingly require a public employee to solicit an application or request an application for an absentee ballot, or to knowingly require an employee to take an affidavit or request for an affidavit in connection with an absentee ballot application.

2007 Acts, ch 59, §24, 38  
2007 amendment to subsection 1 applies to elections held on or after January 1, 2008; 2007 Acts, ch 59, §38  
Subsection 1 amended

### **53.8 Ballot mailed.**

1. Upon receipt of an application for an absentee ballot and immediately after the absentee bal-

lots are printed, the commissioner shall mail an absentee ballot to the applicant within twenty-four hours, except as otherwise provided in subsection 3. The absentee ballot shall be enclosed in an unsealed envelope bearing a serial number and affidavit. The absentee ballot and unsealed envelope shall be enclosed in or with a carrier envelope marked postage paid which bears the same serial number as the unsealed envelope. The absentee ballot, unsealed envelope, and carrier envelope shall be enclosed in a third envelope to be sent to the registered voter. If the ballot cannot be folded so that all of the votes cast on the ballot will be hidden, the commissioner shall also enclose a secrecy envelope with the absentee ballot.

2. a. The commissioner shall enclose with the absentee ballot a statement informing the applicant that the sealed carrier envelope may be mailed to the commissioner by the registered voter or the voter's designee or may be personally delivered to the commissioner's office by the registered voter or the voter's designee. The statement shall also inform the voter that the voter may request that the voter's designee complete a receipt when retrieving the ballot from the voter. A blank receipt shall be enclosed with the absentee ballot.

b. If an application is received so late that it is unlikely that the absentee ballot can be returned in time to be counted on election day, the commissioner shall enclose with the absentee ballot a statement to that effect.

3. a. When an application for an absentee ballot is received by the commissioner of any county from a registered voter who is a patient in a hospital in that county or a resident of any facility in that county shown to be a health care facility by the list of licenses provided the commissioner under section 135C.29, the absentee ballot shall be delivered to the voter and returned to the commissioner in the manner prescribed by section 53.22. However, if the application is received more than ten calendar days before the election and the commissioner has not elected to mail absentee ballots to the applicant as provided under section 53.22, subsection 3, the commissioner shall mail to the applicant within twenty-four hours a letter in substantially the following form:

Your application for an absentee ballot for the election to be held on . . . . . has been received. This ballot will be personally delivered to you by a bipartisan team sometime during the ten days preceding the election. If you will not be at the address from which your application was sent during any or all of the ten-day period immediately preceding the election, contact this office and arrangements will be made to have your absentee ballot delivered at a time when you will be present at that address.

b. Nothing in this subsection nor in section 53.22 shall be construed to prohibit a registered

voter who is a hospital patient or resident of a health care facility, or who anticipates entering a hospital or health care facility before the date of a forthcoming election, from casting an absentee ballot in the manner prescribed by section 53.10 or 53.11.

2007 Acts, ch 59, §25, 26, 38; 2007 Acts, ch 215, §223  
2007 amendment to subsection 3, paragraph b applies to elections held on or after January 1, 2008; 2007 Acts, ch 59, §38  
Subsection 2 amended  
Subsection 3, unnumbered paragraph 1 designated as subsection 3, paragraph a  
Subsection 3, unnumbered paragraph 3 amended and designated as subsection 3, paragraph b

**53.10 Absentee voting at the commissioner's office.**

Not more than forty days before the date of the primary election or the general election, the commissioner shall provide facilities for absentee voting in person at the commissioner's office. This service shall also be provided for other elections as soon as the ballots are ready, but in no case shall absentee ballots be available more than forty days before an election.

Each person who wishes to vote by absentee ballot at the commissioner's office shall first sign an application for a ballot including the following information: name, current address, and the election for which the ballot is requested. The person may report a change of address or other information on the person's voter registration record at that time. The registered voter shall immediately mark the ballot; enclose the ballot in a secrecy envelope, if necessary, and seal it in an affidavit envelope; subscribe to the affidavit on the reverse side of the envelope; and return the absentee ballot to the commissioner. The commissioner shall record the numbers appearing on the application and affidavit envelope along with the name of the registered voter.

During the hours when absentee ballots are available in the office of the commissioner, the posting of political signs is prohibited within three hundred feet of the absentee voting site. No electioneering shall be allowed within the sight or hearing of voters at the absentee voting site.

2007 Acts, ch 215, §224  
Unnumbered paragraph 2 amended

**53.11 Satellite absentee voting stations.**

1. a. Satellite absentee voting stations may be established throughout the cities and county at the direction of the commissioner and shall be established upon receipt of a petition signed by not less than one hundred eligible electors requesting that a satellite absentee voting station be established at a location to be described on the petition. However, if a special election is scheduled in the county on a date that falls between the date of the regular city election and the date of the city runoff election, the commissioner is not required to establish a satellite absentee voting station for the city runoff election.

b. A satellite absentee voting station estab-

lished by petition must be open at least one day for a minimum of six hours. A satellite absentee voting station established at the direction of the commissioner or by petition may remain open until five p.m. on the day before the election.

2. A petition requesting a satellite absentee voting station must be filed by the following deadlines:

a. For a primary or general election, no later than five p.m. on the forty-seventh day before the election.

b. For the regular city election or a city primary election, no later than five p.m. on the thirtieth day before the election.

c. For a city runoff election, no later than five p.m. on the twenty-first day before the election.

d. For the regular school election, no later than five p.m. on the thirtieth day before the election.

e. For a special election, no later than thirty-two days before the special election.

3. Procedures for absentee voting at satellite absentee voting stations shall be the same as specified in section 53.10 for voting at the commissioner's office. Additional procedures shall be prescribed by rule by the state commissioner.

4. During the hours when absentee ballots are available at a satellite absentee voting station, the posting of political signs is prohibited within three hundred feet of the satellite absentee voting station. Electioneering shall not be allowed within the sight or hearing of voters at the satellite absentee voting station.

2007 Acts, ch 112, §1 - 3  
Subsection 1 amended  
Subsection 2, paragraph b amended  
Subsection 2, NEW paragraph c and former paragraphs c and d redesignated as d and e

**53.17 Mailing or delivering ballot.**

1. The sealed envelope containing the absentee ballot shall be enclosed in a carrier envelope which shall be securely sealed. The sealed carrier envelope shall be returned to the commissioner by one of the following methods:

a. The sealed carrier envelope may be delivered by the registered voter, by the voter's designee, or by the special precinct election officials designated pursuant to section 53.22, subsection 1, to the commissioner's office no later than the time the polls are closed on election day. However, if delivered by the voter's designee, the envelope shall be delivered within seventy-two hours of retrieving it from the voter or before the closing of the polls on election day, whichever is earlier.

b. The sealed carrier envelope may be mailed to the commissioner by the registered voter or by the voter's designee. If mailed by the voter's designee, the envelope must be mailed within seventy-two hours of retrieving it from the voter or within time to be postmarked not later than the day before the election, whichever is earlier.

2. In order for the ballot to be counted, the car-

rier envelope must be received in the commissioner's office before the polls close on election day or be clearly postmarked by an officially authorized postal service not later than the day before the election and received by the commissioner not later than noon on the Monday following the election.

3. If the law authorizing the election specifies that the supervisors canvass the votes earlier than the Monday following the election, absentee ballots returned through the mail must be received not later than the time established for the canvass by the board of supervisors for that election. The commissioner shall contact the post office serving the commissioner's office at the latest practicable hour before the canvass by the board of supervisors for that election, and shall arrange for absentee ballots received in that post office but not yet delivered to the commissioner's office to be brought to the commissioner's office before the canvass for that election by the board of supervisors.

4. When a person designated by the voter retrieves a completed absentee ballot from the voter, the designee shall, upon request of the voter, fill out a receipt to be retained by the voter. The state commissioner shall prescribe a form for receipts required by this subsection. The receipt shall include all of the following:

a. The name of the voter's designee.

b. The date and time the completed absentee ballot was received from the voter.

c. The name and date of the election for which the absentee ballot is being voted.

d. The name of the political party, candidate, or committee for which the designee is acting as an actual or implied agent, if applicable.

e. A telephone number at which the voter's designee may be contacted.

f. A statement that the completed absentee ballot will be delivered to the commissioner's office within seventy-two hours of retrieving it from the voter or before the closing of the polls on election day, whichever is earlier, or that the completed absentee ballot will be mailed to the commissioner within seventy-two hours of retrieving it from the voter or within time to be postmarked not later than the day before the election, whichever is earlier.

2007 Acts, ch 59, §27, 38; 2007 Acts, ch 215, §225 - 228  
Subsection 1, paragraph a stricken and rewritten  
Subsection 1, paragraph b amended  
Subsection 1, paragraph c stricken  
Subsection 4 stricken and rewritten  
Subsection 5 stricken

**53.18 Manner of preserving ballot and application — review of affidavit — replacement ballots.**

1. When the return carrier envelope containing the completed absentee ballot is received by the commissioner, the commissioner shall at once record receipt of such ballot. Absentee ballots shall be stored in a secure place until they are de-



livered to the absentee and special voters precinct board.

2. If the commissioner receives the return carrier envelope containing the completed absentee ballot by five p.m. on the Saturday before the election for general and primary elections and by five p.m. on the Friday before the election for all other elections, the commissioner shall open the envelope to review the affidavit for any deficiencies. If the affidavit contains a deficiency that would cause the ballot to be rejected, the commissioner shall, within twenty-four hours of the time the envelope was received, notify the voter of that fact and that the voter may correct the deficiency by five p.m. on the day before the election.

3. If the affidavit envelope is open when received by the commissioner, or has been opened and resealed, or if the ballot is not enclosed in the affidavit envelope, the commissioner shall immediately notify the voter of that fact and that the voter's absentee ballot shall not be counted unless the voter applies for a replacement ballot and returns the replacement ballot in the time permitted under section 53.17, subsection 2. The replacement ballot application shall be the same as is required for an application under section 53.2. If the information on the replacement ballot application matches the information on the original application, the voter shall be allowed to complete a replacement absentee ballot. The same serial number that was assigned to the records of the original absentee ballot application shall be used on the envelope and records of the replacement ballot. The affidavit envelope containing the completed replacement ballot shall be marked "Replacement ballot". The affidavit envelope containing the original ballot shall be marked "Defective ballot" and the replacement ballot and replacement ballot application shall be attached to the original application and affidavit envelope containing the original ballot and shall be stored in a secure place until they are delivered to the absentee and special voters precinct board, notwithstanding sections 53.26 and 53.27.

4. The state commissioner of elections shall adopt rules for implementation of this section.

2007 Acts, ch 215, §229  
Section amended

**53.19 Listing absentee ballots.**

The commissioner shall maintain a list of the absentee ballots provided to registered voters, the serial number appearing on the unsealed envelope, the date the application for the absentee ballot was received, and the date the absentee ballot was sent to the registered voter requesting the absentee ballot.

The commissioner shall provide each precinct election board with a list of all registered voters from that precinct who have received an absentee ballot. The precinct officials shall immediately designate on the election register those registered

voters who have received an absentee ballot and are not entitled to vote in person at the polls.

However, any registered voter who has received an absentee ballot and not returned it may surrender the absentee ballot to the precinct officials and vote in person at the polls. The precinct officials shall mark the uncast absentee ballot "void" and return it to the commissioner. Any registered voter who has been sent an absentee ballot by mail but for any reason has not received it or who has not brought the ballot to the polls may appear at the voter's precinct polling place on election day and shall cast a ballot in accordance with section 49.81. Any registered voter who has been notified by the commissioner pursuant to section 53.18 of the need to correct a deficiency on the affidavit or to apply for and vote a replacement absentee ballot and who has not corrected the deficiency or voted a replacement absentee ballot may appear at the voter's precinct polling place on election day and shall cast a ballot in accordance with section 49.81.

2007 Acts, ch 215, §230  
Unnumbered paragraph 3 amended

**53.21 Replacement of lost or spoiled absentee ballots.**

1. A voter who has requested an absentee ballot may obtain a replacement ballot if the voter declares that the original ballot was lost or did not arrive. The commissioner upon receipt of a written or oral request for a replacement ballot shall provide a duplicate ballot. The same serial number that was assigned to the records of the original absentee ballot request shall be used on the envelopes and records of the replacement ballot.

2. a. The commissioner shall include with the replacement ballot two copies of a statement in substantially the following form:

The absentee ballot which I requested on ..... (date) has been lost or was never received. If I find this absentee ballot I will return it, unvoted, to the commissioner.

.....  
(Signature of voter)

.....  
(Date)

b. The voter shall enclose one copy of the above statement in the return carrier envelope with the affidavit envelope and retain a copy for the voter's records.

3. a. A voter who spoils an absentee ballot may return it to the commissioner. The outside of the return envelope shall be marked "SPOILED BALLOT". The commissioner shall replace the ballot in the manner provided in this section for lost ballots.

b. An absentee ballot returned to the commissioner without a designation that the ballot was

spoiled shall not be replaced.

2007 Acts, ch 215, §231  
 Unnumbered paragraph 1 editorially numbered as subsection 1  
 Unnumbered paragraphs 2 and 3 editorially designated as subsection 2,  
 paragraph a, unnumbered paragraphs 1 and 2  
 Unnumbered paragraph 4 amended and editorially designated as para-  
 graph b of subsection 2  
 Unnumbered paragraphs 5 and 6 editorially designated as subsection 3,  
 paragraphs a and b

### 53.22 Balloting by confined persons.

1. *a.* (1) A registered voter who has applied for an absentee ballot, in a manner other than that prescribed by section 53.10 or 53.11, and who is a resident or patient in a health care facility or hospital located in the county to which the application has been submitted shall be delivered the appropriate absentee ballot by two special precinct election officers, one of whom shall be a member of each of the political parties referred to in section 49.13, who shall be appointed by the commissioner from the election board panel for the special precinct established by section 53.20. The special precinct election officers shall be sworn in the manner provided by section 49.75 for election board members, shall receive compensation as provided in section 49.20 and shall perform their duties during the ten calendar days preceding the election and on election day if all ballots requested under section 53.8, subsection 3, have not previously been delivered and returned.

(2) If materials are prepared for the two special precinct election officials, a list shall be made of all voters to whom ballots are to be delivered. The list shall be sent with the officials who deliver the ballots and shall include spaces to indicate whether the person was present at the hospital or health care facility when the officials arrived, whether the person requested assistance from the officials, whether the person was assisted by another person of the voter's choice, the time that the ballot was returned to the officials, and any other notes the officials deem necessary.

(3) The officials shall also be issued a supply of extra ballots to replace spoiled ballots. Receipts shall be issued in substantially the same form as receipts issued to precinct election officials pursuant to section 49.65. All ballots shall be accounted for and shall be returned to the commissioner. Separate envelopes shall be provided for the return of spoiled ballots and unused ballots.

*b.* If an applicant under this subsection notifies the commissioner that the applicant will not be available at the health care facility or hospital address at any time during the ten-day period immediately prior to the election, but will be available there at some earlier time, the commissioner shall direct the two special precinct election officers to deliver the applicant's ballot at an appropriate time prior to the ten-day period immediately preceding the election. If a person who so requested an absentee ballot has been dismissed

from the health care facility or hospital, the special precinct election officers may take the ballot to the voter if the voter is currently residing in the county.

*c.* The special precinct election officers shall travel together in the same vehicle and both shall be present when an applicant casts an absentee ballot. If either or both of the special precinct election officers fail to appear at the time the duties set forth in this section are to be performed, the commissioner shall at once appoint some other person, giving preference to persons designated by the respective county chairpersons of the political parties described in section 49.13, to carry out the requirements of this section. The persons authorized by this subsection to deliver an absentee ballot to an applicant, if requested, may assist the applicant in filling out the ballot as permitted by section 49.90. After the voter has securely sealed the marked ballot in the envelope provided and has subscribed to the oath, the voted absentee ballots shall be deposited in a sealed container which shall be returned to the commissioner on the same day the ballots are voted. On election day the officers shall return the sealed container by the time the polls are closed.

2. Any registered voter who becomes a patient or resident of a hospital or health care facility in the county where the voter is registered to vote within three days prior to the date of any election or on election day may request an absentee ballot during that period or on election day. As an alternative to the application procedure prescribed by section 53.2, the registered voter may make the request directly to the officers who are delivering and returning absentee ballots under this section. Alternatively, the request may be made by telephone to the office of the commissioner not later than four hours before the close of the polls. If the requester is found to be a registered voter of that county, these officers shall deliver the appropriate absentee ballot to the registered voter in the manner prescribed by this section.

3. For any election except a primary or general election or a special election to fill a vacancy under section 69.14, the commissioner may, as an alternative to subsection 1, mail an absentee ballot to an applicant under this section to be voted and returned to the commissioner in accordance with this chapter. This subsection only applies to applications for absentee ballots from a single health care facility or hospital if there are no more than two applications from that facility or hospital.

4. The commissioner shall mail an absentee ballot to a registered voter who has applied for an absentee ballot and who is a patient or resident of a hospital or health care facility outside the county in which the voter is registered to vote.

5. *a.* If the registered voter becomes a patient or resident of a hospital or health care facility outside the county where the voter is registered to

vote within three days before the date of any election or on election day, the voter may designate a person to deliver and return the absentee ballot. The designee may be any person the voter chooses except that no candidate for any office to be voted upon for the election for which the ballot is requested may deliver a ballot under this subsection. The request for an absentee ballot may be made by telephone to the office of the commissioner not later than four hours before the close of the polls. If the requester is found to be a registered voter of that county, the ballot shall be delivered by mail or by the person designated by the voter. An application form shall be included with the absentee ballot and shall be signed by the voter and returned with the ballot.

*b.* Absentee ballots voted under this subsection shall be delivered to the commissioner no later than the time the polls are closed on election day. If the ballot is returned by mail the carrier envelope must be received by the time the polls close, or clearly postmarked by an officially authorized postal service not later than the day before the election and received by the commissioner no later than the time established for the canvass by the board of supervisors for that election.

2007 Acts, ch 59, §28, 38  
2007 amendment to subsection 1, paragraph a, subparagraph (1) applies to elections held on or after January 1, 2008; 2007 Acts, ch 59, §38  
Subsection 1, paragraph a, unnumbered paragraph 1 amended and designated as subsection 1, paragraph a, subparagraph (1)  
Subsection 1, paragraph a, unnumbered paragraphs 2 and 3 designated as subsection 1, paragraph a, subparagraphs (2) and (3)  
Subsection 5, unnumbered paragraphs 1 and 2 designated as subsection 5, paragraphs a and b

### **53.23 Special precinct election board.**

1. The election board of the absentee ballot and special voters precinct shall be appointed by the commissioner in the manner prescribed by sections 49.12 and 49.13, except that the number of precinct election officials appointed to the board shall be sufficient to complete the counting of absentee ballots by ten p.m. on election day.

2. The board's powers and duties shall be the same as those provided in chapter 50 for precinct election officials in regular precinct polling places. However, the election board of the special precinct shall receive from the commissioner and count all absentee ballots for all precincts in the county; when two or more political subdivisions in the county hold elections simultaneously the special precinct election board shall count absentee ballots cast in all of the elections so held. The tally list shall be recorded on forms prescribed by the state commissioner.

3. *a.* The commissioner shall set the convening time for the board, allowing a reasonable amount of time to complete counting all absentee ballots by ten p.m. on election day. The commissioner may direct the board to meet on the day before the election solely for the purpose of reviewing the absentee voters' affidavits appearing on the sealed affidavit envelopes. If in the commission-

er's judgment this procedure is necessary due to the number of absentee ballots received, the members of the board may open the sealed affidavit envelopes and remove the secrecy envelope containing the ballot, but under no circumstances shall a secrecy envelope be opened before the board convenes on election day. If the affidavit envelopes are opened before election day, two observers, one appointed by each of the two political parties referred to in section 49.13, subsection 2, shall witness the proceedings. The observers shall be appointed by the county chairperson or, if the county chairperson fails to make an appointment, by the state chairperson. However, if either or both political parties fail to appoint an observer, the commissioner may continue with the proceedings.

*b.* If the board finds any ballot not enclosed in a secrecy envelope and the ballot is folded in such a way that any of the votes cast on the ballot are visible, the two special precinct election officials, one from each of the two political parties referred to in section 49.13, subsection 2, shall place the ballot in a secrecy envelope. No one shall examine the ballot. Each of the special precinct election officials shall sign the secrecy envelope.

4. The room where members of the special precinct election board are engaged in counting absentee ballots during the hours the polls are open shall be policed so as to prevent any person other than those whose presence is authorized by this subsection from obtaining information about the progress of the count. The only persons who may be admitted to that room are the members of the board, one challenger representing each political party, one observer representing any nonparty political organization or any candidate nominated by petition pursuant to chapter 45 or any other nonpartisan candidate in a city or school election appearing on the ballot of the election in progress, one observer representing persons supporting a public measure appearing on the ballot and one observer representing persons opposed to such measure, and the commissioner or the commissioner's designee. It shall be unlawful for any of these persons to communicate or attempt to communicate, directly or indirectly, information regarding the progress of the count at any time before the polls are closed.

5. The special precinct election board shall preserve the secrecy of all absentee and provisional ballots. After the affidavits on the envelopes have been reviewed and the qualifications of the persons casting the ballots have been determined, those that have been accepted for counting shall be opened. The ballots shall be removed from the affidavit envelopes without being unfolded or examined, and then shall be thoroughly intermingled, after which they shall be unfolded and tabulated. If secrecy folders or envelopes are used with provisional paper ballots, the ballots shall be removed from the secrecy folders after the ballots have been intermingled.

6. The special precinct election board shall not release the results of its tabulation on election day until all of the ballots it is required to count on that day have been counted, nor release the tabulation of provisional ballots accepted and counted under chapter 50 until that count has been completed.

2007 Acts, ch 59, §29, 38; 2007 Acts, ch 215, §232  
See Code editor's note to §29A.28  
2007 amendment to subsection 3, paragraph a, by 2007 Acts, ch 59, §29, applies to elections held on or after January 1, 2008; 2007 Acts, ch 59, §38  
Subsection 3 amended

#### **53.24 Counties using voting machines.**

In counties which provide the special precinct election board with voting machines, the affidavit envelopes shall be opened by the board and the ballots shall, without being unfolded, be thoroughly intermingled, after which they shall be unfolded and, under the personal supervision of precinct election officials of each of the political parties, be registered on voting machines the same as if the absent voter had been present and voted in person, except that a tally of the write-in votes may be kept in the tally list rather than on the machine. When two or more political subdivisions in the county are holding separate elections simultaneously, the commissioner may arrange the machine so that the absentee and provisional ballots for more than one election may be recorded on the same machine.

2007 Acts, ch 215, §233  
Section amended

#### **53.25 Rejecting ballot.**

If the absentee voter's affidavit is found to be insufficient, if the applicant is not a duly registered voter in such precinct, if the affidavit envelope contains more than one ballot of any one kind, or if the voter has voted in person, such vote shall not be accepted or counted. If the affidavit envelope is open, or has been opened and resealed, or if the ballot is not enclosed in the affidavit envelope, and an affidavit envelope with the same serial number and marked "Replacement ballot" is not attached as provided in section 53.18, the vote shall not be accepted or counted.

If the absentee ballot is rejected prior to the opening of the affidavit envelope, the voter casting the ballot shall be notified by a precinct election official by the time the canvass is completed of the reason for the rejection on a form prescribed by the state commissioner of elections.

2007 Acts, ch 215, §234  
Section amended

#### **53.27 Rejection of ballot — return of envelope.**

If the ballot is rejected, the affidavit envelope, with the affidavit of the voter endorsed thereon, shall be returned with the rejected ballot in the envelope endorsed "Defective ballots".

2007 Acts, ch 215, §235  
Section amended

#### **53.31 Challenges.**

1. Any person qualified to vote at the election in progress may challenge the qualifications of a person casting an absentee ballot by submitting a written challenge to the commissioner no later than five p.m. on the Friday before the election. It is the duty of the special precinct officials to challenge the absentee ballot of any person whom the official knows or suspects is not duly qualified. Challenges by members of the special precinct election board or observers present pursuant to section 53.23 may be made at any time before the close of the polls on election day. The challenge shall state the reasons for which the challenge is being submitted and shall be signed by the challenger. When a challenge is received the absentee ballot shall be set aside for consideration by the special precinct election board when it meets as required by section 50.22.

2. The commissioner shall immediately send a written notice to the elector whose qualifications have been challenged. The notice shall be sent to the address at which the challenged elector is registered to vote. If the ballot was mailed to the challenged elector, the notice shall also be sent to the address to which the ballot was mailed if it is different from the elector's registration address. The notice shall advise the elector of the reason for the challenge, the date and time that the special precinct election board will reconvene to determine challenges, and that the elector has the right to submit written evidence of the elector's qualifications. The notice shall include the telephone number of the commissioner's office. If the commissioner has access to a facsimile machine, the notice shall include the telephone number of the facsimile machine. As far as possible, other procedures for considering provisional ballots shall be followed.

2007 Acts, ch 59, §30, 38  
Challenges, §49.79 – 49.81  
2007 amendment to subsection 1 applies to elections held on or after January 1, 2008; 2007 Acts, ch 59, §38  
Unnumbered paragraph 1 amended and designated as subsection 1  
Unnumbered paragraph 2 designated as subsection 2

#### **53.32 Ballot of deceased voter.**

When it shall be made to appear by due proof to the precinct election officials that any elector, who has so marked and forwarded a ballot, has died before the affidavit envelope is opened, then the ballot of such deceased voter shall be endorsed, "Rejected because voter is dead", and be returned to the commissioner; but the casting of the ballot of a deceased voter shall not invalidate the election.

2007 Acts, ch 215, §236  
Section amended

**53.35 Refusal to return ballot.** Repealed by 2007 Acts, ch 59, § 37, 38.

Repeal of section applies to elections held on or after January 1, 2008; 2007 Acts, ch 59, §38

#### **53.37 Definitions.**

1. This division is intended to implement the

federal Uniform and Overseas Citizens Absentee Voting Act, 42 U.S.C. § 1973ff et seq.

2. The term “armed forces of the United States”, as used in this division, shall mean the army, navy, marine corps, coast guard, and air force of the United States.

3. For the purpose of absentee voting only, there shall be included in the term “armed forces of the United States” the following:

a. Spouses and dependents of members of the armed forces while in active service.

b. Members of the merchant marine of the United States and their spouses and dependents.

c. Civilian employees of the United States in all categories serving outside the territorial limits of the several states of the United States and the District of Columbia and their spouses and dependents when residing with or accompanying them, whether or not the employee is subject to the civil service laws and the Classification Act of 1949, and whether or not paid from funds appropriated by the Congress.

d. Members of religious groups or welfare agencies assisting members of the armed forces, who are officially attached to and serving with the armed forces, and their spouses and dependents.

e. Citizens of the United States who do not fall under any of the categories described in paragraphs “a” through “d”, but who are entitled to register and vote pursuant to section 48A.5, subsection 4.

4. For the purposes of this division, “qualified voter” means a person who is included within the term “armed forces of the United States” as described in this section, who would be qualified to register to vote under section 48A.5, subsection 2, except for residency, and who is not disqualified from registering to vote and voting under section 48A.6.

2007 Acts, ch 59, §31, 38; 2007 Acts, ch 215, §243

Unnumbered paragraphs 1 – 4 designated as subsections 1 – 4

Former subsections 1 – 5 redesignated as subsection 3, paragraphs a –

e

Subsection 3, paragraph e amended

### 53.38 What constitutes registration.

Whenever a ballot is requested pursuant to section 53.39 or 53.45 on behalf of a voter in the armed forces of the United States, the affidavit upon the affidavit envelope of such voter, if the voter is found to be an eligible elector of the county to which the ballot is submitted, shall constitute a sufficient registration under chapter 48A. A completed federal postcard registration and federal absentee ballot request form submitted by such eligible elector shall also constitute a sufficient registration under chapter 48A. The commissioner shall place the voter’s name on the registration record as a registered voter if it does not already appear there. The identification requirements of section 48A.8 and the verification requirements of section 48A.25A do not apply to persons who regis-

ter to vote under this division.

2007 Acts, ch 59, §32, 38; 2007 Acts, ch 215, §237

See Code editor’s note to §29A.28

2007 amendment to this section by 2007 Acts, ch 59, §32, applies to elections held on or after January 1, 2008; 2007 Acts, ch 59, §38

Section amended

### 53.40 Request requirements — transmission of ballot.

1. a. A request in writing for a ballot may be made by any member of the armed forces of the United States who is or will be a qualified voter on the day of the election at which the ballot is to be cast, at any time before the election. Any member of the armed forces of the United States may request ballots for all elections to be held through the next two general elections. The request may be made by using the federal postcard application form and indicating that the applicant wishes to receive ballots for all elections as permitted by state law. The county commissioner shall send the applicant a ballot for each election held after the application is received and through the next two general elections. The commissioner shall forward a copy of the absentee ballot request to other commissioners who are responsible under section 47.2, subsection 2, for conducting elections in which the applicant is eligible to vote.

b. Unless the request specifies otherwise, a request for the primary election shall also be considered a request for the general election. In the case of the general election, request may be made not more than seventy days before the election, for and on behalf of a voter in the armed forces of the United States by a spouse, parent, parent-in-law, adult brother, adult sister, or adult child of the voter, residing in the county of the voter’s residence. However, a request made by other than the voter may be required to be made on forms prescribed by the state commissioner.

c. A request shall show the residence (including street address, if any) of the voter, the age of the voter, and length of residence in the city or township, county and state, and shall designate the address to which the ballot is to be sent, and in the case of the primary election, the party affiliation of such voter. Such request shall be made to the commissioner of the county of the voter’s residence, provided that if the request is made by the voter to any elective state, city or county official, the said official shall forward it to the commissioner of the county of the voter’s residence, and such request so forwarded shall have the same force and effect as if made direct to the commissioner by the voter.

2. The commissioner shall immediately on the fortieth day prior to the particular election transmit ballots to the voter by mail or otherwise, postage prepaid, as directed by the state commissioner, requests for which are in the commissioner’s hands at that time, and thereafter so transmit ballots immediately upon receipt of requests. A re-

quest for ballot for the primary election which does not state the party affiliation of the voter making the request is void and of no effect. A request which does not show that the person for whom a ballot is requested will be a qualified voter in the precinct in which the ballot is to be cast on the day of the election for which the ballot is requested, shall not be honored. However, a request which states the age and the city, including street address, if any, or township, and county where the voter resides, and which shows a sufficient period of residence, is sufficient to show that the person is a qualified voter. A request by the voter containing substantially the information required is sufficient.

3. If the affidavit on the affidavit envelope shows that the affiant is not a qualified voter on the day of the election at which the ballot is offered for voting, the envelope shall not be opened, but the envelope and ballot contained in the envelope shall be preserved and returned by the precinct election officials to the commissioner, who shall preserve them for the period of time and under the conditions provided for in sections 50.12 through 50.15 and section 50.19.

2007 Acts, ch 215, §238  
 Unnumbered paragraphs 1 – 3 editorially designated as subsection 1, paragraphs a – c  
 Unnumbered paragraph 4 editorially numbered as subsection 2  
 Unnumbered paragraph 5 amended and editorially numbered as subsection 3

#### **53.41 Records by commissioner — excess requests or ballots.**

1. The commissioner of each county shall establish and maintain a record of all requests for ballots which are made, and of all ballots transmitted, and the manner of transmittal, from and received in the commissioner's office under the provisions of this division.

2. If more than one request for absent voter's ballot for a particular election is made to the commissioner before the ballots are ready to mail by or on behalf of a voter in the armed forces of the United States, the last request received shall be honored, except that if one of the requests is made by the voter, the request of the voter shall be honored in preference to a request made on the voter's behalf by another.

3. Not more than one ballot shall be transmitted by the commissioner to any voter for a particular election unless after the ballot has been mailed the voter reports a change in the address to which the ballot should be sent. A ballot shall be mailed using a serial number that indicates that this is a replacement sent to an updated address. The original ballot shall be counted only if the replacement ballot does not arrive. If the commissioner receives more than one absent voter's ballot, provided for by this division, from or purporting to be from any one voter for a particular election, all of the ballots so received from or purporting to be from such voter are void, and the

commissioner shall not deliver any of the ballots to the precinct election officials, but shall retain them in the commissioner's office, and preserve them for the period and under the conditions provided for in sections 50.12 through 50.15 and section 50.19.

2007 Acts, ch 59, §33, 38  
 2007 amendment to this section applies to elections held on or after January 1, 2008; 2007 Acts, ch 59, §38  
 Section amended

#### **53.44 Affidavit to be signed and returned.**

The affidavit on the affidavit envelope used in connection with voting by absentee ballot under this division by members of the armed forces of the United States need not be notarized or witnessed, but the affidavit on such envelope shall be completed and signed by the voter.

Absentee ballots issued under this division shall be returned in the same manner and within the same time limits specified in section 53.17.

2007 Acts, ch 215, §239  
 Unnumbered paragraph 1 amended

#### **53.49 Applicable to armed forces and other citizens.**

The provisions of this division as to absent voting shall apply only to absent voters in the armed forces of the United States as defined for the purpose of absentee voting in section 53.37. The provisions of sections 53.1 through 53.34 shall apply to all other voters not members of the armed forces of the United States.

2007 Acts, ch 59, §34, 38  
 2007 amendment to this section applies to elections held on or after January 1, 2008; 2007 Acts, ch 59, §38  
 Section amended

#### **53.53 Federal write-in ballots.**

1. Upon receipt of an official federal write-in ballot, the commissioner shall examine the voter's written declarations on the envelope. If it appears that the voter is eligible to vote under the provisions of this division, has applied in a timely fashion for an absentee ballot, and has complied with all requirements for the federal write-in ballot, then the federal write-in ballot is valid unless the Iowa absentee ballot is received in time to be counted.

2. The voter's declaration or affirmation on the federal write-in ballot constitutes a sufficient registration under the provisions of chapter 48A and the commissioner shall place the voter's name on the registration record as a registered voter, if the voter's name does not already appear on the registration record. No witness to the oath is necessary.

3. Federal write-in absentee ballots may be used in primary and general elections, and in special elections held pursuant to section 69.14. The federal write-in absentee ballot transmission envelope may also serve as an application for voter registration if the information submitted is sufficient to register the person to vote and the applicant is otherwise eligible to vote under the provi-

sions of this division.

4. The federal write-in ballot shall not be counted if any of the following apply:

a. The ballot was submitted from within the United States, unless the voter is a member of the armed forces of the United States as described in section 53.37, subsection 2, on active duty, and away from the voter's county of residence for purposes of serving on active duty.

b. The voter's application for a regular absentee ballot was received by the commissioner less than fourteen days prior to the election.

c. The voter's completed regular or special Iowa absentee ballot was received by the deadline for return of absentee ballots established in section 53.17.

d. The voter's federal write-in ballot was received after the deadline for return of absentee ballots established in section 53.17.

5. A federal write-in ballot received by the state commissioner of elections shall be forwarded immediately to the appropriate county commissioner. However, if the state commissioner re-

ceives a federal write-in ballot after election day and before noon on the Monday following an election, the state commissioner shall at once verify that the voter has complied with the requirements of this section and that the voter's federal write-in ballot is eligible to be counted. If the ballot is eligible to be counted, the state commissioner shall notify the appropriate county commissioner and make arrangements for the ballot to be transmitted to the county for counting. If the ballot is not eligible to be counted, the state commissioner shall mail the ballot to the appropriate commissioner along with notification that the ballot is ineligible to be counted. The county commissioner shall keep the ballot with the other records of the election.

6. The county commissioner shall notify a voter when the voter's federal write-in ballot was not counted and shall give the voter the reason the ballot was not counted.

2007 Acts, ch 59, §35, 36, 38

2007 amendments to subsection 4, paragraphs a and b, apply to elections held on or after January 1, 2008; 2007 Acts, ch 59, §38  
Subsection 4, paragraphs a and b amended

## CHAPTER 58

### CONTESTING ELECTIONS OF GOVERNOR AND LIEUTENANT GOVERNOR

#### 58.1 Notice — grounds.

The contestant for the office of governor shall, within thirty days after the proclamation of the result of the election, deliver to the presiding officer of each house of the general assembly a notice of

intent to contest, and a specification of the grounds of such contest, as provided in chapter 62.

2007 Acts, ch 59, §17, 19

2007 amendment to this section applies to elections held on or after January 1, 2008; 2007 Acts, ch 59, §19  
Section amended

## CHAPTER 68A

### CAMPAIGN FINANCE

#### 68A.102 Definitions.

As used in this chapter, unless the context otherwise requires:

1. "*Ballot issue*" means a question, other than the nomination or election of a candidate to a public office, which has been approved by a political subdivision or the general assembly or is required by law to be placed before the voters of the political subdivision by a commissioner of elections, or to be placed before the voters by the state commissioner of elections.

2. "*Board*" means the Iowa ethics and campaign disclosure board established under section 68B.32.

3. "*Campaign function*" means any meeting related to a candidate's campaign for election.

4. "*Candidate*" means any individual who has taken affirmative action to seek nomination or election to a public office and shall also include any

judge standing for retention in a judicial election.

5. "*Candidate's committee*" means the committee designated by the candidate for a state, county, city, or school office to receive contributions in excess of seven hundred fifty dollars in the aggregate, expend funds in excess of seven hundred fifty dollars in the aggregate, or incur indebtedness on behalf of the candidate in excess of seven hundred fifty dollars in the aggregate in any calendar year.

6. "*Clearly identified*" means that a communication contains an unambiguous reference to a particular candidate or ballot issue, including but not limited to one or more of the following:

a. Use of the name of the candidate or ballot issue.

b. Use of a photograph or drawing of the candidate, or the use of a particular symbol associated with a specific ballot issue.

c. Use of a candidate's initials, nickname, of-

fice, or status as a candidate, or use of acronym, popular name, or characterization of a ballot issue.

7. “*Commissioner*” means the county auditor of each county, who is designated as the county commissioner of elections pursuant to section 47.2.

8. “*Committee*” includes a political committee and a candidate’s committee.

9. “*Consultant*” means a person who provides or procures services including but not limited to consulting, public relations, advertising, fundraising, polling, managing or organizing services.

10. “*Contribution*” means:

a. A gift, loan, advance, deposit, rebate, refund, or transfer of money or a gift in kind.

b. The payment, by any person other than a candidate or political committee, of compensation for the personal services of another person which are rendered to a candidate or political committee for any such purpose.

“*Contribution*” shall not include services provided without compensation by individuals volunteering their time on behalf of a candidate’s committee or political committee or a state or county statutory political committee except when organized or provided on a collective basis by a business, trade association, labor union, or any other organized group or association. “*Contribution*” shall not include refreshments served at a campaign function so long as such refreshments do not exceed fifty dollars in value or transportation provided to a candidate so long as its value computed at the current rate of reimbursement allowed under the standard mileage rate method for computation of business expenses pursuant to the Internal Revenue Code does not exceed one hundred dollars in value in any one reporting period. “*Contribution*” shall not include something provided to a candidate for the candidate’s personal consumption or use and not intended for or on behalf of the candidate’s committee.

11. “*County office*” includes the office of drainage district trustee.

12. “*County statutory political committee*” means a committee as described in section 43.100 that accepts contributions in excess of seven hundred fifty dollars in the aggregate, makes expenditures in excess of seven hundred fifty dollars in the aggregate, or incurs indebtedness in excess of seven hundred fifty dollars in the aggregate in any one calendar year to expressly advocate the nomination, election, or defeat of a candidate for public office.

13. “*Disclosure report*” means a statement of contributions received, expenditures made, and indebtedness incurred on forms prescribed by rules adopted by the board in accordance with chapter 17A.

14. “*Express advocacy*” or to “*expressly advo-*

*cate*” means communication that can be characterized according to at least one of the following descriptions:

a. The communication is political speech made in the form of a contribution.

b. In advocating the election or defeat of one or more clearly identified candidates or the passage or defeat of one or more clearly identified ballot issues, the communication includes explicit words that unambiguously indicate that the communication is recommending or supporting a particular outcome in the election with regard to any clearly identified candidate or ballot issue.

15. “*Fundraising event*” means any campaign function to which admission is charged or at which goods or services are sold.

16. “*National political party*” means a party which meets the definition of a political party established for this state by section 43.2, and which also meets the statutory definition of the term “political party” or a term of like import in at least twenty-five other states of the United States.

17. “*Person*” means, without limitation, any individual, corporation, government or governmental subdivision or agency, business trust, estate, trust, partnership or association, labor union, or any other legal entity.

18. “*Political committee*” means either of the following:

a. A committee, but not a candidate’s committee, that accepts contributions in excess of seven hundred fifty dollars in the aggregate, makes expenditures in excess of seven hundred fifty dollars in the aggregate, or incurs indebtedness in excess of seven hundred fifty dollars in the aggregate in any one calendar year to expressly advocate the nomination, election, or defeat of a candidate for public office, or to expressly advocate the passage or defeat of a ballot issue.

b. An association, lodge, society, cooperative, union, fraternity, sorority, educational institution, civic organization, labor organization, religious organization, or professional organization that accepts contributions in excess of seven hundred fifty dollars in the aggregate, makes expenditures in excess of seven hundred fifty dollars in the aggregate, or incurs indebtedness in excess of seven hundred fifty dollars in the aggregate in any one calendar year to expressly advocate the nomination, election, or defeat of a candidate for public office, or to expressly advocate the passage or defeat of a ballot issue.

19. “*Political purpose*” or “*political purposes*” means the express advocacy of a candidate or ballot issue.

20. “*Public office*” means any state, county, city, or school office filled by election.

21. “*State income tax liability*” means the state individual income tax imposed under section 422.5, less the amounts of nonrefundable credits



allowed under chapter 422, division II.

22. “*State statutory political committee*” means a committee as defined in section 43.111.

2007 Acts, ch 14, §1

“State commissioner” defined, §39.3

Subsection 10, paragraph b, unnumbered paragraph 2 amended

### **68A.201 Organization statement.**

1. Every committee, as defined in this chapter, shall file a statement of organization within ten days from the date of its organization. Unless formal organization has previously occurred, a committee is deemed to have organized as of the date that committee transactions exceed the financial activity threshold established in section 68A.102, subsection 5 or 18. If committee transactions exceed the financial activity threshold prior to the due date for filing a disclosure report as established under section 68A.402, the committee shall file a disclosure report whether or not a statement of organization has been filed by the committee.

2. The statement of organization shall include:

*a.* The name, purpose, mailing address, and telephone number of the committee. The committee name shall not duplicate the name of another committee organized under this section. For candidate’s committees filing initial statements of organization on or after July 1, 1995, the candidate’s name shall be contained within the committee name.

*b.* The name, mailing address, and position of the committee officers.

*c.* The name, address, office sought, and the party affiliation of all candidates whom the committee is supporting and, if the committee is supporting the entire ticket of any party, the name of the party. If, however, the committee is supporting several candidates who are not identified by name or are not of the same political affiliation, the committee may provide a statement of purpose in lieu of candidate names or political party affiliation.

*d.* Such other information as may be required by this chapter or rules adopted pursuant to this chapter.

*e.* A signed statement by the treasurer of the committee and the candidate, in the case of a candidate’s committee, which shall verify that they are aware of the requirement to file disclosure reports if the committee, the committee officers, the candidate, or both the committee officers and the candidate receive contributions in excess of seven hundred fifty dollars in the aggregate, make expenditures in excess of seven hundred fifty dollars in the aggregate, or incur indebtedness in excess of seven hundred fifty dollars in the aggregate in a calendar year to expressly advocate the nomination, election, or defeat of any candidate for public office. In the case of political committees, statements shall be made by the treasurer of the com-

mittee and the chairperson.

*f.* The identification of any parent entity or other affiliates or sponsors.

*g.* The name of the financial institution in which the committee receipts will be deposited.

3. Any change in information previously submitted in a statement of organization or notice in case of dissolution of the committee shall be reported to the board not more than thirty days from the date of the change or dissolution.

4. A list, by office and district, of all candidates who have filed an affidavit of candidacy in the office of the secretary of state shall be prepared by the secretary of state and delivered to the board not more than ten days after the last day for filing nomination papers.

5. *a.* When either a committee or organization not organized as a committee under this section makes a contribution to a committee organized in Iowa, that committee or organization shall disclose each contribution in excess of fifty dollars to the board.

*b.* A committee or organization not organized as a committee under this section that is not registered and filing full disclosure reports of all financial activities with the federal election commission or another state’s disclosure commission shall register and file full disclosure reports with the board pursuant to this chapter. The committee or organization shall either appoint an eligible Iowa elector as committee or organization treasurer, or shall maintain all committee funds in an account in a financial institution located in Iowa.

*c.* A committee that is currently filing a disclosure report in another jurisdiction shall either file a statement of organization under subsections 1 and 2 and file disclosure reports under section 68A.402, or shall file one copy of a verified statement with the board within fifteen days of the contribution being made.

*d.* The verified statement shall be on forms prescribed by the board and shall attest that the committee is filing reports with the federal election commission or in a jurisdiction with reporting requirements which are substantially similar to those of this chapter, and that the contribution is made from an account that does not accept contributions that would be in violation of section 68A.503.

*e.* The verified statement shall include the complete name, address, and telephone number of the contributing committee, the state or federal jurisdiction under which it is registered or operates, the identification of any parent entity or other affiliates or sponsors, its purpose, the name and address of an Iowa resident authorized to receive service of original notice, the name and address of the receiving committee, the amount of the cash or in-kind contribution, and the date the contribu-

tion was made.

2007 Acts, ch 14, §2, 3  
Subsections 1 and 5 amended

**68A.203 Committee treasurer and chairperson — duties.**

1. *a.* Every candidate's committee shall appoint a treasurer who shall be an Iowa resident who has reached the age of majority. Every political committee, state statutory political committee, and county statutory political committee shall appoint both a treasurer and a chairperson, each of whom shall have reached the age of majority.

*b.* Every candidate's committee shall maintain all of the committee's funds in bank accounts in a financial institution located in Iowa. Every political committee, state statutory political committee, and county statutory political committee shall either have an Iowa resident as treasurer or maintain all of the committee's funds in bank accounts in a financial institution located in Iowa.

*c.* An expenditure shall not be made by the treasurer or treasurer's designee for or on behalf of a committee without the approval of the chairperson of the committee, or the candidate. Expenditures shall be remitted to the designated recipient within fifteen days of the date of the issuance of the payment.

2. *a.* An individual who receives contributions for a committee without the prior authorization of the chairperson of the committee or the candidate shall be responsible for either rendering the contributions to the treasurer within fifteen days of the date of receipt of the contributions, or depositing the contributions in the account maintained by the committee within seven days of the date of receipt of the contributions.

*b.* A person, other than a candidate or committee officer, who receives contributions for a committee shall, not later than fifteen days from the date of receipt of the contributions or on demand of the treasurer, render to the treasurer the contributions and an account of the total of all contributions, including the name and address of each person making a contribution in excess of ten dollars, the amount of the contributions, and the date on which the contributions were received.

*c.* The treasurer shall deposit all contributions within seven days of receipt by the treasurer in an account maintained by the committee.

*d.* All funds of a committee shall be segregated from any other funds held by officers, members, or associates of the committee or the committee's candidate. However, if a candidate's committee receives contributions only from the candidate, or if a permanent organization temporarily engages in activity that qualifies it as a political committee and all expenditures of the organization are made from existing general operating funds and funds are not solicited or received for this purpose from sources other than operating funds, then that committee is not required to maintain a separate

account in a financial institution.

*e.* Committee funds or committee property shall not be used for the personal benefit of a candidate, officer, member, or associate of the committee. The funds of a committee are not attachable for the personal debt of the committee's candidate or an officer, member, or associate of the committee.

3. The treasurer of a committee shall keep a detailed and exact account of:

*a.* All contributions made to or for the committee.

*b.* The name and mailing address of every person making contributions in excess of ten dollars, and the date and amount of the contribution.

*c.* All disbursements made from contributions by or on behalf of the committee.

*d.* The name and mailing address of every person to whom any expenditure is made, the purpose of the expenditure, the date and amount of the expenditure and the name and address of, and office sought by each candidate, if any, on whose behalf the expenditure was made. Notwithstanding this paragraph, the treasurer may keep a miscellaneous account for disbursements of less than five dollars which need only show the amount of the disbursement so long as the aggregate miscellaneous disbursements to any one person during a calendar year do not exceed one hundred dollars.

*e.* Notwithstanding the provisions of subsection 3, paragraph "d", of this section, when an expenditure is made by a committee in support of the entire state or local political party ticket, only the name of the party shall be given.

4. The treasurer and candidate in the case of a candidate's committee, and the treasurer and chairperson in the case of a political committee, shall preserve all records required to be kept by this section for a period of five years. However, a committee is not required to preserve any records for more than three years from the certified date of dissolution of the committee. For purposes of this section, the five-year period shall commence with the due date of the disclosure report covering the activity documented in the records.

2007 Acts, ch 14, §4  
Subsection 2 amended

**68A.401 Reports filed with board.**

1. All statements and reports required to be filed under this chapter shall be filed with the board as provided in section 68A.402, subsection 1. The board shall post on its internet website all statements and reports filed under this chapter. For purposes of this section, the term "statement" does not include a bank statement.

*a.* A candidate's committee of a candidate for statewide office or the general assembly shall file all statements and reports in an electronic format by 4:30 p.m. of the day the filing is due and according to rules adopted by the board. Any other candidate or political committee may submit the state-

ments and reports in an electronic format as prescribed by rule.

b. If the board determines that a violation of this subsection has occurred, the board may impose any of the remedies or penalties provided for under section 68B.32D, except that the board shall not refer any complaint or supporting information of a violation of this section to the attorney general or any county attorney for prosecution.

2. The board shall retain filed statements and reports for at least five years from the date of the election in which the committee is involved, or at least five years from the certified date of dissolution of the committee, whichever date is later.

3. The candidate of a candidate's committee, or the chairperson of any other committee, is responsible for filing statements and reports under this chapter. The board shall send notice to a committee that has failed to file a disclosure report at the time required under section 68A.402. A candidate of a candidate's committee, or the chairperson of any other committee, may be subject to a civil penalty for failure to file a disclosure report required under section 68A.402.

4. Political committees expressly advocating the nomination, election, or defeat of candidates for both federal office and any elected office created by law or the Constitution of the State of Iowa shall file statements and reports with the board in addition to any federal reports required to be filed with the board. However, a political committee that is registered and filing full disclosure reports of all financial activities with the federal election commission may file verified statements as provided in section 68A.201.

2007 Acts, ch 14, §5; 2007 Acts, ch 80, §1, 2, 5  
2007 amendment adding paragraphs a and b to subsection 1 applies to committees that file a statement of organization on or after January 1, 2010, and to all committees, regardless of when they file statements of organization, on January 1, 2012; 2007 Acts, ch 80, §5  
See Code editor's note to §29A.28  
Subsections 1 and 3 amended

**68A.402 Disclosure report due dates — permanent organization temporarily engaging in political activity required to file reports.**

1. *Filing methods.* Each committee shall file with the board reports disclosing information required under this section on forms prescribed by rule. Reports shall be filed on or before the required due dates by using any of the following methods: mail bearing a United States postal service postmark, hand-delivery, facsimile transmission, electronic mail attachment, or electronic filing as prescribed by rule. Any report that is required to be filed five days prior to an election must be physically received by the board to be considered timely filed. For purposes of this section, “physically received” means the report is either

electronically filed using the board's electronic filing system or is received by the board prior to 4:30 p.m. on the report due date.

2. *Statewide office, general assembly, and county elections.*

a. *Election year.* A candidate's committee of a candidate for statewide office, the general assembly, or county office shall file reports in an election year as follows:

Report due:	Covering period:
May 19	January 1 through May 14
July 19	May 15 or Wednesday preceding primary election through July 14
October 19	July 15 through October 14
January 19 (next calendar year)	October 15 or Wednesday preceding general election through December 31

b. *Supplementary report — statewide and general assembly elections.* A candidate's committee of a candidate for statewide office or the general assembly shall file a supplementary report in a year in which a primary, general, or special election for that office is held. The supplementary reports shall be filed if contributions are received after the close of the period covered by the last report filed prior to that primary, general, or special election if any of the following applies:

(1) The committee of a candidate for governor receives ten thousand dollars or more.

(2) The committee of a candidate for any other statewide office receives five thousand dollars or more.

(3) The committee of a candidate for the general assembly receives one thousand dollars or more.

The amount of any contribution causing a supplementary report under this paragraph “b” shall include the estimated fair market value of any in-kind contribution. The report shall be filed by the Friday immediately preceding the election and be current through the Tuesday immediately preceding the election.

c. *Nonelection year.* A candidate's committee of a candidate for statewide office, the general assembly, or county office shall file reports in a nonelection year as follows:

Report due:	Covering period:
January 19	January 1 through December 31 of the previous year

3. *City offices.*

a. *Election year.* A candidate's committee of a candidate for city office shall file a report in an election year as follows:

Report due: Five days before primary election	Covering period: Date of initial activity through ten days before primary election
Five days before general election	Nine days before primary election through ten days before general election
Five days before runoff election (if applicable)	Nine days before the general election through ten days before the runoff election
January 19 (next calendar year)	Cutoff date from previously filed report through December 31

b. *Nonelection year.* A candidate's committee of a candidate for city office shall file a report in a nonelection year as follows:

Report due: January 19 (next calendar year)	Covering period: January 1 through December 31 of nonelection year
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4. *School board and other political subdivision elections.*

a. *Election year.* A candidate's committee of a candidate for school board or any other political subdivision office, except for county and city office, shall file a report in an election year as follows:

Report due: Five days before election	Covering period: Date of initial activity through ten days before election
January 19 (next calendar year)	Nine days before election through December 31

b. *Nonelection year.* A candidate's committee of a candidate for school board or any other political subdivision office, except for county and city office, shall file a report in a nonelection year as follows:

Report due: January 19 (next calendar year)	Covering period: January 1 through December 31 of nonelection year
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5. *Special elections.*

a. A candidate's committee shall file a report by the fifth day prior to a special election that is current through the tenth day prior to the special election.

b. *Special elections — nonelection year.* A

candidate's committee at a special election shall file a report in a nonelection year as follows:

Report due: January 19 (next calendar year)	Covering period: January 1 through December 31 of nonelection year
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6. *Statutory political committees.*

a. A state statutory political committee shall file a report on the same dates as a candidate's committee is required to file reports under subsection 2, paragraphs "a" and "c".

b. A county statutory political committee shall file a report on the same dates as a candidate's committee is required to file reports under subsection 2, paragraphs "a" and "c".

7. *Political committees.*

a. *Statewide office and general assembly elections.*

*Election year.* A political committee expressly advocating the nomination, election, or defeat of candidates for statewide office or the general assembly shall file a report on the same dates as a candidate's committee is required to file reports under subsection 2, paragraph "a".

*Nonelection year.* A political committee expressly advocating the nomination, election, or defeat of candidates for statewide office or the general assembly shall file a report as follows:

Report due: July 19	Covering period: January 1 through June 30
January 19 (next calendar year)	July 1 through December 31

b. *County elections.* A political committee expressly advocating the nomination, election, or defeat of candidates for county office shall file reports on the same dates as a candidate's committee is required to file reports under subsection 2, paragraphs "a" and "c".

c. *City elections.* A political committee expressly advocating the nomination, election, or defeat of candidates for city office shall file reports on the same dates as candidates for city office are required to file reports under subsection 3.

d. *School board and other political subdivision elections.* A political committee expressly advocating the nomination, election, or defeat of candidates for school board or other political subdivision office, except for county office or city office, shall file reports on the same dates as candidates for school board or other political subdivision office are required to file reports under subsection 4.

8. *Political committees — ballot issues.* A political committee expressly advocating the passage or defeat of a ballot issue shall file reports on the same dates as a candidate's committee is required to file reports under subsection 2, para-

graphs “a” and “c” and another report five days before an election covering the period from the previous report or date of initial activity through ten days before the election.

9. *Permanent organizations.* A permanent organization temporarily engaging in activity described in section 68A.102, subsection 18, shall organize a political committee and shall keep the funds relating to that political activity segregated from its operating funds. The political committee shall file reports on the appropriate due dates as required by this section. The reports filed under this subsection shall identify the source of the original funds used for a contribution made to a candidate or a candidate’s committee. When the permanent organization ceases to be involved in the political activity, the permanent organization shall dissolve the political committee. As used in this subsection, “*permanent organization*” means an organization that is continuing, stable, and enduring, and was originally organized for purposes other than engaging in election activities.

10. *Election year defined.* As used in this section, “*election year*” means a year in which the name of the candidate or ballot issue that is expressly advocated for or against appears on any ballot to be voted on by the electors of the state of Iowa. For state and county statutory political committees, and all other political committees except for political committees that advocate for or against ballot issues, “*election year*” means a year in which primary and general elections are held.

2007 Acts, ch 14, §6; 2007 Acts, ch 61, §1; 2007 Acts, ch 65, §1; 2007 Acts, ch 80, §3

See Code editor’s note to §29A.28  
Subsections 1 and 8 amended

### 68A.403 Reports signed and preserved.

1. Unless filed in an electronic format in accordance with section 68A.401, subsection 1, a report or statement required to be filed under this chapter shall be signed by the person filing the report.

2. A copy of every report or statement shall be preserved by the person filing it or the person’s successor for at least three years following the filing of the report or statement.

2007 Acts, ch 80, §4  
Subsection 1 amended

### 68A.406 Campaign signs — yard signs.

1. Campaign signs may be placed with the permission of the property owner on any of the following:

- a. Residential property.
- b. Agricultural land owned by individuals or by a family farm operation as defined in section 9H.1, subsections 8, 9, and 10.
- c. Property leased for residential purposes including, but not limited to, apartments, condominiums, and houses.
- d. Vacant lots owned by a private individual.

e. Property owned by an organization that is not a prohibited contributor under section 68A.503.

f. Property leased by a candidate, committee, or an organization established to advocate the nomination, election, or defeat of a candidate or the passage or defeat of a ballot issue that has not yet registered pursuant to section 68A.201, when the property is used as campaign headquarters or a campaign office and the placement of the sign is limited to the space that is actually leased.

2. Campaign signs shall not be placed on any of the following:

a. Any property owned by the state or the governing body of a county, city, or other political subdivision of the state, including all property considered the public right-of-way. Upon a determination by the board that a sign has been improperly placed, the sign shall be removed by highway authorities as provided in section 318.5, or by county or city law enforcement authorities in a manner consistent with section 318.5.

b. Property owned by a prohibited contributor under section 68A.503 unless the sign advocates the passage or defeat of a ballot issue or is exempted under subsection 1.

c. On any property without the permission of the property owner.

d. On election day either on the premises of any polling place or within three hundred feet of any outside door of any building affording access to any room where the polls are held, or of any outside door of any building affording access to any hallway, corridor, stairway, or other means of reaching the room where the polls are held.

e. Within three hundred feet of an absentee voting site during the hours when absentee ballots are available in the office of the county commissioner of elections as provided in section 53.10.

f. Within three hundred feet of a satellite absentee voting station during the hours when absentee ballots are available at the satellite absentee voting station as provided in section 53.11.

Paragraphs “d”, “e”, and “f” shall not apply to the posting of signs on private property not a polling place, except that the placement of a sign on a motor vehicle, trailer, or semitrailer, or any attachment to a motor vehicle, trailer, or semitrailer parked on public property within three hundred feet of a polling place, which sign is more than ninety square inches in size, is prohibited.

3. Campaign signs with dimensions of thirty-two square feet or less are exempt from the attribution statement requirement in section 68A.405. Campaign signs in excess of thirty-two square feet, or signs that are affixed to buildings or vehicles regardless of size except for bumper stickers, are required to include the attribution statement required by section 68A.405. The placement or erection of campaign signs shall be exempt from

the requirements of chapter 480 relating to underground facilities information.

2007 Acts, ch 14, §7; 2007 Acts, ch 215, §244  
Subsection 2, unnumbered paragraph 2 amended

**68A.501 Funds from unknown source — escheat.**

The expenditure of funds from an unknown or unidentifiable source received by a candidate or committee is prohibited. Such funds received by a candidate or committee shall escheat to the state. Any candidate or committee receiving such contributions shall remit such contributions to the board which shall forward it to the treasurer of state for deposit in the general fund of the state. Persons requested to make a contribution at a fundraising event shall be advised that it is illegal to make a contribution in excess of ten dollars unless the person making the contribution also provides the person's name and address.

2007 Acts, ch 14, §8  
Section amended

**68A.503 Financial institution, insurance company, and corporation restrictions.**

1. Except as provided in subsections 3 and 4, it is unlawful for an insurance company, savings and loan association, bank, credit union, or corporation organized pursuant to the laws of this state, the United States, or any other state, territory, or foreign country, whether for profit or not, or an officer, agent, or representative acting for such insurance company, savings and loan association, bank, credit union, or corporation, to contribute any money, property, labor, or thing of value, directly or indirectly, to a committee, or to expressly advocate that the vote of an elector be used to nominate, elect, or defeat a candidate for public office, except that such resources may be so expended in connection with a utility franchise election held pursuant to section 364.2, subsection 4, or a ballot issue. All such expenditures are subject to the disclosure requirements of this chapter.

2. *a.* Except as provided in subsection 3, it is unlawful for a member of a committee, or its employee or representative, except a ballot issue committee, or for a candidate for office or the representative of the candidate, to solicit, request, or knowingly receive from an insurance company, savings and loan association, bank, credit union, or corporation organized pursuant to the laws of this state, the United States, or any other state, territory, or foreign country, whether for profit or not, or its officer, agent, or representative, any money, property, or thing of value belonging to the insurance company, savings and loan association, bank, or corporation for campaign expenses, or to expressly advocate that the vote of an elector be used to nominate, elect, or defeat a candidate for public office.

*b.* This section does not restrain or abridge the freedom of the press or prohibit the consideration and discussion in the press of candidacies, nominations, public officers, or public questions.

*c.* This section does not apply to a nonprofit organization communicating with its own members. The board shall adopt rules pursuant to chapter 17A to administer this paragraph.

*d.* The board shall adopt rules prohibiting the owner, publisher, or editor of a sham newspaper from using the sham newspaper to promote in any way the candidacy of such a person for any public office. As used in this paragraph, “*sham newspaper*” means a newspaper that does not meet the requirements set forth in section 618.3 and “*owner*” means a person having an ownership interest exceeding ten percent of the equity or profits of the newspaper.

3. It is lawful for an insurance company, savings and loan association, bank, credit union, and corporation organized pursuant to the laws of this state, the United States, or any other state or territory, whether or not for profit, and for their officers, agents, and representatives, to use the money, property, labor, or any other thing of value of the entity for the purposes of soliciting its stockholders, administrative officers, and members for contributions to a committee sponsored by that entity and of financing the administration of a committee sponsored by that entity. The entity's employees to whom the foregoing authority does not extend may voluntarily contribute to such a committee but shall not be solicited for contributions. All contributions made under this subsection are subject to the disclosure requirements of this chapter. A committee member, committee employee, committee representative, candidate, or representative referred to in subsection 2 lawfully may solicit, request, and receive money, property and other things of value from a committee sponsored by an insurance company, savings and loan association, bank, credit union, or corporation as permitted by this subsection.

4. The prohibitions in subsections 1 and 2 shall not apply to an insurance company, savings and loan association, bank, credit union, or corporation engaged in any of the following activities:

*a.* Using its funds to encourage registration of voters and participation in the political process or to publicize public issues, provided that no part of those contributions are used to expressly advocate the nomination, election, or defeat of any candidate for public office.

*b.* Using its funds to expressly advocate the passage or defeat of ballot issues so long as the transactions are reported as required under section 68A.402.

*c.* The placement of campaign signs under section 68A.406.

5. For purposes of this section, “*committee*”

shall include statutory political committees organized under chapter 43, and nonparty political organizations organized under chapter 44.

6. Any person convicted of a violation of any of

the provisions of this section shall be guilty of a serious misdemeanor.

2007 Acts, ch 61, §2  
Subsection 2 amended

## CHAPTER 68B

### GOVERNMENT ETHICS AND LOBBYING

#### **68B.3 When public bids required — disclosure of income from other sales.**

1. An official, a state employee, a member of the general assembly, or a legislative employee shall not sell, in any one occurrence, any goods or services having a value in excess of two thousand dollars to any state agency unless the sale is made pursuant to an award or contract let after public notice and competitive bidding.

2. This section does not apply to the publication of resolutions, advertisements, or other legal propositions or notices in newspapers designated pursuant to law for the publication of legal propositions or notices and for which rates are fixed pursuant to law.

3. An official or member of the general assembly who sells goods or services to a political subdivision of the state shall disclose whether income has been received from commissions from the sales in the manner provided under section 68B.35.

4. For purposes of this section, “services” does not include instruction at an accredited education institution if the person providing the instruction meets the minimum education and licensing requirements established for instructors at the education institution.

2007 Acts, ch 5, §1  
Section amended

#### **68B.22 Gifts accepted or received.**

1. Except as otherwise provided in this section, a public official, public employee, or candidate, or that person’s immediate family member shall not, directly or indirectly, accept or receive any gift or series of gifts from a restricted donor. A public official, public employee, candidate, or the person’s immediate family member shall not solicit any gift or series of gifts from a restricted donor at any time.

2. Except as otherwise provided in this section, a restricted donor shall not, directly or indirectly, offer or make a gift or a series of gifts to a public official, public employee, or candidate. Except as otherwise provided in this section, a restricted donor shall not, directly or indirectly, join with one or more other restricted donors to offer or make a gift or a series of gifts to a public official, public employee, or candidate.

3. A restricted donor may give, and a public of-

ficial, public employee, or candidate, or the person’s immediate family member, may accept an otherwise prohibited nonmonetary gift or a series of otherwise prohibited nonmonetary gifts and not be in violation of this section if the nonmonetary gift or series of nonmonetary gifts is donated within thirty days to a public body, the department of administrative services, or a bona fide educational or charitable organization, if no part of the net earnings of the educational or charitable organization inures to the benefit of any private stockholder or other individual. All such items donated to the department of administrative services shall be disposed of by assignment to state agencies for official use or by public sale. A person subject to section 8.7 that receives a gift pursuant to this subsection shall file a report pursuant to section 8.7.

4. Notwithstanding subsections 1 and 2, the following gifts may be received by public officials, public employees, candidates, or members of the immediate family of public officials, public employees, or candidates:

a. Contributions to a candidate or a candidate’s committee.

b. Informational material relevant to a public official’s or public employee’s official functions, such as books, pamphlets, reports, documents, periodicals, or other information that is recorded in a written, audio, or visual format.

c. Anything received from a person related within the fourth degree by kinship or marriage, unless the donor is acting as an agent or intermediary for another person not so related.

d. An inheritance.

e. Anything available or distributed free of charge to members of the general public without regard to the official status of the recipient. This paragraph shall not apply to receptions described under paragraph “f.”

f. Items received from a bona fide charitable, professional, educational, or business organization to which the donee belongs as a dues-paying member, if the items are given to all members of the organization without regard to individual members’ status or positions held outside of the organization and if the dues paid are not inconsequential when compared to the items received.

g. Actual expenses of a donee for food, beverages, registration, travel, and lodging for a meet-

ing, which is given in return for participation in a panel or speaking engagement at the meeting when the expenses relate directly to the day or days on which the donee has participation or presentation responsibilities.

*h.* Plaques or items of negligible resale value which are given as recognition for the public services of the recipient.

*i.* Nonmonetary items with a value of three dollars or less that are received from any one donor during one calendar day.

*j.* Items or services solicited by or given to a state, national, or regional government organization in which the state of Iowa or a political subdivision of the state is a member for purposes of a business or educational conference, seminar, or other meeting; or solicited by or given to state, national, or regional government organizations, whose memberships and officers are primarily composed of state or local government officials or employees, for purposes of a business or educational conference, seminar, or other meeting.

*k.* Items or services received by members or representatives of members at a regularly scheduled event that is part of a business or educational conference, seminar, or other meeting that is sponsored and directed by any state, national, or regional government organization in which the state of Iowa or a political subdivision of the state is a member, or received at such an event by members or representatives of members of state, national, or regional government organizations whose memberships and officers are primarily composed of state or local government officials or employees.

*l.* Funeral flowers or memorials to a church or nonprofit organization.

*m.* Gifts which are given to a public official or public employee for the public official's or public employee's wedding or twenty-fifth or fiftieth wedding anniversary.

*n.* Payment of salary or expenses by a person's employer or the firm in which the person is a member for the cost of attending a meeting of a subunit of an agency when the person whose expenses are being paid serves on a board, commission, committee, council, or other subunit of the agency and the person is not entitled to receive compensation or reimbursement of expenses from the state or a political subdivision of the state for attending the meeting.

*o.* Gifts of food, beverages, travel, or lodging received by a public official or public employee if all of the following apply:

(1) The public official or public employee is officially representing an agency in a delegation whose sole purpose is to attract a specific new business to locate in the state, encourage expansion or retention of an existing business already established in the state, or to develop markets for Iowa businesses or products.

(2) The donor of the gift is not the business or businesses being contacted. However, food or beverages provided by the business or businesses being contacted which are consumed during the meeting are not a gift under section 68B.2, subsection 9, or this section.

(3) The public official or public employee plays a significant role in the presentation to the business or businesses on behalf of the public official's or public employee's agency.

*p.* Gifts other than food, beverages, travel, and lodging received by a public official or public employee which are received from a person who is a citizen of a country other than the United States and are given during a ceremonial presentation or as a result of a custom of the other country and are of personal value only to the donee.

*q.* Actual registration costs for informational meetings or sessions which assist a public official or public employee in the performance of the person's official functions. The costs of food, drink, lodging and travel are not "registration costs" under this paragraph. Meetings or sessions which a public official or public employee attends for personal or professional licensing purposes are not "informational meetings or sessions which assist a public official or public employee in the performance of the person's official functions" under this paragraph.

*r.* Gifts of food, beverage, and entertainment received by public officials or public employees at a function where every member of the general assembly has been invited to attend, when the function takes place during a regular session of the general assembly. A sponsor of a function under this paragraph shall file a report disclosing the total amount expended, including in-kind expenditures, on food, beverage, and entertainment for the function. The report shall be filed with the person or persons designated by the secretary of the senate and the chief clerk of the house within five business days following the date of the function. The person or persons designated by the secretary of the senate and the chief clerk of the house shall forward a copy of each report to the board.

5. For purposes of determining the value of an item given or received, an individual who gives an item on behalf of more than one person shall not divide the value of the item by the number of persons on whose behalf the item is given and the value of an item received shall be the value actually received by the donee.

6. A gift shall not be considered to be received by a public official or public employee if the state is the donee of the gift and the public official or public employee is required to receive the gift on behalf of the state as part of the performance of the person's duties of office or employment.

7. A person shall not request, and a member of the general assembly shall not agree, that a mem-



ber of the general assembly sell tickets for a community-related social event that is to be held for members of the general assembly in Polk county during the legislative session. This section shall not apply to Polk county or city of Des Moines events that are open to the public generally or are held only for Polk county or city of Des Moines legislators.

8. Except as otherwise provided in subsection 4, an organization or association which has as one of its purposes the encouragement of the passage, defeat, introduction, or modification of legislation shall not give and a member of the general assembly shall not receive food, beverages, registration, or scheduled entertainment with a per person value in excess of three dollars.

2007 Acts, ch 5, §2

Reports on gifts received on behalf of state, see §8.7

Solicitations for capitol complex projects, see §8A.108

Subsection 3 amended

#### **68B.32A Duties of the board.**

The duties of the board shall include, but are not limited to, all of the following:

1. Adopt rules pursuant to chapter 17A and conduct hearings under sections 68B.32B and 68B.32C and chapter 17A, as necessary to carry out the purposes of this chapter, chapter 68A, and section 8.7.

2. Develop, prescribe, furnish, and distribute any forms necessary for the implementation of the procedures contained in this chapter, chapter 68A, and section 8.7 for the filing of reports and statements by persons required to file the reports and statements under this chapter and chapter 68A.

The board may establish a process to assign signature codes to a person or committee for purposes of facilitating an electronic filing procedure. The assignment of signature codes shall be kept confidential, notwithstanding section 22.2. The board and persons electronically filing reports and statements shall keep assigned signature codes or subsequently selected signature codes confidential. Signature codes shall not be subject to state security policies regarding frequency of change.

3. Review the contents of all campaign finance disclosure reports and statements filed with the board and promptly advise each person or committee of errors found. The board may verify information contained in the reports with other parties to assure accurate disclosure. The board may also verify information by requesting that a candidate or committee produce copies of receipts, bills, log-books, or other memoranda of reimbursements of expenses to a candidate for expenses incurred during a campaign. The board, upon its own motion, may initiate action and conduct a hearing relating to requirements under chapter 68A.

4. Receive and file registration and reports from lobbyists of the executive branch of state government, client disclosure from clients of lobbyists of the executive branch of state government, per-

sonal financial disclosure information from officials and employees in the executive branch of state government who are required to file personal financial disclosure information under this chapter, and gift, bequest, and grant disclosure information pursuant to section 8.7. The board, upon its own motion, may initiate action and conduct a hearing relating to reporting requirements under this chapter or section 8.7.

5. Prepare and publish a manual setting forth examples of approved uniform systems of accounts and approved methods of disclosure for use by persons required to file statements and reports under this chapter, chapter 68A, and section 8.7. The board shall also prepare and publish other educational materials, and any other reports or materials deemed appropriate by the board. The board shall annually provide all officials and state employees with notification of the contents of this chapter, chapter 68A, and section 8.7 by distributing copies of educational materials to each agency of state government under the board's jurisdiction.

6. Assure that the statements and reports which have been filed in accordance with this chapter, chapter 68A, and section 8.7 are available for public inspection and copying during the regular office hours of the office in which they are filed and not later than by the end of the day during which a report or statement was received. Rules adopted relating to public inspection and copying of statements and reports may include a charge for any copying and mailing of the reports and statements, shall provide for the mailing of copies upon the request of any person and upon prior receipt of payment of the costs by the board, and shall prohibit the use of the information copied from reports and statements for any commercial purpose by any person.

7. Require that the candidate of a candidate's committee, or the chairperson of a political committee, is responsible for filing disclosure reports under chapter 68A, and shall receive notice from the board if the committee has failed to file a disclosure report at the time required under chapter 68A. A candidate of a candidate's committee, or the chairperson of a political committee, may be subject to a civil penalty for failure to file a disclosure report required under section 68A.402, subsection 1.

8. Establish and impose penalties, and recommendations for punishment of persons who are subject to penalties of or punishment by the board or by other bodies, for the failure to comply with the requirements of this chapter, chapter 68A, or section 8.7.

9. Determine, in case of dispute, at what time a person has become a candidate.

10. Preserve copies of reports and statements filed with the board for a period of five years from the date of receipt.

11. Establish a procedure for requesting and issuing board advisory opinions to persons subject to the authority of the board under this chapter, chapter 68A, or section 8.7. Local officials and local employees may also seek an advisory opinion concerning the application of the applicable provisions of this chapter. Advice contained in board advisory opinions shall, if followed, constitute a defense to a complaint alleging a violation of this chapter, chapter 68A, section 8.7, or rules of the board that is based on the same facts and circumstances.

12. Establish rules relating to ethical conduct for officials and state employees, including candidates for statewide office, and regulations governing the conduct of lobbyists of the executive branch of state government, including but not limited to conflicts of interest, abuse of office, misuse of public property, use of confidential information, participation in matters in which an official or state employee has a financial interest, and rejection of improper offers.

13. Impose penalties upon, or refer matters relating to, persons who discharge any employee, or who otherwise discriminate in employment against any employee, for the filing of a complaint with, or the disclosure of information to, the board if the employee has filed the complaint or made the disclosure in good faith.

14. Establish fees, where necessary, to cover the costs associated with preparing, printing, and distributing materials to persons subject to the authority of the board.

2007 Acts, ch 5, §3; 2007 Acts, ch 126, §15  
Subsections 4 and 6 amended

### **68B.32B Complaint procedures.**

1. Any person may file a complaint alleging that a candidate, committee, person holding a state office in the executive branch of state government, employee of the executive branch of state government, or other person has committed a violation of chapter 68A or rules adopted by the board. Any person may file a complaint alleging that a person holding a state office in the executive branch of state government, an employee of the executive branch of state government, or a lobbyist or a client of a lobbyist of the executive branch of state government has committed a violation of this chapter or rules adopted by the board. Any person may file a complaint alleging a violation of section 8.7 or rules adopted by the board. The board shall prescribe and provide forms for purposes of this subsection. A complaint must include the name and address of the complainant, a statement of the facts believed to be true that form the basis of the complaint, including the sources of information and approximate dates of the acts alleged, and a certification by the complainant under penalty of perjury that the facts stated to be true are true to the best of the complainant's knowledge.

2. The board staff shall review the complaint to determine if the complaint is sufficient as to form. If the complaint is deficient as to form, the complaint shall be returned to the complainant with a statement of the deficiency and an explanation describing how the deficiency may be cured. If the complaint is sufficient as to form, the complaint shall be referred for legal review.

3. Unless the chairperson of the board concludes that immediate notification would prejudice a preliminary investigation or subject the complainant to an unreasonable risk, the board shall mail a copy of the complaint to the subject of the complaint within three working days of the acceptance of the complaint. If a determination is made by the chairperson not to mail a copy of the complaint to the subject of the complaint within the three working days time period, the board shall approve and establish the time and conditions under which the subject will be informed of the filing and contents of the complaint.

4. Upon completion of legal review, the chairperson of the board shall be advised whether, in the opinion of the legal advisor, the complaint states an allegation which is legally sufficient. A legally sufficient allegation must allege all of the following:

a. Facts that would establish a violation of a provision of this chapter, chapter 68A, section 8.7, or rules adopted by the board.

b. Facts that would establish that the conduct providing the basis for the complaint occurred within three years of the complaint.

c. Facts that would establish that the subject of the complaint is a party subject to the jurisdiction of the board.

5. After receiving an evaluation of the legal sufficiency of the complaint, the chairperson shall refer the complaint to the board for a formal determination by the board of the legal sufficiency of the allegations contained in the complaint.

6. If the board determines that none of the allegations contained in the complaint are legally sufficient, the complaint shall be dismissed. The complainant shall be sent a notice of dismissal stating the reason or reasons for the dismissal. If a copy of the complaint was sent to the subject of the complaint, a copy of the notice shall be sent to the subject of the complaint. If the board determines that any allegation contained in the complaint is legally sufficient, the complaint shall be referred to the board staff for investigation of any legally sufficient allegations.

7. Notwithstanding subsections 1 through 6, the board may, on its own motion and without the filing of a complaint by another person, initiate investigations into matters that the board believes may be subject to the board's jurisdiction. This section does not preclude persons from providing information to the board for possible board-initiated investigation instead of filing a complaint.

8. The purpose of an investigation by the

board's staff is to determine whether there is probable cause to believe that there has been a violation of this chapter, chapter 68A, section 8.7, or of rules adopted by the board. To facilitate the conduct of investigations, the board may issue and seek enforcement of subpoenas requiring the attendance and testimony of witnesses and subpoenas requiring the production of books, papers, records, and other real evidence relating to the matter under investigation. Upon the request of the board, an appropriate county attorney or the attorney general shall assist the staff of the board in its investigation.

9. If the board determines on the basis of an investigation by board staff that there is probable cause to believe the existence of facts that would establish a violation of this chapter, chapter 68A, section 8.7, or of rules adopted by the board, the board may issue a statement of charges and notice of a contested case proceeding to the complainant and to the person who is the subject of the complaint, in the manner provided for the issuance of statements of charges under chapter 17A. If the board determines on the basis of an investigation by staff that there is no probable cause to believe that a violation has occurred, the board shall close the investigation, dismiss any related complaint, and the subject of the complaint shall be notified of the dismissal. If the investigation originated from a complaint filed by a person other than the board, the person making the complaint shall also be notified of the dismissal.

10. At any stage during the investigation or after the initiation of a contested case proceeding, the board may approve a settlement regarding an alleged violation. Terms of a settlement shall be reduced to writing and be available for public inspection. An informal settlement may provide for any remedy specified in section 68B.32D. However, the board shall not approve a settlement unless the board determines that the terms of the settlement are in the public interest and are consistent with the purposes of this chapter and rules of the board. In addition, the board may authorize board staff to seek informal voluntary compliance in routine matters brought to the attention of the board or its staff.

11. A complaint shall be a public record, but some or all of the contents may be treated as confidential under section 22.7, subsection 18, to the extent necessary under subsection 3 of this section. Information informally reported to the board and board staff which results in a board-initiated investigation shall be a public record but may be treated as confidential information consistent with the provisions of section 22.7, subsection 18. If the complainant, the person who provides information to the board, or the person who is the subject of an investigation publicly discloses the existence of an investigation, the board may publicly confirm the existence of the disclosed formal com-

plaint or investigation and, in the board's discretion, make the complaint or the informal referral public, as well as any other documents that were issued by the board to any party to the investigation. However, investigative materials may be furnished to the appropriate law enforcement authorities by the board at any time. Upon the commencement of a contested case proceeding by the board, all investigative material relating to that proceeding shall be made available to the subject of the proceeding. The entire record of any contested case proceeding initiated under this section shall be a public record.

12. Board records used to achieve voluntary compliance to resolve discrepancies and deficiencies shall not be confidential unless otherwise required by law.

2007 Acts, ch 126, §16  
Subsection 1 amended

### **68B.32C Contested case proceedings.**

1. Contested case proceedings initiated as a result of the issuance of a statement of charges pursuant to section 68B.32B, subsection 9, shall be conducted in accordance with the requirements of chapter 17A. Clear and convincing evidence shall be required to support a finding that a person has violated this chapter, section 8.7, or any rules adopted by the board pursuant to this chapter. A preponderance of the evidence shall be required to support a finding that a person has violated chapter 68A or any rules adopted by the board pursuant to chapter 68A. The case in support of the statement of charges shall be presented at the hearing by one of the board's attorneys or staff unless, upon the request of the board, the charges are prosecuted by another legal counsel designated by the attorney general. A person making a complaint under section 68B.32B, subsection 1, is not a party to contested case proceedings conducted relating to allegations contained in the complaint.

2. Hearings held pursuant to this chapter shall be heard by a quorum of the board, unless the board designates a board member or an administrative law judge to preside at the hearing. If a quorum of the board does not preside at the hearing, the board member or administrative law judge shall make a proposed decision. The board or presiding board member may be assisted by an administrative law judge in the conduct of the hearing and the preparation of a decision.

3. Upon a finding by the board that the party charged has violated this chapter, chapter 68A, section 8.7, or rules adopted by the board, the board may impose any penalty provided for by section 68B.32D. Upon a final decision of the board finding that the party charged has not violated this chapter, chapter 68A, section 8.7, or the rules of the board, the complaint shall be dismissed and the party charged and the original complainant, if any, shall be notified.

4. The right of an appropriate county attorney or the attorney general to commence and maintain a district court prosecution for criminal violations of the law is unaffected by any proceedings under this section.

5. The board shall adopt rules, pursuant to chapter 17A, establishing procedures to implement this section.

2007 Acts, ch 126, §17  
Subsection 3 amended

#### **68B.37 Lobbyist reporting.**

1. A lobbyist before the general assembly shall file with the general assembly, on forms prescribed by each house of the general assembly, a report disclosing all of the following:

*a.* The lobbyist's clients before the general assembly.

*b.* Contributions made to candidates for state office by the lobbyist during calendar months during the reporting period when the general assembly is not in session.

*c.* The recipient of the campaign contributions.

*d.* Expenditures made by the lobbyist for the purposes of providing the services enumerated under section 68B.2, subsection 13, paragraph "a", before the general assembly. For purposes of this paragraph, "expenditures" does not include expenditures made by any organization for publishing a newsletter or other informational release for its members.

2. A lobbyist before a state agency or the office of the governor shall file with the board, on forms prescribed by the board, a report disclosing all of the following:

*a.* The lobbyist's clients before the executive branch.

*b.* Contributions made to candidates for state office by the lobbyist during calendar months during the reporting period when the general assembly is not in session.

*c.* The recipient of the campaign contributions.

*d.* Expenditures made by the lobbyist for the purposes of providing the services enumerated under section 68B.2, subsection 13, paragraph "a", before the executive branch. For purposes of this paragraph, "expenditures" does not include expen-

ditures made by any organization for publishing a newsletter or other informational release for its members.

3. The reports by lobbyists before the general assembly shall be filed not later than twenty-five days following any month in which the general assembly is in session and thereafter on or before July 31, October 31, and January 31. The reports filed by a lobbyist before the general assembly shall contain information for the preceding calendar month or quarter or parts thereof during which the person was engaged in lobbying. Reports filed by lobbyists before a state agency shall be filed on or before April 30, July 31, October 31, and January 31, for the preceding calendar quarter or parts thereof during which the person was engaged in lobbying.

If a person cancels the person's lobbyist registration at any time during the calendar year, the reports required by this section are due on the dates required by this section or fifteen days after cancellation, whichever is earlier. The report due January 31 shall include all reportable items for the preceding calendar year in addition to containing the quarterly reportable items. A lobbyist who cancels the person's lobbyist registration before January 1 of a year shall file a report listing all reportable items for the year in which the cancellation was filed. A lobbyist who cancels the person's lobbyist registration between January 1 and January 15 of a year shall file a report listing all reportable items for the preceding year and so much of the month of January as has expired at the time of cancellation. However, if a lobbyist is a person who is designated to represent the interest of an organization as defined in section 68B.2, subsection 13, paragraph "a", subparagraph (2), but is not paid compensation for that representation and does not expend more than one thousand dollars as provided in section 68B.2, subsection 13, paragraph "a", subparagraph (4), the lobbyist shall only be required to file the report specified in this section once annually, which shall be performed at the time of filing the person's lobbyist registration form or forms.

2007 Acts, ch 22, §15  
Subsections 1 and 2 amended

## CHAPTER 69

### VACANCIES — REMOVAL — TERMS

#### **69.15 Board members — nonattendance — vacancy.**

1. Any person who has been appointed by the governor to any board under the laws of this state shall be deemed to have submitted a resignation from such office if either of the following events occurs:

*a.* The person does not attend three or more

consecutive regular meetings of such board. This paragraph does not apply unless the first and last of the consecutive meetings counted for this purpose are at least thirty days apart.

*b.* The person attends less than one-half of the regular meetings of such board within any period of twelve calendar months beginning on July 1 or January 1. This paragraph does not apply unless

such board holds at least four regular meetings during such period. This paragraph applies only to such a period beginning on or after the date when the person takes office as a member of such board.

2. If such person received no notice and had no knowledge of a regular meeting and gives the governor a sworn statement to that effect within ten days after the person learns of the meeting, such meeting shall not be counted for the purposes of this section.

3. The governor in the governor's discretion may accept or reject such resignation. If the gover-

nor accepts it, the governor shall notify such person, in writing, that the resignation is accepted pursuant to this section. The governor shall then make another appointment to such office. Such appointment shall be made in the same manner and for the same term as in the case of other vacancies caused by resignation from such office.

4. As used in this section, "board" includes any commission, committee, agency, or governmental body which has three or more members.

2007 Acts, ch 22, §16  
Section amended

## CHAPTER 70A

### FINANCIAL AND OTHER PROVISIONS FOR PUBLIC OFFICERS AND EMPLOYEES

#### **70A.28 Prohibitions relating to certain actions by state employees — penalty — civil remedies.**

1. A person who serves as the head of a state department or agency or otherwise serves in a supervisory capacity within the executive or legislative branch of state government shall not require an employee of the state to inform the person that the employee made a disclosure of information permitted by this section and shall not prohibit an employee of the state from disclosing any information to a member or employee of the general assembly or from disclosing information to any other public official or law enforcement agency if the employee reasonably believes the information evidences a violation of law or rule, mismanagement, a gross abuse of funds, an abuse of authority, or a substantial and specific danger to public health or safety. However, an employee may be required to inform the person that the employee made a disclosure of information permitted by this section if the employee represented that the disclosure was the official position of the employee's immediate supervisor or employer.

2. A person shall not discharge an employee from or take or fail to take action regarding an employee's appointment or proposed appointment to, promotion or proposed promotion to, or any advantage in, a position in a state employment system administered by, or subject to approval of, a state agency as a reprisal for a failure by that employee to inform the person that the employee made a disclosure of information permitted by this section, or for a disclosure of any information by that employee to a member or employee of the general assembly, a disclosure of information to the office of citizens' aide, or a disclosure of information to any other public official or law enforcement agency if the employee reasonably believes the information evidences a violation of law or rule, mismanage-

ment, a gross abuse of funds, an abuse of authority, or a substantial and specific danger to public health or safety. However, an employee may be required to inform the person that the employee made a disclosure of information permitted by this section if the employee represented that the disclosure was the official position of the employee's immediate supervisor or employer.

3. Subsections 1 and 2 do not apply if the disclosure of the information is prohibited by statute.

4. A person who violates subsection 1 or 2 commits a simple misdemeanor.

5. Subsection 2 may be enforced through a civil action.

a. A person who violates subsection 2 is liable to an aggrieved employee for affirmative relief including reinstatement, with or without back pay, or any other equitable relief the court deems appropriate, including attorney fees and costs.

b. When a person commits, is committing, or proposes to commit an act in violation of subsection 2, an injunction may be granted through an action in district court to prohibit the person from continuing such acts. The action for injunctive relief may be brought by an aggrieved employee or the attorney general.

6. Subsection 2 may also be enforced by an employee through an administrative action pursuant to the requirements of this subsection if the employee is not a merit system employee or an employee covered by a collective bargaining agreement. An employee eligible to pursue an administrative action pursuant to this subsection who is discharged, suspended, demoted, or otherwise receives a reduction in pay and who believes the adverse employment action was taken as a result of the employee's disclosure of information that was authorized pursuant to subsection 2, may file an appeal of the adverse employment action with the public employment relations board within thirty

calendar days following the later of the effective date of the action or the date a finding is issued to the employee by the office of the citizens' aide pursuant to section 2C.11A. The findings issued by the citizens' aide may be introduced as evidence before the public employment relations board. The employee has the right to a hearing closed to the public, but may request a public hearing. The hearing shall otherwise be conducted in accordance with the rules of the public employment relations board and the Iowa administrative procedure Act, chapter 17A. If the public employment relations board finds that the action taken in regard to the employee was in violation of subsection 2, the employee may be reinstated without loss of pay or benefits for the elapsed period, or the public employment relations board may provide other appropriate remedies. Decisions by the public employment relations board constitute final agency action.

7. A person shall not discharge an employee from or take or fail to take action regarding an employee's appointment or proposed appointment to,

promotion or proposed promotion to, or any advantage in, a position in a state employment system administered by, or subject to approval of, a state agency as a reprisal for the employee's declining to participate in contributions or donations to charities or community organizations.

8. The director of the department of administrative services or, for employees of the general assembly or of the state board of regents, the legislative council or the state board of regents, respectively, shall provide procedures for notifying new state employees of the provisions of this section and shall periodically conduct promotional campaigns to provide similar information to state employees. The information shall include the toll-free telephone number of the citizens' aide.

9. For purposes of this section, "state employee" and "employee" include, but are not limited to, persons employed by the general assembly and persons employed by the state board of regents.

2007 Acts, ch 126, §18  
See also §8A.417, 70A.29  
Subsection 6 amended

## CHAPTER 72

### DUTIES RELATING TO PUBLIC CONTRACTS

#### 72.5 Life cycle cost.

1. A contract for a public improvement or construction of a public building, including new construction or renovation of an existing public building, by the state, or an agency of the state, shall not be let without satisfying the following requirements:

*a.* A design professional submitting a design development proposal for consideration of the public body shall at minimum prepare one proposal meeting the design program's space and use requirements which reflects the lowest life cycle cost possible in light of existing commercially available technology.

*b.* Submission of a cost-benefit analysis of any deviations from the lowest life cycle cost proposal contained in other design proposals requested by or prepared for submission to the public body.

The public body may request additional design proposals in light of funds available for construction, aesthetic considerations, or any other reason.

This subsection applies for all design development proposals requested on or after January 1, 1991.

2. The director of the department of natural resources in consultation with the department of management, state building code commissioner,

and state fire marshal, shall develop standards and methods to evaluate design development documents and construction documents based upon life cycle cost factors to facilitate fair and uniform comparisons between design proposals and informed decision making by public bodies.

3. The department of management shall develop a proposal for submission to the general assembly on or before January 10, 1991, to create a division within the department of management to evaluate life cycle costs on design proposals submitted on public improvement and construction contracts for agencies of the state, to assure uniform comparisons and professional evaluations of design proposals by an independent agency. The report shall also address potential redundancy and conflicts within existing state law regarding life cycle cost analysis and recommend the resolution of any problems which are identified.

4. It is the intent of the general assembly to discourage construction of public buildings based upon lowest acquisition cost, and instead to require that such decisions be based upon life cycle costs to reduce energy consumption, maintenance requirements, and continuing burdens upon taxpayers.

2007 Acts, ch 22, §17  
Subsection 2 amended

## CHAPTER 73

### PREFERENCES

#### **73.16 Procurements from small businesses and targeted small businesses — goals.**

Notwithstanding any provision of law or rule relating to competitive bidding procedures:

1. Every agency, department, commission, board, committee, officer or other governing body of the state shall purchase goods and services supplied by small businesses and targeted small businesses in Iowa. In addition to the other provisions of this section relating to procurement contracts for targeted small businesses, all purchasing authorities shall assure that a proportionate share of small businesses and targeted small businesses identified under the uniform small business vendor application program of the department of economic development are given the opportunity to bid on all solicitations issued by agencies and departments of state government.

2. Prior to the commencement of a fiscal year, the director of each agency or department of state government having purchasing authority, in cooperation with the targeted small business marketing and compliance manager of the department of economic development, shall establish for that fiscal year a procurement goal from certified targeted small businesses identified pursuant to section 10A.104, subsection 8. The procurement goal shall include the procurement of all goods and services, including construction, but not including utility services. A procurement goal shall be stated in terms of a dollar amount of certified purchases and shall be established at a level that exceeds the procurement levels from certified targeted small businesses during the previous fiscal year. The director of an agency or department of state government that has established a procurement goal as required under this subsection shall provide a report within fifteen business days following the end of each calendar quarter to the targeted small business marketing and compliance manager of the department of economic development, providing the total dollar amount of certified purchases from certified targeted small busi-

nesses during the previous calendar quarter. The required report shall be made in a form approved by the targeted small business marketing and compliance manager. The first quarterly report shall be for the calendar quarter ending September 30, 2007. The director of each department and agency of state government shall cooperate with the director of the department of inspections and appeals, the director of the department of economic development, and the director of the department of management and do all acts necessary to carry out the provisions of this division.

The director of each agency or department of state government having purchasing authority shall issue electronic bid notices for distribution to the targeted small business web page located at the department of economic development if the director releases a solicitation for bids for procurement of equipment, supplies, or services. The notices shall be provided to the targeted small business marketing manager forty-eight hours prior to the issuance of all bid notices. The notices shall contain a description of the subject of the bid, a point of contact for the bid, and any subcontract goals included in the bid.

A community college, area education agency, or school district shall establish a procurement goal from certified targeted small businesses, identified pursuant to section 10A.104, subsection 8, of at least ten percent of the value of anticipated procurements of goods and services including construction, but not including utility services, each fiscal year.

Of the total value of anticipated procurements of goods and services under this subsection, an additional goal shall be established to procure at least forty percent from minority-owned businesses, and forty percent from female-owned businesses.

2007 Acts, ch 207, §10, 18  
State board of regents' bid procedure, §262.34A  
Subsection 2, unnumbered paragraph 1 amended

## CHAPTER 80

### DEPARTMENT OF PUBLIC SAFETY

#### **80.9 Duties of department — duties and powers of peace officers — state patrol.**

It shall be the duty of the department to prevent crime, to detect and apprehend criminals, and to enforce such other laws as are hereinafter specified. A peace officer of the department when au-

thorized by the commissioner shall have and exercise all the powers of any other peace officer of the state.

1. A peace officer shall not exercise the general powers of a peace officer within the limits of any city, except:

- a. When so ordered by the direction of the governor;
- b. When request is made by the mayor of any city, with the approval of the commissioner;
- c. When request is made by the sheriff or county attorney of any county with the approval of the commissioner;
- d. While in the pursuit of law violators or in investigating law violations;
- e. While making any inspection provided by this chapter, or any additional inspection ordered by the commissioner;
- f. When engaged in the investigating and enforcing of fire and arson laws;
- g. When engaged in the investigation and enforcement of laws relating to narcotic, counterfeit, stimulant, and depressant drugs.

When a peace officer of the department is acting in cooperation with any other local peace officer, or county attorney in general criminal investigation work, or when acting on a special assignment by the commissioner, the jurisdiction of the peace officer is statewide.

However, the above limitations shall in no way be construed as a limitation as to their power as officers when a public offense is being committed in their presence.

2. In more particular, the duties of a peace officer shall be as follows:

- a. To enforce all state laws.
- b. To enforce all laws relating to traffic on the public highways of the state, including those relating to the safe and legal operation of passenger cars, motorcycles, motor trucks and buses; to see that proper safety rules are observed and to give first aid to the injured.
- c. To investigate all fires; to apprehend persons suspected of arson; to enforce all safety measures in connection with the prevention of fires; to disseminate fire-prevention education; to develop training standards and provide training to fire fighters around the state; and to address other issues related to fire service and emergency response as requested by the state fire service and emergency response council.
- d. To collect and classify, and keep at all times available, complete information useful for the detection of crime, and the identification and apprehension of criminals. Such information shall be available for all peace officers within the state, under such regulations as the commissioner may prescribe. The provisions of chapter 141A do not apply to the entry of human immunodeficiency virus-related information by criminal or juvenile justice agencies, as defined in section 692.1, into the Iowa criminal justice information system or the national crime information center system. The provisions of chapter 141A also do not apply to the transmission of the same information from either or both information systems to criminal or

juvenile justice agencies. The provisions of chapter 141A also do not apply to the transmission of the same information from either or both information systems to employees of state correctional institutions subject to the jurisdiction of the department of corrections, employees of secure facilities for juveniles subject to the jurisdiction of the department of human services, and employees of city and county jails, if those employees have direct physical supervision over inmates of those facilities or institutions. Human immunodeficiency virus-related information shall not be transmitted over the police radio broadcasting system under chapter 693 or any other radio-based communications system. An employee of an agency receiving human immunodeficiency virus-related information under this section who communicates the information to another employee who does not have direct physical supervision over inmates, other than to a supervisor of an employee who has direct physical supervision over inmates for the purpose of conveying the information to such an employee, or who communicates the information to any person not employed by the agency or uses the information outside the agency is guilty of a class "D" felony. The commissioner shall adopt rules regarding the transmission of human immunodeficiency virus-related information including provisions for maintaining confidentiality of the information. The rules shall include a requirement that persons receiving information from the Iowa criminal justice information system or the national crime information center system receive training regarding confidentiality standards applicable to the information received from the system. The commissioner shall develop and establish, in cooperation with the department of corrections and the Iowa department of public health, training programs and program criteria for persons receiving human immunodeficiency virus-related information through the Iowa criminal justice information system or the national crime information center system.

e. To operate such radio broadcasting stations as may be necessary in order to disseminate information which will make possible the speedy apprehension of lawbreakers, as well as such other information as may be necessary in connection with the duties of this office.

f. Provide protection and security for persons and property on the grounds of the state capitol complex.

g. To assist persons who are responsible for the care of private and public land in identifying growing marijuana plants when the plants are reported to the department. The department shall also provide education to the persons regarding methods of eradicating the plants. The department shall adopt rules necessary to carry out this paragraph.

h. To maintain a vehicle theft unit in the state



patrol to investigate and assist in the examination and identification of stolen, altered, or forfeited vehicles.

*i.* Receive and review the budget submitted by the state fire marshal and the state fire service and emergency response council.

*j.* To administer section 100B.31 relating to volunteer emergency services provider death benefits.

3. A peace officer may administer oaths, acknowledge signatures, and take voluntary testimony pursuant to the peace officer's duties as provided by law.

4. The state patrol is established in the department. The patrol shall be under the direction of the commissioner. The number of supervisory officers shall be in proportion to the membership of the state patrol.

5. The department shall be primarily responsible for the enforcement of all laws and rules relating to any controlled substance or counterfeit substance, except for making accountability audits of the supply and inventory of controlled substances in the possession of pharmacists, physicians, hospitals, and health care facilities as defined in section 135C.1, as well as in the possession of any and all other individuals or institutions authorized to have possession of any controlled substances.

2007 Acts, ch 38, §1 – 3  
Department designated as state highway safety agency to receive federal funds; Executive Order No. 23; June 9, 1986  
Subsection 1, unnumbered paragraph 1 amended  
Subsection 2, unnumbered paragraph 1 amended  
Subsection 3 amended

#### **80.25A Pari-mutuel and gambling game investigation and enforcement.**

The commissioner of public safety shall direct the chief of the division of criminal investigation to establish a subdivision to be the primary criminal investigative and enforcement agency for the purpose of enforcement of chapters 99D and 99F. The commissioner of public safety shall appoint or assign other agents to the division as necessary to enforce chapters 99D and 99F. All enforcement officers, assistants, and agents of the division are subject to section 80.15 except clerical workers.

Section text not amended; headnote revised

#### **80.28 Statewide interoperable communications system board — established — members.**

1. A statewide interoperable communications system board is established, under the joint purview of the department and the state department of transportation. The board shall develop, implement, and oversee policy, operations, and fiscal components of communications interoperability efforts at the state and local level, and coordinate with similar efforts at the federal level, with the ultimate objective of developing and overseeing the operation of a statewide integrated public

safety communications interoperability system. For the purposes of this section and section 80.29, "interoperability" means the ability of public safety and public services personnel to communicate and to share data on an immediate basis, on demand, when needed, and when authorized.

2. The board shall consist of fifteen voting members, as follows:

*a.* The following members representing state agencies:

(1) One member representing the department of public safety.

(2) One member representing the state department of transportation.

(3) One member representing the homeland security and emergency management division.

(4) One member representing the department of corrections.

(5) One member representing the department of natural resources.

(6) One member representing the Iowa department of public health.

*b.* The following members, to be appointed by the governor:

(1) Two members who are representatives from municipal police departments.

(2) Two members who are representatives of sheriff's offices.

(3) Two members who are representatives from fire departments.

(4) Two members who are law communication center managers employed by state or local government agencies.

(5) One at-large member.

3. Board members shall be appointed in compliance with sections 69.16 and 69.16A. Members shall elect a chairperson and vice chairperson from the board membership, who shall serve two-year terms. The members appointed by the governor shall be appointed to three-year staggered terms and the terms shall commence and end as provided by section 69.19. The governor shall solicit and consider recommendations from professional or volunteer organizations in making appointments to the board. If a vacancy occurs, a successor shall be appointed to serve the unexpired term. A successor shall be appointed in the same manner and subject to the same qualifications as the original appointment to serve the unexpired term. Members of the board are entitled to receive reimbursement for actual expenses incurred while engaged in the performance of official duties from funds appropriated to the department of public safety and the state department of transportation for that purpose. The departments shall enter into an agreement to provide administrative assistance and support to the board.

2007 Acts, ch 90, §1  
NEW section

#### **80.29 Board duties.**

The statewide interoperable communications

system board established in section 80.28 shall:

1. Implement and maintain organizational and operational elements of the board, including staffing and program activity.

2. Review and monitor communications interoperability performance and service levels on behalf of agencies.

3. Establish, monitor, and maintain appropriate policies and protocols to ensure that interoperable communications systems function properly.

4. Allocate and oversee state appropriations or other funding received for interoperable communications.

5. Identify sources for ongoing, sustainable, longer-term funding for communications interoperability projects, including available and future assets that will leverage resources and provide incentives for communications interoperability participation, and develop and obtain adequate funding in accordance with a communications interoperability sustainability plan.

6. Develop and evaluate potential legislative solutions to address the funding and resource challenges of implementing statewide communications interoperability initiatives.

7. Develop a statewide integrated public safety communications interoperability system that allows for shared communications systems and costs, takes into account infrastructure needs and requirements, improves reliability, and addresses liability concerns of the shared network.

8. Investigate data and video interoperability systems.

9. Expand, maintain, and fund consistent, periodic training programs for current communications systems and for the statewide integrated public safety communications interoperability system as it is implemented.

10. Expand, maintain, and fund stakeholder education, public education, and public official education programs to demonstrate the value of short-term communications interoperability solutions, and to emphasize the importance of developing and funding long-term solutions, including implementation of the statewide integrated public safety communications interoperability system.

11. Identify, promote, and provide incentives for appropriate collaborations and partnerships among government entities, agencies, businesses, organizations, and associations, both public and private, relating to communications interoperability.

12. Provide incentives to support maintenance and expansion of regional efforts to promote implementation of the statewide integrated public safety communications interoperability system.

13. In performing its duties, consult with representatives of private businesses, organizations, and associations on technical matters relating to data, video, and communications interoperability;

technological developments in private industry; and potential collaboration and partnership opportunities.

14. Submit a report by January 1, annually, to the members of the general assembly regarding communications interoperability efforts, activities, and effectiveness at the local and regional level, and shall include a status report regarding the development of a statewide integrated public safety communications interoperability system, and funding requirements relating thereto.

2007 Acts, ch 90, §2  
NEW section

### **80.33 Access to drug records by peace officers.**

A person required by law to keep records, and a carrier maintaining records with respect to any shipment containing any controlled or counterfeit substances shall, upon request of an authorized peace officer of the department designated by the commissioner, permit such peace officer at reasonable times to have access to and copy such records. For the purpose of examining and verifying such records, an authorized peace officer of the department designated by the commissioner, may enter at reasonable times any place or vehicle in which any controlled or counterfeit substance is held, manufactured, dispensed, compounded, processed, sold, delivered, or otherwise disposed of and inspect such place or vehicle and the contents of such place or vehicle. For the purpose of enforcing laws relating to controlled or counterfeit substances, and upon good cause shown, a peace officer of the department shall be allowed to inspect audits and records in the possession of the board of pharmacy.

2007 Acts, ch 10, §7  
Section amended

### **80.34 Peace officer — authority.**

An authorized peace officer of the department designated to conduct examinations, investigations, or inspections and enforce the laws relating to controlled or counterfeit substances shall have all the authority of other peace officers and may arrest a person without warrant for offenses under this chapter committed in the peace officer's presence or, in the case of a felony, if the peace officer has probable cause to believe that the person arrested has committed or is committing such offense. A peace officer of the department shall have the same authority as other peace officers to seize controlled or counterfeit substances or articles used in the manufacture or sale of controlled or counterfeit substances which they have reasonable grounds to believe are in violation of law. Such controlled or counterfeit substances or articles shall be subject to forfeiture.

2007 Acts, ch 126, §19  
Forfeiture procedures, chapter 809A  
Section amended

## CHAPTER 80B

### LAW ENFORCEMENT ACADEMY

#### 80B.11 Rules.

1. The director of the academy, subject to the approval of the council, shall promulgate rules in accordance with the provisions of this chapter and chapter 17A, giving due consideration to varying factors and special requirements of law enforcement agencies relative to the following:

*a.* Minimum entrance requirements, course of study, attendance requirements, and equipment and facilities required at approved law enforcement training schools. Minimum age requirements for entrance to approved law enforcement training schools shall be eighteen years of age. Minimum course of study requirements shall include a separate domestic abuse curriculum, which may include but is not limited to outside speakers from domestic abuse shelters and crime victim assistance organizations. Minimum course of study requirements shall also include a sexual assault curriculum.

*b.* Minimum basic training requirements law enforcement officers employed after July 1, 1968, must complete in order to remain eligible for continued employment and the time within which such basic training must be completed. Minimum requirements shall mandate training devoted to the topic of domestic abuse and sexual assault. The council shall submit an annual report to the general assembly by January 15 of each year relating to the continuing education requirements devoted to the topic of domestic abuse, including the number of hours required, the substance of the classes offered, and other related matters.

*c.* (1) Categories or classifications of advanced in-service training program and minimum courses of study and attendance requirements for such categories or classifications.

(2) In-service training under this paragraph "c" shall include the requirement that by December 31, 1994, all law enforcement officers complete a course on investigation, identification, and reporting of public offenses based on the race, color, religion, ancestry, national origin, political affiliation, sex, sexual orientation, age, or disability of the victim. The director shall consult with the civil rights commission, the department of public safety, and the prosecuting attorneys training coordinator in developing the requirements for this course and may contract with outside providers for this course.

*d.* Within the existing curriculum, expanded training regarding racial and cultural awareness and dealing with gang-affected youth.

*e.* Training standards on the subject of human trafficking, to include curricula on cultural sensitivity and the means to deal effectively and appropriately with trafficking victims. Such training

shall encourage law enforcement personnel to communicate in the language of the trafficking victims. The course of instruction and training standards shall be developed by the director in consultation with the appropriate national and state experts in the field of human trafficking.

*f.* Minimum standards of physical, educational, and moral fitness which shall govern the recruitment, selection, and appointment of law enforcement officers.

*g.* Minimum standards of mental fitness which shall govern the initial recruitment, selection, and appointment of law enforcement officers. The rules shall include but are not limited to providing a battery of psychological tests to determine cognitive skills, personality characteristics, and suitability of an applicant for a law enforcement career. However, this battery of tests need only be given to applicants being considered in the final selection process for a law enforcement position. Notwithstanding any provision of chapter 400, an applicant shall not be hired if the employer determines from the tests that the applicant does not possess sufficient cognitive skills, personality characteristics, or suitability for a law enforcement career. The director of the academy shall provide for the cognitive and psychological examinations and their administration to the law enforcement agencies or applicants, and shall identify and procure persons who can be hired to interpret the examinations.

*h.* Grounds for revocation or suspension of a law enforcement officer's certification.

*i.* Exemptions from particular provisions of this chapter in case of any state, county, or city, if, in the opinion of the council, the standards of law enforcement training established and maintained by the governmental agency are as high or higher than those established pursuant to this chapter; or revocation in whole or in part of such exemption, if in its opinion the standards of law enforcement training established and maintained by the governmental agency are lower than those established pursuant to this chapter.

*j.* Minimum qualifications for instructors in telecommunicator training schools.

*k.* Minimum qualifications for instructors in law enforcement and jailer training schools.

*l.* Certification through examination for individuals who have successfully completed the federal bureau of investigation national academy, have corrected Snellen vision in both eyes of 20/20 or better, and were employed on or before January 1, 1996, as chief of police of a city in this state with a population of twenty thousand or more.

2. A certified course of instruction provided for under this section which occurs at a location other

than at the central training facility of the Iowa law enforcement academy shall not be eliminated by the Iowa law enforcement academy.

2007 Acts, ch 22, §18  
Section amended

#### **80B.13 Authority of council.**

The council may:

1. Designate members to visit and inspect any law enforcement or jailer training schools, or examine the curriculum or training procedures, for which application for approval has been made.

2. Issue certificates to law enforcement training schools qualifying under the regulations of the council.

3. Issue certificates to law enforcement officers and jailers who have met the requirements of this chapter and rules adopted under chapter 17A relative to hiring and training standards.

4. Make recommendations to the governor, the attorney general, the commissioner of public safety and the legislature on matters pertaining to qualification and training of law enforcement officers and jailers and other matters considered necessary to improve law enforcement services and jailer training.

5. Cooperate with federal, state, and local enforcement agencies in establishing and conducting local or area schools, or regional training centers for instruction and training of law enforcement officers and jailers.

6. Direct research in the field of law enforcement and jailer training and accept grants for such purposes.

7. Accept applications for attendance of the academy from persons other than those required to attend.

8. Revoke a law enforcement officer's certification for the conviction of a felony or revoke or suspend a law enforcement officer's certification for a violation of rules adopted pursuant to section

80B.11, subsection 1, paragraph "h". In addition the council may consider revocation or suspension proceedings when an employing agency recommends to the council that revocation or suspension would be appropriate with regard to a current or former employee. If a law enforcement officer resigns, the employing agency shall notify the council that an officer has resigned and state the reason for the resignation if a substantial likelihood exists that the reason would result in the revocation or suspension of an officer's certification for a violation of the rules.

A recommendation by an employing agency must be in writing and set forth the reasons why the action is being recommended, the findings of the employing agency concerning the matter, the action taken by the employing agency, and that the action by the agency is final. "Final", as used in this section, means that all appeals through a grievance procedure available to the officer or civil service have been exhausted. The written recommendations shall be unavailable for inspection by anyone except personnel of the employing agency, the council and the affected law enforcement officer, or as ordered by a reviewing court.

The council shall establish a process for the protest and appeal of a revocation or suspension made pursuant to this subsection.

9. In accordance with chapter 17A, conduct investigations, hold hearings, appoint hearing examiners, administer oaths and issue subpoenas enforceable in district court on matters relating to the revocation or suspension of a law enforcement officer's certification.

10. Secure the assistance of the state division of criminal investigation in the investigation of alleged violations, as provided under section 80.9, subsection 1, paragraphs "c" and "g", of the provisions adopted under section 80B.11.

2007 Acts, ch 22, §19

Subsection 8, unnumbered paragraph 1 amended

## CHAPTER 80D

### RESERVE PEACE OFFICERS

#### **80D.1A Definitions.**

As used in this chapter, unless the context otherwise requires:

1. "Academy" means the Iowa law enforcement academy.

2. "Council" means the Iowa law enforcement academy council.

3. "Minimum training course" means a curriculum of basic training requirements developed by the academy pursuant to the academy's rulemaking authority that a reserve peace officer must complete within a prescribed time period to be-

come state certified as a reserve peace officer. The minimum training course does not include required weapons training.

4. "Reserve force" means an organization of reserve peace officers established as provided in this chapter.

5. "Reserve peace officer" means a volunteer, nonregular, sworn member of a law enforcement agency who serves with or without compensation, has regular police powers while functioning as a law enforcement agency's representative, and participates on a regular basis in the law enforcement

agency's activities including crime prevention and control, preservation of the peace, and enforcement of law.

2007 Acts, ch 47, §1  
Section amended

### 80D.3 Training standards.

1. Each person appointed to serve as a reserve peace officer shall satisfactorily complete a minimum training course as established by academy rules. In addition, if a reserve peace officer is authorized to carry weapons, the officer shall satisfactorily complete the same training course in the use of weapons as is required for basic training of regular peace officers by the academy. The minimum training course for reserve peace officers shall be satisfactorily completed within the time period prescribed by academy rules. Academy-approved reserve peace officer training received before July 1, 2007, may be applied to meet the minimum training course requirements established by academy rules.

2. A reserve peace officer who does not carry a weapon shall not be required to complete a weapons training course, but the officer shall comply with all other training requirements.

3. A person appointed to serve as a reserve peace officer who has received basic training as a peace officer and has been certified by the academy pursuant to chapter 80B and rules adopted pursuant to chapter 80B may be exempted from completing the minimum training course at the discretion of the appointing authority. However, such a person appointed to serve as a reserve peace officer shall meet mandatory in-service training requirements established by academy rules if the person has not served as an active peace officer within one hundred eighty days of appointment as a reserve peace officer.

4. The minimum training course required for

a reserve peace officer shall be conducted pursuant to sections 80D.4 and 80D.7. If weapons are to be carried, a reserve peace officer shall complete a weapons training course having the same number of hours of training as is required of regular peace officers in basic training pursuant to section 80D.7.

A person is eligible for state certification as a reserve peace officer upon satisfactory completion of the training and testing requirements specified by academy rules. A reserve peace officer enrolled in an academy-approved minimum course of training prior to July 1, 2007, shall obtain state certification by July 1, 2012.

2007 Acts, ch 47, §2  
Section amended

### 80D.4 Training.

Training for individuals appointed as reserve peace officers shall be provided by instructors in a community college or other facility, including a law enforcement agency, selected by the individual and approved by the law enforcement agency and the academy. Upon satisfactory completion of training required by the academy, the academy shall certify the individual as a reserve peace officer.

2007 Acts, ch 47, §3  
Section amended

### 80D.4A Training and certification requirements.

The director of the academy, subject to the approval of the council, shall promulgate rules in accordance with the provisions of this chapter and chapter 17A, giving due consideration to varying factors and special requirements of law enforcement agencies relative to the standardized training and state certification of reserve peace officers.

2007 Acts, ch 47, §4  
NEW section

## CHAPTER 80F

### RIGHTS OF PEACE OFFICERS AND PUBLIC SAFETY AND EMERGENCY PERSONNEL

#### 80F.1 Peace officer, public safety, and emergency personnel bill of rights.

1. As used in this section, unless the context otherwise requires:

a. *"Complaint"* means a formal written allegation signed by the complainant or a written statement by an officer receiving an oral complaint stating the complainant's allegation.

b. *"Formal administrative investigation"* means an investigative process ordered by a commanding officer of an agency or commander's designee during which the questioning of an officer is

intended to gather evidence to determine the merit of a complaint which may be the basis for seeking removal, discharge, or suspension, or other disciplinary action against the officer.

c. *"Informal inquiry"* means a meeting by supervisory or command personnel with an officer who is the subject of an allegation, for the purpose of resolving the allegation or determining whether a formal administrative investigation should be commenced.

d. *"Interview"* means the questioning of an officer who is the subject of a complaint pursuant to

the formal administrative investigation procedures of the investigating agency, if such a complaint may be the basis for seeking removal, discharge, or suspension, or other disciplinary action against the officer. "Interview" does not include questioning as part of any informal inquiry or questioning related to minor infractions of agency rules which will not result in removal, discharge, suspension, or other disciplinary action against the officer.

e. "Officer" means a certified law enforcement officer, fire fighter, emergency medical technician, corrections officer, detention officer, jailer, probation or parole officer, communications officer, or any other law enforcement officer certified by the Iowa law enforcement academy and employed by a municipality, county, or state agency.

f. "Statement" means the statement of the officer who is the subject of an allegation in response to a complaint.

2. This section is not applicable to a criminal investigation of an officer or where other investigations pursuant to state or federal law require different investigatory procedures.

3. A formal administrative investigation of an officer shall be commenced and completed in a reasonable period of time and an officer shall be immediately notified of the results of the investigation when the investigation is completed.

4. An officer shall not be compelled to submit to a polygraph examination against the will of the officer except as otherwise provided in section 730.4, subsection 3.

5. An officer who is the subject of a complaint, shall at a minimum, be provided a written summary of the complaint prior to an interview. If a collective bargaining agreement applies, the complaint or written summary shall be provided pursuant to the procedures established under the collective bargaining agreement. If the complaint alleges domestic abuse, sexual abuse, or sexual harassment, an officer shall not receive more than a written summary of the complaint.

6. An officer being interviewed shall be advised by the interviewer that the officer shall answer the questions and be advised that the answers shall not be used against the officer in any subsequent criminal proceeding.

7. An interview of an officer who is the subject of the complaint shall, at a minimum, be audio recorded.

8. The officer shall have the right to have legal counsel present, at the officer's expense, during the interview of the officer. In addition, the officer shall have the right, at the officer's expense, to have a union representative present during the interview or, if not a member of a union, the officer shall have the right to have a designee present.

9. If a formal administrative investigation results in the removal, discharge, or suspension, or other disciplinary action against an officer, copies

of any witness statements and the investigative agency's report shall be timely provided to the officer upon the request of the officer.

10. An interview shall be conducted at any facility of the investigating agency.

11. If an interview is conducted while an officer is off duty, the officer shall be compensated as provided by law, or as provided in the applicable collective bargaining agreement.

12. If a complaint is determined by the investigating officer to be a violation of section 718.6, the investigating officer shall be responsible for filing the necessary paperwork with the county attorney's office in order for the county attorney to make a determination as to whether to charge the person with a violation of section 718.6.

13. An officer shall have the right to pursue civil remedies under the law against a citizen arising from the filing of a false complaint against the officer.

14. Notwithstanding any other provision of state law to the contrary, an officer shall not be denied the opportunity to be a candidate for any elected office as long as the officer's candidacy does not violate the federal Hatch Act, 5 U.S.C. § 1501 et seq. An officer may be required, as a condition of being a candidate, to take a leave of absence during the campaign. If the officer is subject to chapter 341A and is a candidate for county sheriff, the candidate, upon the candidate's request, shall automatically be given a leave of absence without pay as provided in section 341A.18.

15. An officer shall have the right, as any other citizen, to engage in political activity except while on duty as long as the officer's political activity does not violate the federal Hatch Act, 5 U.S.C. § 1501 et seq. An officer shall not be required to engage in political activity by the officer's agency, a representative of the officer's agency, or any other agency.

16. An officer shall not be discharged, disciplined, or threatened with discharge or discipline in retaliation for exercising the rights of the officer enumerated in this section.

17. The rights enumerated in this section are in addition to any other rights granted pursuant to a collective bargaining agreement or other applicable law.

18. A municipality, county, or state agency employing an officer shall not publicly release the officer's official photograph without the written permission of the officer or without a request to release pursuant to chapter 22.

19. If a formal administrative investigation results in removal, discharge, suspension, or disciplinary action against an officer, and the officer alleges in writing a violation of the provisions of this section, the municipality, county, or state agency employing the officer shall hold in abeyance for a period of ten days any punitive action taken as a result of the investigation, including a reprimand.

An allegation of a violation of this section may be raised and given due consideration in any properly authorized grievance or appeal exercised by an officer, including but not limited to a grievance or appeal exercised pursuant to the terms of an ap-

plicable collective bargaining agreement and an appeal right exercised under section 341A.12 or 400.20.

2007 Acts, ch 160, §1  
NEW section

## CHAPTER 81

### DNA PROFILING

#### 81.2 Persons required to submit a DNA sample.

1. A person who receives a deferred judgment for a felony or against whom a judgment or conviction for a felony has been entered shall be required to submit a DNA sample for DNA profiling pursuant to section 81.4.

2. A person determined to be a sexually violent predator pursuant to chapter 229A shall be required to submit a DNA sample for DNA profiling pursuant to section 81.4 prior to discharge or placement in a transitional release program.

3. A person found not guilty by reason of insanity of an offense that requires DNA profiling shall be required to submit a DNA sample for DNA profiling pursuant to section 81.4 as part of the person's treatment management program.

4. A juvenile adjudicated delinquent of an offense that requires DNA profiling of an adult of-

fender shall be required to submit a DNA sample for DNA profiling pursuant to section 81.4 as part of the disposition of the juvenile's case.

5. An offender placed on probation shall immediately report to the judicial district department of correctional services after sentencing so it can be determined if the offender has been convicted of an offense requiring DNA profiling. If it is determined by the judicial district that DNA profiling is required, the offender shall immediately submit a DNA sample.

6. A person required to register as a sex offender shall submit a DNA sample for DNA profiling pursuant to section 81.4.

2007 Acts, ch 38, §4

Submission of samples by persons convicted, adjudicated a delinquent, civilly committed as a sexually violent predator, or found not guilty by reason of insanity prior to June 14, 2005; 2005 Acts, ch 158, §18, 19

Subsection 6 amended

## CHAPTER 84A

### DEPARTMENT OF WORKFORCE DEVELOPMENT

#### 84A.5 Department of workforce development — primary responsibilities.

The department of workforce development, in consultation with the workforce development board and the regional advisory boards, has the primary responsibilities set out in this section.

1. The department of workforce development shall develop and implement a workforce development system which increases the skills of the Iowa workforce, fosters economic growth and the creation of new high skill and high wage jobs through job placement and training services, increases the competitiveness of Iowa businesses by promoting high performance workplaces, and encourages investment in workers.

a. The workforce development system shall strive to provide high quality services to its customers including workers, families, and businesses. The department of workforce development shall maintain a common intake, assessment, and customer tracking system and to the extent practical provide one-stop services to customers at work-

force development centers and other service access points.

b. The system shall include an accountability system to measure program performance, identify accomplishments, and evaluate programs to ensure goals and standards are met. The accountability system shall use information obtained from the customer tracking system, the department of economic development, the department of education, and training providers to evaluate the effectiveness of programs. The department of economic development, the department of education, and training providers shall report information concerning the use of any state or federal training or retraining funds to the department of workforce development in a form as required by the department of workforce development. The accountability system shall evaluate all of the following:

(1) The impact of services on wages earned by individuals.

(2) The effectiveness of training services providers in raising the skills of the Iowa workforce.

(3) The impact of placement and training services on Iowa's families, communities, and economy.

2. The department of workforce development shall make information from the customer tracking and accountability system available to the department of economic development, the department of education, and other appropriate public agencies for the purpose of assisting with the evaluation of programs administered by those departments and agencies and for planning and researching public policies relating to education and economic development.

3. The department of workforce development is responsible for administration of unemployment compensation benefits and collection of employer contributions under chapter 96, providing for the delivery of free public employment services established pursuant to chapter 96, other job placement and training programs established pursuant to section 84A.6, and the delivery of services located throughout the state.

4. The division of labor services is responsible for the administration of the laws of this state under chapters 88, 88A, 88B, 89, 89A, 89B, 90A, 91, 91A, 91C, 91D, 91E, 92, and 94A, and section 85.68. The executive head of the division is the labor commissioner, appointed pursuant to section 91.2.

5. The division of workers' compensation is responsible for the administration of the laws of this state relating to workers' compensation under chapters 85, 85A, 85B, 86, and 87. The executive head of the division is the workers' compensation commissioner, appointed pursuant to section 86.1.

6. The director of the department of workforce development shall form a coordinating committee composed of the director of the department of workforce development, the labor commissioner, the workers' compensation commissioner, and other administrators. The committee shall monitor federal compliance issues relating to coordination of functions among the divisions.

7. The department of workforce development shall administer the following programs:

a. The Iowa conservation corps established under section 84A.7.

b. The workforce investment program established under section 84A.8.

c. The statewide mentoring program established under section 84A.9.

d. The workforce development centers established under chapter 84B.

8. The department of workforce development shall work with the department of economic development to incorporate workforce development as a component of community-based economic development.

9. The department of workforce development, in consultation with the applicable regional advisory board, shall select service providers, subject to approval by the workforce development board for each service delivery area. A service provider in each service delivery area shall be identified to coordinate the services throughout the service delivery area. The department of workforce development shall select service providers that, to the extent possible, meet or have the ability to meet the following criteria:

a. The capacity to deliver services uniformly throughout the service delivery area.

b. The experience to provide workforce development services.

c. The capacity to cooperate with other public and private agencies and entities in the delivery of education, workforce training, retraining, and workforce development services throughout the service delivery area.

d. The demonstrated capacity to understand and comply with all applicable state and federal laws, rules, ordinances, regulations, and orders, including fiscal requirements.

10. The department of workforce development shall provide access to information and documents necessary for employers and payors of income, as defined in sections 252D.16 and 252G.1, to comply with child support reporting and payment requirements. Access to the information and documents shall be provided at the central location of the department of workforce development and at each workforce development center.

11. The director of the department of workforce development may adopt rules pursuant to chapter 17A to charge and collect fees for enhanced or value-added services provided by the department of workforce development which are not required by law to be provided by the department and are not generally available from the department of workforce development. Fees shall not be charged to provide a free public labor exchange. Fees established by the director of the department of workforce development shall be based upon the costs of administering the service, with due regard to the anticipated time spent, and travel costs incurred, by personnel performing the service. The collection of fees authorized by this subsection shall be treated as repayment receipts as defined in section 8.2.

2007 Acts, ch 211, §33  
Immigration service centers, pilot program continuation; 2007 Acts, ch 212, §16

Subsection 1, unnumbered paragraph 2 editorially redesignated as paragraph a

Subsection 1, unnumbered paragraph 3 and paragraphs a – c editorially redesignated as paragraph b and subparagraphs (1) – (3) respectively

Subsection 1, unnumbered paragraph 4 editorially redesignated as subsection 2 and former subsections 2 – 10 renumbered as 3 – 11

Subsection 4 amended



## CHAPTER 85

### WORKERS' COMPENSATION

#### 85.1 Inapplicability of chapter.

Except as provided in subsection 6 of this section, this chapter does not apply to:

1. Any employee engaged in any type of service in or about a private dwelling except that after July 1, 1997, this chapter shall apply to such persons who earn one thousand five hundred dollars or more from such employer for whom employed at the time of the injury during the twelve consecutive months prior to the injury, provided the employee is not a regular member of the household. For purposes of this subsection, "*member of the household*" is defined to be the spouse of the employer or relatives of either the employer or spouse residing on the premises of the employer.

2. Persons whose employment is purely casual and not for the purpose of the employer's trade or business, except that after July 1, 1997, this chapter shall apply to such employees who earn one thousand five hundred dollars or more from such employer for whom employed at the time of the injury during the twelve consecutive months prior to the injury.

3. Persons engaged in agriculture, insofar as injuries incurred by employees while engaged in agricultural pursuits or any operations immediately connected therewith whether on or off the premises of the employer, except:

*a.* This chapter applies to persons not specifically exempted by paragraph "b" of this subsection if at the time of injury the person is employed by an employer whose total cash payroll to one or more persons other than those exempted by paragraph "b" of this subsection amounted to two thousand five hundred dollars or more during the preceding calendar year.

*b.* The following persons or employees or groups of employees are specifically included within the exemption from coverage of this chapter provided by this subsection:

(1) The spouse of the employer, parents, brothers, sisters, children, and stepchildren of either the employer or the spouse of the employer, and the spouses of the brothers, sisters, children, and stepchildren of either the employer or the spouse of the employer.

(2) The spouse of a partner of a partnership, the parents, brothers, sisters, children, and stepchildren of either a partner or the spouse of a partner, and the spouses of the brothers, sisters, children, and stepchildren of either a partner or the spouse of a partner, who are employed by the partnership and actually engaged in agricultural pursuits or operations immediately connected with the agricultural pursuits either on or off the premises of the partnership. For the purpose of this section, "*partnership*" includes partnerships, limited

partnerships, and joint ventures.

(3) Officers of a family farm corporation or members of a limited liability company, spouses of the officers or members, the parents, brothers, sisters, children, and stepchildren of either the officers or members, or the spouses of the officers or members, and the spouses of the brothers, sisters, children, and stepchildren of either the officers or members, or the spouses of the officers or members who are employed by the corporation or limited liability company, the primary purpose of which, although not necessarily the stated purpose, is farming or ownership of agricultural land, and who are actually engaged in agricultural pursuits or operations immediately connected with the agricultural pursuits either on or off the premises of the corporation or limited liability company.

(4) A person engaged in agriculture as an owner of agricultural land, as a farm operator, or as a person engaged in agriculture who is exempt from coverage under this chapter by subsection 3, paragraph "b", subparagraph (1), (2), or (3), while exchanging labor with another owner of agricultural land, farm operator, or person engaged in agriculture who is exempt from coverage under this chapter by subsection 3, paragraph "b", subparagraph (1), (2), or (3), for the mutual benefit of all such persons.

4. Persons entitled to benefits pursuant to chapters 410 and 411.

5. The president, vice president, secretary, and treasurer of a corporation other than a family farm corporation, not to exceed four officers per corporation, if such an officer knowingly and voluntarily rejects workers' compensation coverage pursuant to section 87.22.

6. Employers may with respect to an employee or a classification of employees exempt from coverage provided by this chapter pursuant to subsection 1, 2, or 3, other than the employee or classification of employees with respect to whom a rule of liability or a method of compensation is established by the Congress of the United States, assume a liability for compensation imposed upon employers by this chapter, for the benefit of employees within the coverage of this chapter, by the purchase of valid workers' compensation insurance that does not specifically exclude the employee or classification of employees. The purchase of and acceptance by an employer of valid workers' compensation insurance applicable to the employee or classification of employees constitutes an assumption by the employer of liability without any further act on the part of the employer, but only with respect to the employee or classification of employees as are within the coverage of the workers' compensation insurance contract and only for

the time period in which the insurance contract is in force. Upon an election of such coverage, the employee or classification of employees shall accept compensation in the manner provided by this chapter and the employer shall be relieved from any other liability for recovery of damage, or other compensation for injury.

2007 Acts, ch 128, §1  
Subsection 6 amended

**85.27 Services — release of information — charges — payment — debt collection prohibited.**

1. The employer, for all injuries compensable under this chapter or chapter 85A, shall furnish reasonable surgical, medical, dental, osteopathic, chiropractic, podiatric, physical rehabilitation, nursing, ambulance and hospital services and supplies therefor and shall allow reasonably necessary transportation expenses incurred for such services. The employer shall also furnish reasonable and necessary crutches, artificial members and appliances but shall not be required to furnish more than one set of permanent prosthetic devices.

2. Any employee, employer or insurance carrier making or defending a claim for benefits agrees to the release of all information to which the employee, employer, or carrier has access concerning the employee's physical or mental condition relative to the claim and further waives any privilege for the release of the information. The information shall be made available to any party or the party's representative upon request. Any institution or person releasing the information to a party or the party's representative shall not be liable criminally or for civil damages by reason of the release of the information. If release of information is refused the party requesting the information may apply to the workers' compensation commissioner for relief. The information requested shall be submitted to the workers' compensation commissioner who shall determine the relevance and materiality of the information to the claim and enter an order accordingly.

3. Notwithstanding section 85.26, subsection 4, charges believed to be excessive or unnecessary may be referred by the employer, insurance carrier, or health service provider to the workers' compensation commissioner for determination, and the commissioner may utilize the procedures provided in sections 86.38 and 86.39, or set by rule, and conduct such inquiry as the commissioner deems necessary. Any health service provider charges not in dispute shall be paid directly to the health service provider prior to utilization of procedures provided in sections 86.38 and 86.39 or set by rule. A health service provider rendering treatment to an employee whose injury is compensable under this section agrees to be bound by such charges as allowed by the workers' compensation commissioner and shall not recover in law or equi-

ty any amount in excess of charges set by the commissioner. When a dispute under this chapter, chapter 85A, or chapter 85B regarding reasonableness of a fee for medical services arises between a health service provider and an employer or insurance carrier, the health service provider, employer, or insurance carrier shall not seek payment from the injured employee. A health service provider shall not seek payment for fees in dispute from the insurance carrier or employer until the commissioner finds, pursuant to informal dispute resolution procedures established by rule by the commissioner, that the disputed amount is reasonable. This section does not affect the responsibility of an insurance carrier or an employer to pay amounts not in dispute or a health service provider's right to receive payment from an employee's nonoccupational plan as provided in section 85.38, subsection 2.

4. For purposes of this section, the employer is obliged to furnish reasonable services and supplies to treat an injured employee, and has the right to choose the care. If the employer chooses the care, the employer shall hold the employee harmless for the cost of care until the employer notifies the employee that the employer is no longer authorizing all or any part of the care and the reason for the change in authorization. An employer is not liable for the cost of care that the employer arranges in response to a sudden emergency if the employee's condition, for which care was arranged, is not related to the employment. The treatment must be offered promptly and be reasonably suited to treat the injury without undue inconvenience to the employee. If the employee has reason to be dissatisfied with the care offered, the employee should communicate the basis of such dissatisfaction to the employer, in writing if requested, following which the employer and the employee may agree to alternate care reasonably suited to treat the injury. If the employer and employee cannot agree on such alternate care, the commissioner may, upon application and reasonable proofs of the necessity therefor, allow and order other care. In an emergency, the employee may choose the employee's care at the employer's expense, provided the employer or the employer's agent cannot be reached immediately. An application made under this subsection shall be considered an original proceeding for purposes of commencement and contested case proceedings under section 85.26. The hearing shall be conducted pursuant to chapter 17A. Before a hearing is scheduled, the parties may choose a telephone hearing or an in-person hearing. A request for an in-person hearing shall be approved unless the in-person hearing would be impractical because of the distance between the parties to the hearing. The workers' compensation commissioner shall issue a decision within ten working days of receipt of an application for alternate care made pursuant to a telephone hearing or within fourteen working

days of receipt of an application for alternate care made pursuant to an in-person hearing. The employer shall notify an injured employee of the employee's ability to contest the employer's choice of care pursuant to this subsection.

5. When an artificial member or orthopedic appliance, whether or not previously furnished by the employer, is damaged or made unusable by circumstances arising out of and in the course of employment other than through ordinary wear and tear, the employer shall repair or replace it. When any crutch, artificial member or appliance, whether or not previously furnished by the employer, either is damaged or made unusable in conjunction with a personal injury entitling the employee to disability benefits, or services as provided by this section or is damaged in connection with employee actions taken which avoid such personal injury, the employer shall repair or replace it.

6. While a contested case proceeding for determination of liability for workers' compensation benefits is pending before the workers' compensation commissioner relating to an injury alleged to have given rise to treatment, no debt collection, as defined by section 537.7102, shall be undertaken against an employee or the employee's dependents for the collection of charges for that treatment rendered an employee by any health service provider. If debt collection is undertaken after a creditor receives actual notice that a contested case proceeding for determination of liability for workers' compensation benefits is pending, such debt collection shall constitute a prohibited practice under section 537.7103, and the employee or the employee's dependents are entitled to the remedies provided in section 537.5201. However, the health service provider may send one itemized written bill to the employee setting forth the amount of the charges in connection with the treatment after notification of the contested case proceeding.

7. If, after the third day of incapacity to work following the date of sustaining a compensable injury which does not result in permanent partial disability, or if, at any time after sustaining a compensable injury which results in permanent partial disability, an employee, who is not receiving weekly benefits under section 85.33 or section 85.34, subsection 1, returns to work and is required to leave work for one full day or less to receive services pursuant to this section, the employee shall be paid an amount equivalent to the wages lost at the employee's regular rate of pay for the time the employee is required to leave work. For the purposes of this subsection, "*day of incapacity to work*" means eight hours of accumulated absence from work due to incapacity to work or due to the receipt of services pursuant to this section. The employer shall make the payments under this subsection as wages to the employee after making such deductions from the amount as legally required or customarily made by the employer

from wages. Payments made under this subsection shall be required to be reimbursed pursuant to any insurance policy covering workers' compensation. Payments under this subsection shall not be construed to be payment of weekly benefits.

2007 Acts, ch 22, §20; 2007 Acts, ch 128, §2  
See Code editor's note to §29A.28  
Subsections 3 and 6 amended

### 85.61 Definitions.

In this and chapters 86 and 87, unless the context otherwise requires, the following definitions of terms shall prevail:

1. The word "*court*" wherever used in this and chapters 86 and 87, unless the context shows otherwise, shall be taken to mean the district court.

2. "*Employer*" includes and applies to a person, firm, association, or corporation, state, county, municipal corporation, school corporation, area education agency, township as an employer of volunteer fire fighters, volunteer emergency rescue technicians, and emergency medical care providers only, benefited fire district, and the legal representatives of a deceased employer. "*Employer*" includes and applies to a rehabilitation facility approved for purchase-of-service contracts or for referrals by the department of human services or the department of education.

"*Employer*" also includes and applies to an eligible postsecondary institution as defined in section 261C.3, subsection 1, a school corporation, or an accredited nonpublic school if a student enrolled in the eligible postsecondary institution, school corporation, or accredited nonpublic school is providing unpaid services under a school-to-work program that includes, but is not limited to, the components provided for in section 258.10, subsection 2, paragraphs "a" through "f". However, if a student participating in a school-to-work program is participating in open enrollment under section 282.18, "*employer*" means the receiving district. "*Employer*" also includes and applies to a community college as defined in section 260C.2, if a student enrolled in the community college is providing unpaid services under a school-to-work program that includes but is not limited to the components provided for in section 258.10, subsection 2, paragraphs "a" through "f", and that is offered by the community college pursuant to a contractual agreement with a school corporation or accredited nonpublic school to provide the program. If a student participating in a school-to-work program that includes but is not limited to the components provided for in section 258.10, subsection 2, paragraphs "a" through "f", is paid for services provided under the program, "*employer*" means any entity otherwise defined as an employer under this subsection which pays the student for providing services under the program.

3. "*Gross earnings*" means recurring payments by employer to the employee for employment, before any authorized or lawfully required

deduction or withholding of funds by the employer, excluding irregular bonuses, retroactive pay, over-time, penalty pay, reimbursement of expenses, expense allowances, and the employer's contribution for welfare benefits.

4. The words "injury" or "personal injury" shall be construed as follows:

a. They shall include death resulting from personal injury.

b. They shall not include a disease unless it shall result from the injury and they shall not include an occupational disease as defined in section 85A.8.

5. "Pay period" means that period of employment for which the employer customarily or regularly makes payments to employees for work performed or services rendered.

6. "Payroll taxes" means an amount, determined by tables adopted by the workers' compensation commissioner pursuant to chapter 17A, equal to the sum of the following:

a. An amount equal to the amount which would be withheld pursuant to withholding tables in effect on July 1 preceding the injury under the Internal Revenue Code, and regulations pursuant thereto, as amended, as though the employee had elected to claim the maximum number of exemptions for actual dependency, blindness and old age to which the employee is entitled on the date on which the employee was injured.

b. An amount equal to the amount which would be withheld pursuant to withholding tables in effect on July 1 preceding the injury under chapter 422, and any rules pursuant thereto, as though the employee had elected to claim the maximum number of exemptions for actual dependency, blindness and old age to which the employee is entitled on the date on which the employee was injured.

c. An amount equal to the amount required on July 1 preceding the injury by the Social Security Act of 1935 as amended, to be deducted or withheld from the amount of earnings of the employee at the time of the injury as if the earnings were earned at the beginning of the calendar year in which the employee was injured.

7. The words "personal injury arising out of and in the course of the employment" shall include injuries to employees whose services are being performed on, in, or about the premises which are occupied, used, or controlled by the employer, and also injuries to those who are engaged elsewhere in places where their employer's business requires their presence and subjects them to dangers incident to the business.

Personal injuries sustained by a volunteer fire fighter arise in the course of employment if the injuries are sustained at any time from the time the volunteer fire fighter is summoned to duty as a volunteer fire fighter until the time the volunteer fire

fighter is discharged from duty by the chief of the volunteer fire department or the chief's designee.

Personal injuries sustained by volunteer emergency rescue technicians or emergency medical care providers as defined in section 147A.1 arise in the course of employment if the injuries are sustained at any time from the time the volunteer emergency rescue technicians or emergency medical care providers are summoned to duty until the time those duties have been fully discharged.

8. The words "reserve peace officer" shall mean a person defined as such by section 80D.1 who is not a full-time member of a paid law enforcement agency. A person performing such services shall not be classified as a casual employee.

9. "Spendable weekly earnings" is that amount remaining after payroll taxes are deducted from gross weekly earnings.

10. "Volunteer fire fighter" means any active member of an organized volunteer fire department in this state and any other person performing services as a volunteer fire fighter for a municipality, township or benefited fire district at the request of the chief or other person in command of the fire department of the municipality, township or benefited fire district, or of any other officer of the municipality, township or benefited fire district having authority to demand such service, and who is not a full-time member of a paid fire department. A person performing such services shall not be classified as a casual employee.

11. a. "Worker" or "employee" means a person who has entered into the employment of, or works under contract of service, express or implied, or apprenticeship, for an employer; an executive officer elected or appointed and empowered under and in accordance with the charter and bylaws of a corporation, including a person holding an official position, or standing in a representative capacity of the employer; an official elected or appointed by the state, or a county, school district, area education agency, municipal corporation, or city under any form of government; a member of the state patrol; a conservation officer; and a proprietor, limited liability company member, limited liability partner, or partner who elects to be covered pursuant to section 85.1A, except as specified in this chapter.

b. "Worker" or "employee" includes an inmate as defined in section 85.59 and a person described in section 85.60.

c. "Worker" or "employee" includes an emergency medical care provider as defined in section 147A.1, a volunteer emergency rescue technician as defined in section 147A.1, a volunteer ambulance driver, or an emergency medical technician trainee, only if an agreement is reached between such worker or employee and the employer for whom the volunteer services are provided that workers' compensation coverage under this chap-

ter and chapters 85A and 85B is to be provided by the employer. An emergency medical care provider or volunteer emergency rescue technician who is a worker or employee under this paragraph is not a casual employee. “*Volunteer ambulance driver*” means a person performing services as a volunteer ambulance driver at the request of the person in charge of a fire department or ambulance service of a municipality. “*Emergency medical technician trainee*” means a person enrolled in and training for emergency medical technician certification.

d. “*Worker*” or “*employee*” includes a real estate agent who does not provide the services of an independent contractor. For the purposes of this paragraph “d”, a real estate agent is an independent contractor if the real estate agent is licensed by the Iowa real estate commission as a salesperson and both of the following apply:

(1) Seventy-five percent or more of the remuneration, whether or not paid in cash, for the services performed by the individual as a real estate salesperson is derived from one company and is directly related to sales or other output, including the performance of services, rather than to the number of hours worked.

(2) The services performed by the individual are performed pursuant to a written contract between the individual and the person for whom the services are performed, and the contract provides that the individual will not be treated as an employee with respect to the services for state tax purposes.

e. “*Worker*” or “*employee*” includes a student enrolled in a public school corporation or accredited nonpublic school who is participating in a school-to-work program that includes but is not limited to the components provided for in section 258.10, subsection 2, paragraphs “a” through “f”. “*Worker*” or “*employee*” also includes a student enrolled in a community college as defined in section 260C.2, who is participating in a school-to-work program that includes but is not limited to the components provided for in section 258.10, subsection 2, paragraphs “a” through “f”, and that is offered by the community college pursuant to a contractual agreement with a school corporation or accredited nonpublic school to provide the program.

f. The term “*worker*” or “*employee*” shall include the singular and plural. Any reference to a worker or employee who has been injured shall, when such worker or employee is dead, include the worker’s or employee’s dependents as herein defined or the worker’s or employee’s legal representatives; and where the worker or employee is a minor or incompetent, it shall include the minor’s or incompetent’s guardian, next friend, or trustee. Notwithstanding any law prohibiting the employment of minors, all minor employees shall be entitled to the benefits of this chapter and chapters 86

and 87 regardless of the age of such minor employee.

g. The following persons shall not be deemed “*workers*” or “*employees*”:

(1) A person whose employment is purely casual and not for the purpose of the employer’s trade or business except as otherwise provided in section 85.1.

(2) An independent contractor.

(3) An owner-operator who, as an individual or partner, or shareholder of a corporate owner-operator, owns a vehicle licensed and registered as a truck, road tractor, or truck tractor by a governmental agency, is an independent contractor while performing services in the operation of the owner-operator’s vehicle if all of the following conditions are substantially present:

(a) The owner-operator is responsible for the maintenance of the vehicle.

(b) The owner-operator bears the principal burden of the vehicle’s operating costs, including fuel, repairs, supplies, collision insurance, and personal expenses for the operator while on the road.

(c) The owner-operator is responsible for supplying the necessary personnel to operate the vehicle, and the personnel are considered the owner-operator’s employees.

(d) The owner-operator’s compensation is based on factors related to the work performed, including a percentage of any schedule of rates or lawfully published tariff, and not on the basis of the hours or time expended.

(e) The owner-operator determines the details and means of performing the services, in conformance with regulatory requirements, operating procedures of the carrier, and specifications of the shipper.

(f) The owner-operator enters into a contract which specifies the relationship to be that of an independent contractor and not that of an employee.

(4) Directors of a corporation who are not at the same time employees of the corporation; or directors, trustees, officers, or other managing officials of a nonprofit corporation or association who are not at the same time full-time employees of the nonprofit corporation or association.

(5) Proprietors, limited liability company members, limited liability partners, and partners who have not elected to be covered by the workers’ compensation law of this state pursuant to section 85.1A.

2007 Acts, ch 22, §21

Subsection 11 amended

Subsection 12 amended and redesignated as subsection 11, paragraph

f

Subsection 13 redesignated as subsection 11, paragraph g

### **85.66 Second injury fund — creation — custodian.**

The “*Second Injury Fund*” is hereby established under the custody of the treasurer of state and

shall consist of payments to the fund as provided by this division and any accumulated interest and earnings on moneys in the second injury fund. The treasurer of state is charged with the conservation of the assets of the second injury fund. Moneys collected in the second injury fund shall be disbursed only for the purposes stated in this division, and shall not at any time be appropriated or diverted to any other use or purpose. The treasurer of state shall invest any surplus moneys of the fund in securities which constitute legal investments for state funds under the laws of this state, and may sell any of the securities in which the fund is invested, if necessary, for the proper administration or in the best interests of the fund. Disbursements from the fund shall be paid by the treasurer of state only upon the written order of the workers' compensation commissioner. The attorney general shall be reimbursed up to one hundred fifty thousand dollars annually from the fund for services provided related to the fund. The treasurer of state shall quarterly prepare a statement of the fund, setting forth the balance of moneys in the fund, the income of the fund, specifying the source of all income, the payments out of the fund, specifying the various items of payments, and setting forth the balance of the fund remaining to its cred-

it. The statement shall be open to public inspection in the office of the treasurer of state.

2007 Acts, ch 215, §84  
Section amended

**85.67 Administration of fund — special counsel — payment of award.**

The attorney general shall appoint a staff member to represent the treasurer of state and the fund in all proceedings and matters arising under this division. The attorney general shall be reimbursed up to one hundred fifty thousand dollars annually from the fund for services provided related to the fund. The commissioner of insurance shall consider the reimbursement to the attorney general as an outstanding liability when making a determination of funding availability under section 85.65A, subsection 2. In making an award under this division, the workers' compensation commissioner shall specifically find the amount the injured employee shall be paid weekly, the number of weeks of compensation which shall be paid by the employer, the date upon which payments out of the fund shall begin, and, if possible, the length of time the payments shall continue.

2007 Acts, ch 215, §85  
Section amended

## CHAPTER 87

### COMPENSATION LIABILITY INSURANCE

**87.1 Insurance of liability required.**

1. Every employer subject to the provisions of this and chapters 85, 85A, 85B, and 86, unless relieved therefrom as hereinafter provided, shall insure the employer's liability thereunder in some corporation, association, or organization approved by the commissioner of insurance.

2. A motor carrier who contracts with an owner-operator who is acting as an independent contractor pursuant to section 85.61, subsection 11, paragraph "g", shall not be required to insure the motor carrier's liability for the owner-operator. A motor carrier may procure compensation liability insurance coverage for these owner-operators, and may charge the owner-operator for the costs of the premiums. A motor carrier shall require the owner-operator to provide and maintain a certificate of workers' compensation insurance covering the owner-operator's employees. An owner-operator shall remain responsible for providing compensation liability insurance for the owner-operator's employees.

3. Every such employer shall exhibit, on demand of the workers' compensation commissioner, evidence of the employer's compliance with this section; and if such employer refuses, or neglects to comply with this section, the employer shall be

liable in case of injury to any worker in the employer's employ under the common law as modified by statute.

2007 Acts, ch 22, §22  
Unnumbered paragraph 1 editorially numbered as subsection 1  
Former unnumbered paragraph 2 amended and editorially numbered as subsection 2  
Former unnumbered paragraph 3 editorially numbered as subsection 3

**87.11 Relief from insurance — procedures upon employer's insolvency.**

1. *a.* When an employer coming under this chapter furnishes satisfactory proofs to the insurance commissioner of such employer's solvency and financial ability to pay the compensation and benefits as by law provided and to make such payments to the parties when entitled thereto, or when such employer deposits with the insurance commissioner security satisfactory to the insurance commissioner as guaranty for the payment of such compensation, such employer shall be relieved of the provisions of this chapter requiring insurance; but such employer shall, from time to time, furnish such additional proof of solvency and financial ability to pay as may be required by such insurance commissioner. Such security shall be held in trust for the sole purpose of paying compensation and benefits and is not subject to attach-

ment, levy, execution, garnishment, liens, or any other form of encumbrance. However, the insurance commissioner shall be reimbursed from the security for all costs and fees incurred by the insurance commissioner in resolving disputes involving the security. A political subdivision, including a city, county, community college, or school corporation, that is self-insured for workers' compensation is not required to submit a plan or program to the insurance commissioner for review and approval.

b. If an approved self-insured employer discontinues its self-insured status or enters bankruptcy proceedings, the self-insured employer or its successor in interest may petition the commissioner of insurance for release of its security. The commissioner shall release the security upon a finding of both of the following:

(1) The employer has not been self-insured pursuant to this chapter for at least four years.

(2) Ten years have elapsed from the date of the last open claim, claim activity, or claim payment involving the self-insured employer or its successor in interest, whichever is later.

c. The commissioner shall release the security upon a finding that a self-insured employer presents acceptable replacement security.

2. An employer seeking relief from the insurance requirements of this chapter shall pay to the insurance division of the department of commerce the following fees:

a. A fee of one hundred dollars, to be submitted annually along with an application for relief.

b. A fee of one hundred dollars for issuance of the certificate relieving the employer from the insurance requirements of this chapter.

c. A fee of fifty dollars, to be submitted with each filing required by the commissioner of insurance, including but not limited to the annual and quarterly financial statements, and material change statements.

3. a. If an employer becomes insolvent and a debtor under 11 U.S.C., on or after January 1, 1990, the commissioner of insurance may request of the workers' compensation commissioner that all future payments of workers' compensation weekly benefits, medical expenses, or other payments pursuant to this chapter or chapter 85, 85A, 85B, or 86, be commuted to a present lump sum. The workers' compensation commissioner shall fix the lump sum of probable future medical ex-

penses and weekly compensation benefits, or other benefits payable pursuant to this chapter or chapter 85, 85A, 85B, or 86, capitalized at their present value upon the basis of interest at the rate provided in section 535.3 for court judgments and decrees. The commissioner of insurance shall be discharged from all further liability for the commuted workers' compensation claim upon payment of the present lump sum to either the claimant, or a licensed insurer for purchase of an annuity or other periodic payment plan for the benefit of the claimant.

b. The commissioner of insurance shall not be required to pay more for all claims of an insolvent self-insured employer than is available for payment of such claims from the security given under this section.

4. Notwithstanding contrary provisions of section 85.45, any future payment of medical expenses, weekly compensation benefits, or other payments by the commissioner of insurance from the security given under this section, pursuant to this chapter or chapter 85, 85A, 85B, or 86, shall be deemed an undue expense, hardship, or inconvenience upon the employer for purposes of a full commutation pursuant to section 85.45, subsection 2.

5. Financial statements provided to the commissioner of insurance pursuant to this section may be held as confidential, proprietary trade secrets pursuant to section 22.7, subsection 3, upon the request of the employer, subject to rules adopted by the commissioner of insurance, and are not subject to disclosure or examination under chapter 22.

2007 Acts, ch 137, §1  
Section amended

### **87.23 Compensation liability insurance not required.**

A corporation, association, or organization approved by the commissioner of insurance to provide compensation liability insurance shall not require a motor carrier that contracts with an owner-operator who is acting as an independent contractor pursuant to section 85.61, subsection 11, paragraph "g", to purchase compensation liability insurance for the employer's liability for the owner-operator or its employees.

2007 Acts, ch 22, §23  
Section amended

## CHAPTER 88

### OCCUPATIONAL SAFETY AND HEALTH

#### **88.5 Occupational safety and health standards.**

1. *Promulgation of rules.*

a. As soon as practicable following July 1, 1972, the commissioner shall by rule, adopt and promulgate those occupational safety and health

standards, which would result in improved safety or health for employees; provided, that the commissioner shall adopt no such standard unless the same has been adopted and promulgated as a permanent standard by the secretary in accordance with the procedures set forth in the federal law. In the event that any such federal standard is subsequently amended, modified, repealed, or substituted by a new standard, the commissioner shall, within ninety days, review such amendment, modification, repeal or substitution, and take such action with respect to the state standards, including the repeal or substitution of the same, as will conform the state standards to those federal standards then in effect.

b. Before adopting, modifying, or revoking any standard by rule pursuant to this section, the commissioner shall hold a public hearing on the subject matter of the proposed adoption, modification, or revocation. An interested person may appear and be heard at the hearing, in person or by agent or counsel. The provisions of this section are in addition to the requirements of chapter 17A.

c. Notwithstanding other provisions of this section, upon or following July 1, 1972, the commissioner may adopt as interim standards those standards adopted by the secretary in conformance with section 6(a) of the federal law, provided that any such standard so adopted shall cease to be effective on April 28, 1973, unless the commissioner shall have initiated the procedures for adopting a permanent standard in conformance with and following the procedures set forth in this section, in which case the interim standard shall remain in effect pending the adoption of the permanent standard. In the event that any such federal interim standard is subsequently amended, modified, repealed, or substituted by a new interim standard, the commissioner shall, within thirty days, review such amendment, modification, repeal or substitution, and take such action with respect to the state interim standards, including the repeal or substitution of the same, as will conform the state interim standards to those federal interim standards then in effect.

2. *Toxic materials and other harmful physical agents.* The commissioner, in promulgating standards dealing with toxic materials or harmful physical agents under this subsection, shall set the standard which most adequately assures, to the extent feasible, on the basis of the best available evidence, that no employee will suffer material impairment of health or functional capacity even if such employee has regular exposure to the hazard dealt with by such standard for the period of the employee's working life. Development of standards under this subsection shall be based upon research, demonstrations, experiments, and such other information as may be appropriate, but in any event shall conform with the provisions of subsection 1 of this section. In addition to the attainment of the highest degree of health and safe-

ty protection for the employee, other considerations shall be the latest available scientific data in the field, the feasibility of the standards, and experience gained under this and other health and safety laws. Whenever practicable, a standard promulgated shall be expressed in terms of objective criteria and of the performance desired.

3. *Temporary variances.*

a. Any employer may apply to the commissioner for a temporary order granting a variance from a standard or any provision thereof promulgated under this section. Such temporary order shall be granted only if the employer files an application which meets the requirements of paragraph "b" of this subsection and establishes that the employer is unable to comply with the standard by its effective date because of unavailability of professional or technical personnel or of materials and equipment needed to come into compliance with the standards or because necessary construction or operation of the facilities cannot be completed by the effective date, that the employer is taking all available steps to safeguard the employer's employees against the hazards that are covered by the standard, and that the employer has an effective program for coming into compliance with this standard as quickly as practicable. Any temporary order issued under this paragraph shall prescribe the practices, means, methods, operations, and processes which the employer must adopt and use while the order is in effect and state in detail the employer's program for coming into compliance with the standard. Such a temporary order may be granted only after notice to employees and an opportunity for a hearing, provided that the commissioner may issue one interim order to be effective until a decision is made on the basis of the hearing. No temporary order may be in effect longer than the period needed by the employer to achieve compliance with the standard, or one year, whichever is shorter except that such an order may be renewed not more than twice so long as the requirements of this paragraph are met and an application for renewal is filed at least ninety days prior to the expiration date of the order. No interim renewal of an order may remain in effect for longer than one hundred and eighty days.

b. An application for a temporary order under this subsection shall contain:

(1) A specification of the standard or portion thereof from which the employer seeks a variance.

(2) A representation by the employer, supported by representations from qualified persons having firsthand knowledge of the fact represented, that the employer is unable to comply with the standard or portion thereof and a detailed statement of those reasons therefor.

(3) A statement of the steps the employer has taken and will take (with specific dates) to protect employees against the hazard covered by the standard.

(4) A statement of when the employer expects



to be able to comply with the standard and what steps the employer has taken and what steps the employer will take (with dates specified) to come into compliance with the standard.

(5) A certification that the employer has informed the employer's employees of any application by giving a copy thereof to their authorized employee representative, posting a statement giving a summary of the application and specifying where a copy may be examined at the place or places where notices to employees are normally posted, and by other reasonably appropriate means as may be directed by the commissioner.

(6) A description of how employees have been informed shall be contained in the certification. The information to employees shall also inform them of their right to petition the commissioner for a hearing.

4. *Labels, warnings, protective equipment.* Any standard promulgated under this section shall prescribe the use of labels or other appropriate forms of warning as are necessary to insure that employees are apprised of all hazards to which they are exposed, relevant symptoms and appropriate emergency treatment, and proper conditions and precautions of safe use or exposure. Where appropriate, such standard shall also prescribe suitable protective equipment and control or technological procedures to be used in connection with such hazards and shall provide for monitoring or measuring employee exposure at such locations and intervals, and in such manner as may be necessary for the protection of employees. In addition, where appropriate, any such standard shall prescribe the type and frequency of medical examinations or other tests which shall be made available, by the employer or at the employer's cost, to employees exposed to such hazard in order to most effectively determine whether the health of such employee is adversely affected by such exposure. The results of such examinations or tests shall be furnished to the commissioner, and if released by the employee, shall be furnished to the employee's physician and the employer's physician.

5. *Emergency temporary standards.* The commissioner shall provide for an emergency temporary standard to take immediate effect if the commissioner determines that employees are exposed to grave danger from exposure from substances or agents determined to be toxic or physically harmful or from new hazards and if such emergency temporary standard is necessary to protect the employees from such danger. Such emergency standard shall cease to be effective and shall no longer be applicable after the lapse of six months following the effective date thereof unless the commissioner has initiated the procedures provided for under this chapter, for the purpose of promulgating a permanent standard as provided in subsection 1 of this section in which case the emergency temporary standard will remain in ef-

fect until the permanent standard is adopted and becomes effective. Abandonment of the procedure for such promulgation by the commissioner shall terminate the effectiveness and applicability of the emergency temporary standard.

6. *Permanent variance.* Any affected employer may apply to the commissioner for a rule or order for a permanent variance from a standard promulgated under this section. Affected employees shall be given notice of each such application and an opportunity to participate in a hearing. The commissioner shall issue such rule or order if the commissioner determines on the record, after opportunity for an inspection where appropriate and a hearing, that the proponent of the variance has demonstrated by a preponderance of the evidence that the conditions, practices, means, methods, operations, or processes used or proposed to be used by an employer will provide employment and places of employment to the employer's employees which are as safe and healthful as those which would prevail if the employer complied with the standard. The rule or order so issued shall prescribe the conditions the employer must maintain, and the practices, means, methods, operations, and processes which the employer must adopt and utilize to the extent that they differ from the standard in question. Such a rule or order may be modified or revoked upon application by an employer, employees, or by the commissioner on the commissioner's own motion, in the manner prescribed for its issuance under this subsection at any time after six months from its issuance.

7. *Special variance.* Where there are conflicts with standards, rules, or regulations promulgated by any federal agency other than the United States department of labor, special variances from standards, rules, or regulations promulgated under this chapter may be granted to avoid such regulatory conflicts. Such variances shall take into consideration the safety of the employees involved. Notwithstanding any other provision of this chapter, and with respect to this subsection, any employer seeking relief under this provision must file an application with the commissioner and the commissioner shall forthwith hold a hearing at which employees or other interested persons, including representatives of the federal regulatory agencies involved, may appear and, upon the showing that such a conflict indeed exists, the commissioner may issue a special variance until the conflict is resolved.

8. *Priority for setting standards.* In determining the priorities for establishing standards under this section, the commissioner shall give due regard to the urgency of the need for mandatory safety and health standards for particular industries, trades, crafts, occupations, businesses, workplaces or work environments.

9. *Product safety.* Standards promulgated under this chapter shall not be different from federal standards applying to products distributed or

used in interstate commerce unless such standards are required by compelling local conditions and do not unduly burden interstate commerce. This provision does not apply to customized products or parts not normally available on the open market, or to optional parts or additions to products which are ordinarily available with such optional parts or additions.

10. *Judicial review before enforcement.* The provisions of the Iowa administrative procedure Act, chapter 17A, shall apply to judicial review of standards issued under this section. Notwithstanding any provision of the Iowa administrative procedure Act, chapter 17A, to the contrary, a person who is aggrieved or adversely affected by a standard issued under this section must seek judicial review of such standard prior to the sixtieth day after such standard becomes effective. All determinations of the commissioner shall be conclusive if supported by substantial evidence in the record as a whole.

11. *Railway sanitation and shelter.* A railway corporation within the state shall provide adequate sanitation and shelter for all railway employees. The commissioner shall adopt rules requiring railway corporations within the state to provide a safe and healthy workplace. The commissioner shall enforce the requirements of this section upon the receipt of a written complaint.

2007 Acts, ch 36, §1  
Subsection 11 stricken and former subsection 12 renumbered as 11

### 88.19 Annual report.

Within one hundred twenty days following the convening of each session of each general assembly, the commissioner shall prepare and submit to the governor for transmittal to the general assembly a report upon the subject matter of this chap-

ter, the progress toward achievement of the purpose of this chapter, the needs and requirements in the field of occupational safety and health, and any other relevant information. Such reports may include information regarding occupational safety and health standards, and criteria for such standards, developed during the preceding year; evaluation of standards and criteria previously developed under this chapter, defining areas of emphasis for new criteria and standards; and evaluation of the degree of observance of applicable occupational safety and health standards, and a summary of inspection and enforcement activity undertaken, including remedial actions taken under chapter 89A; analysis and evaluation of research activities for which results have been obtained under governmental and nongovernmental sponsorship; an analysis of major occupational diseases; evaluation of available control and measurement technology for hazards for which standards or criteria have been developed during the preceding year; description of cooperative efforts undertaken between government agencies and other interested parties in the implementation of this chapter during the preceding year; a progress report on the development of an adequate supply of trained personnel in the field of occupational safety and health, including estimates of future needs and the efforts being made by government and others to meet those needs; listing of all toxic substances in industrial usage for which labeling requirements, criteria, or standards have not yet been established; and such recommendations for additional legislation as are deemed necessary to protect the safety and health of the worker and improve the administration of this chapter.

2007 Acts, ch 16, §1  
Section amended

## CHAPTER 88B

### ASBESTOS REMOVAL AND ENCAPSULATION

#### 88B.1 Definitions.

As used in this chapter, unless the context otherwise requires:

1. *"Asbestos project"* means an activity involving the removal or encapsulation of asbestos and affecting a building or structure. *"Asbestos project"* includes the preparation of the project site and all activities through the transportation of the asbestos-containing materials off the premises. *"Asbestos project"* includes the removal or encapsulation of building materials containing asbestos from the site of a building or structure renovation, demolition, or collapse.

2. *"Business entity"* means a partnership, firm, association, corporation, sole proprietorship, or other business concern.

3. *"Commissioner"* means the labor commissioner or the commissioner's designee.

4. *"Division"* means the division of labor services of the department of workforce development created under section 84A.1.

5. *"License"* means an authorization issued by the division permitting an individual person, including a supervisor or contractor, to work on an asbestos project, to inspect buildings for asbestos-containing building materials, to develop management plans, and to act as an asbestos project designer.

6. *"Permit"* means an authorization issued by the division permitting a business entity to remove or encapsulate asbestos.

7. *"Public or commercial building"* means a

building that is not a residential apartment building of fewer than ten units or a school building.

2007 Acts, ch 125, §1  
Subsection 1 amended

### **88B.2 Jurisdiction of other agencies.**

This chapter shall not be construed to prevent the department of natural resources from implementing and enforcing the federal national emission standard for asbestos under 40 C.F.R. pt. 61, subpt. M, and other relevant provisions of environmental law.

2007 Acts, ch 125, §3  
NEW section

### **88B.11 Bids for governmental projects.**

A state agency or political subdivision shall not accept a bid in connection with any asbestos project from a business entity that does not hold a permit from the division at the time the bid is submitted, unless the business entity provides the state agency or political subdivision with written proof that ensures that the business entity has contracted to have the asbestos removal or encapsulation performed by a licensed asbestos contractor.

2007 Acts, ch 125, §2  
Section amended

## CHAPTER 89

### BOILERS AND UNFIRED STEAM PRESSURE VESSELS

#### **89.3 Inspection made.**

1. It shall be the duty of the commissioner, to inspect or cause to be inspected internally and externally, at least once every twelve months, except as otherwise provided in this section, in order to determine whether all such equipment is in a safe and satisfactory condition, and properly constructed and maintained for the purpose for which it is used, all boilers and unfired steam pressure vessels operating in excess of fifteen pounds per square inch, all low pressure heating boilers and unfired steam pressure vessels located in places of public assembly and other appurtenances used in this state for generating or transmitting steam for power, or for using steam under pressure for heating or steaming purposes.

2. The commissioner may enter any building or structure, public or private, for the purpose of inspecting any equipment covered by this chapter or gathering information with reference thereto.

3. The commissioner may inspect boilers and tanks and other equipment stamped with the American society of mechanical engineers code symbol for other than steam pressure, manufactured in Iowa, when requested by the manufacturer.

4. Each boiler of one hundred thousand pounds per hour or more capacity, unfired steam pressure vessel or regulated appurtenance used or proposed to be used within this state, which contains only water subject to internal continuous water treatment under the direct supervision of a graduate engineer or chemist, or one having equivalent experience in the treatment of boiler water where the water treatment is for the purpose of controlling and limiting serious corrosion and other deteriorating factors, and with respect to which vessel the commissioner has determined that the owner or user has complied with the recordkeeping requirements prescribed in this chapter, shall be inspected at least once every two years internally and externally while not under pres-

sure, and at least once every two years externally while under pressure. At any time a hydrostatic test is deemed necessary to determine the safety of a vessel, the tests shall be conducted by the owner or user of the equipment under the supervision of the commissioner.

5. The owner or user of a boiler of one hundred thousand pounds per hour or more capacity, unfired steam pressure vessel or regulated appurtenance desiring to qualify for biennial inspection shall keep available for examination by the commissioner accurate records showing the date and actual time the vessel is out of service and the reason it is out of service, and the chemical physical laboratory analyses of samples of the vessel water taken at regular intervals of not more than forty-eight hours of operation as will adequately show the condition of the water and any elements or characteristics of the water which are capable of producing corrosion or other deterioration of the vessel or its parts.

6. Internal inspections of cast aluminum steam, cast aluminum hot water heating, sectional cast iron steam, and cast iron hot water heating boilers shall be conducted only as deemed necessary by the commissioner. External operating inspections shall be conducted annually.

7. Internal inspections of steel hot water boilers shall be conducted once every six years. External operating inspections shall be conducted annually.

8. Internal inspections of unfired steam pressure vessels operating in excess of fifteen pounds per square inch shall be conducted once every two years. External inspections shall be conducted annually. An internal inspection of an unfired steam pressure vessel may be required at any time by the commissioner upon the observation by an inspector of conditions, enumerated by the commissioner through rules, warranting an internal inspection.

9. All power boilers that are converted to low pressure boilers shall have a fifteen pound safety

valve installed and be approved by the commissioner no later than thirty days after the expiration date of the certificate for the boiler.

10. An exhibition boiler does not require an annual inspection certificate but special inspections may be requested by the owner or an event's management to be performed by the commissioner. Upon the completion of an exhibition boiler inspection a written condition report shall be prepared by the commissioner regarding the condition of the exhibition boiler's boiler or pressure vessel. This report will be issued to the owner and the management of all events at which the exhibition boiler is to be operated. The event's management is responsible for the decision on whether the exhibition boiler should be operated and shall inform the division of labor of the event's management's decision. The event's management is responsible for any injuries which result from the operation of any exhibition boiler approved for use at the event by the event's management. A repair symbol, known as the "R" stamp, is not required for repairs made to exhibition boilers pursuant to the rules regarding inspections and repair of exhibition boilers as adopted by the commissioner, pursuant to chapter 17A.

11. An inspection report created pursuant to this chapter that requires modification, alteration, or change shall be in writing and shall cite the state law or rule or the ASME code section allegedly violated.

2007 Acts, ch 135, §1 - 3  
Subsections 3 and 4 stricken and former subsections 5 - 7 renumbered as 3 - 5  
Subsections 8 and 9 amended and renumbered as 6 and 7  
Former subsections 10 - 13 renumbered as 8 - 11

#### 89.4 Exemptions.

1. The provisions of this chapter shall not apply to the following boilers:

*a.* Boilers of railway locomotives subject to federal inspection.

*b.* Boilers operated and regularly inspected by railway companies operating in interstate commerce.

*c.* Boilers under the jurisdiction and subject to inspection by the United States government.

*d.* Steam heating boilers and unfired steam pressure vessels associated therewith and mobile power boilers used exclusively for agricultural purposes.

*e.* Heating boilers in residences.

*f.* Fire engine boilers brought into the state for temporary use in times of emergency.

*g.* Low pressure heating boilers used in buildings other than those for public assembly.

*h.* Hot water heating boilers used for heating pools or spas regulated by the department of public health pursuant to chapter 135I.

*i.* Water heaters used for potable water if the capacity is less than or equal to fifty gallons, the

burner input is less than or equal to fifty thousand British thermal units, and the maximum allowable working pressure is less than one hundred sixty pounds per square inch.

2. Unfired steam pressure vessels not exceeding the following limitations are not required to be reported to the commissioner and shall be exempt from regular inspection under provisions of this chapter:

*a.* A vessel not greater than five cubic feet in volume and not having a pressure greater than two hundred fifty pounds per square inch.

*b.* A vessel not greater than one and one-half cubic feet in volume with no limit on pressure.

3. Internal inspections shall not be required on unfired steam pressure vessels where they have been manufactured without inspection plate and where it would be necessary for them to be drilled in order to be inspected. The existence of such unfired pressure vessels shall be reported to the commissioner, and certified by the commissioner that the unfired pressure vessel is in a satisfactory condition for the purpose for which it is used.

4. Jacketed direct or indirect fired vessels built and installed in accordance with the American society of mechanical engineers code, section VIII, division 1, appendix 19, shall not be considered boilers or power boilers for purposes of this chapter and shall not be required to meet the American society of mechanical engineers standard for controls and safety devices for automatically fired boilers. However, jacketed direct or indirect fired vessels as described in this subsection shall be subject to inspection under section 89.3 as pressure vessels.

2007 Acts, ch 135, §4  
Subsection 1, NEW paragraph i

#### 89.7 Special inspectors.

1. The inspection required by this chapter shall not be made by the commissioner if an owner or user of equipment specified by this chapter obtains an inspection by a representative of a reputable insurance company and obtains a policy of insurance upon the equipment from that insurance company.

2. The representative conducting the inspection shall be commissioned by the commissioner as a special inspector for the year during which the inspection occurs and shall meet such other requirements as the commissioner may by rule establish. The commission shall be valid for one year and the special inspector shall pay a fee for the issuance of the commission. The commissioner shall establish the amount of the fee by rule. The commissioner shall establish rules for the issuance and revocation of special inspector commissions. The rules are subject to the requirements of chapter 17A.

3. The insurance company shall file a notice of

insurance coverage on forms approved by the commissioner stating that the equipment is insured and that inspection shall be made in accordance with section 89.3.

4. The special inspector shall provide the user and the commissioner with an inspection report including the nature and extent of all defects and violations, in a format approved by the labor commissioner.

5. The failure of a special inspector to inform the commissioner of violations shall not subject the commissioner to liability for any damages incurred.

2007 Acts, ch 135, §5  
Section stricken and rewritten

#### **89.7A Certificates.**

1. The commissioner shall issue a certificate of inspection valid for the period specified in section 89.3 after the payment of a fee, the filing of an inspection report, and the correction or other appropriate resolution of any defects identified in the inspection report.

2. The owner or user of any equipment covered in this chapter, or persons in charge of such equipment, shall not allow or permit a greater pressure in any unit than is stated in the certificate of inspection issued by the commissioner.

3. The commissioner shall indicate to the user whether or not the equipment may be used without making repair or replacement of defective parts, or whether or how the equipment may be used in a limited capacity before repairs or replacements are made, and the commissioner may permit the user a reasonable time to make such repairs or replacements.

2007 Acts, ch 135, §6  
NEW section

#### **89.11 Injunction.**

In addition to all other remedies, if any owner, user, or person in charge of any equipment covered by this chapter continues to use any equipment covered by this chapter, after receiving an inspection report identifying defects and exhausting appeal rights as provided by this chapter without first correcting the defects or making replacements, the commissioner may apply to the district court by petition in equity, in an action brought in the name of the state, for a writ of injunction to restrain the use of the alleged defective equipment. However, if the commissioner believes that the continued operation of equipment constitutes an imminent danger that could seriously injure or cause death to any person, in addition to all other remedies, the commissioner may apply to the district court in the county in which the imminently dangerous condition exists for a temporary order to enjoin the owner, user, or person in charge before exhausting administrative appeals.

2007 Acts, ch 135, §7  
Section amended

#### **89.14 Boiler and pressure vessel board — created — duties.**

1. A boiler and pressure vessel board is created within the division of labor services of the department of workforce development to formulate definitions and rules requirements for the safe and proper installation, repair, maintenance, alteration, use, and operation of boilers and pressure vessels in this state.

2. The boiler and pressure vessel board is composed of nine members, one of whom shall be the commissioner or the commissioner's designee. The remaining eight members shall be appointed by the governor, subject to confirmation by the senate, to four-year staggered terms beginning and ending as provided in section 69.19. One member shall be a special inspector who is employed by an insurance company that is licensed and actively writing boiler and machinery insurance in this state and who is commissioned to inspect boiler and pressure vessels in this state, two members shall be appointed from certified employee organizations, one of whom shall represent steamfitters, two members shall be mechanical engineers who regularly practice in the area of boilers and pressure vessels, one member shall be a boiler and pressure vessel distributor in this state, one member shall represent boiler and pressure vessel manufacturers, and one member shall be a mechanical contractor engaged in the business of installation, renovation, and repair of boilers and pressure vessels.

3. A vacancy in membership shall be filled in the same manner as the original appointment. The members shall serve without compensation, but shall be reimbursed for actual and necessary expenses incurred in the performance of official duties as a member.

4. The members of the board shall select a chairperson, vice chairperson, and secretary from their membership. However, neither the commissioner nor the commissioner's designee shall serve as chairperson. The board shall meet at least quarterly but may meet as often as necessary. Meetings shall be set by a majority of the board or upon the call of the chairperson, or in the chairperson's absence, upon the call of the vice chairperson. A majority of the board members shall constitute a quorum.

5. The board shall adopt rules pursuant to chapter 17A necessary to administer the duties of the board. Rules adopted by the board shall be in accordance with accepted engineering standards and practices. The board shall adopt rules relating to the equipment covered by this chapter that are in accordance with the ASME code, which may include addenda, interpretations, and code cases, as soon as reasonably practical following publication by the American society of mechanical engineers. The board shall adopt rules to require that operation of equipment cease in the event of imminent danger.

6. A notice of defect or inspection report issued by the commissioner pursuant to this chapter may, within thirty days after the making of the order, be appealed to the board. Board action constitutes final agency action for purposes of chapter 17A.

7. Not later than July 1, 2005, and every three years thereafter, the board shall conduct a comprehensive review of existing boiler rules, regulations, and standards, including but not limited to those relating to potable hot water supply boilers

and water heaters.

8. The board shall establish fees for examinations, inspections, annual statements, shop inspections, and other services. The fees shall reflect the actual costs and expenses necessary to operate the board and perform the duties of the commissioner.

2007 Acts, ch 135, §§  
Confirmation, see §2.32  
Subsections 5 and 8 amended

## CHAPTER 89A

### ELEVATORS

#### 89A.1 Definitions.

As used in this chapter, except as otherwise expressly provided:

1. *"Alteration"* means any change made to an existing conveyance, other than the repair or replacement of damaged, worn, or broken parts necessary for normal maintenance.

2. *"Commissioner"* means the labor commissioner, appointed pursuant to section 91.2, or the labor commissioner's designee.

3. *"Conveyance"* means an elevator, dumbwaiter, escalator, moving walk, lift, or inclined or vertical wheelchair lift subject to regulation under this chapter, and includes hoistways, rails, guides, and all other related mechanical and electrical equipment.

4. *"Division"* means the division of labor services of the department of workforce development created under section 84A.1.

5. *"Dormant conveyance"* means a conveyance whose power feed lines have been disconnected from the mainline disconnect switch and is one of the following:

a. An electric elevator, material lift, or dumbwaiter whose suspension ropes have been removed, whose car and counterweight rest at the bottom of the hoistway, and whose hoistway doors have been permanently barricaded or sealed in the closed position on the hoistway side.

b. A hydraulic elevator, material lift, or dumbwaiter whose car rests at the bottom of the hoistway, whose pressure piping has been disassembled and a section removed from the premises; whose hoistway doors have been permanently barricaded or sealed in the closed position on the hoistway side; and, if provided, whose suspension ropes have been removed and the counterweights landed at the bottom of the hoistway.

c. An escalator or moving walk whose entrances have been permanently barricaded.

d. A rack and pinion or screw column elevator, whose motor has been removed, platform lowered to the bottom, and entrances barricaded.

6. *"Dumbwaiter"* means a hoisting and lower-

ing mechanism equipped with a car which moves in guides in a substantially vertical direction, when the floor area does not exceed nine square feet, the total compartment height does not exceed four feet, the capacity does not exceed five hundred pounds, and which is used exclusively for carrying materials.

7. *"Elevator"* means a hoisting and lowering mechanism equipped with a car or platform which moves in guides in a substantially vertical direction, and which serves two or more floors of a building or structure. *"Elevator"* does not include a dumbwaiter, endless belt, conveyor, chain or bucket hoist, construction hoist, or other device used for the primary purpose of elevating or lowering building or other materials and not used as a means of conveyance for individuals, and does not include tiering, piling, feeding, or other machines or devices giving service within only one story.

8. *"Escalator"* means a power-driven, inclined, continuous stairway used for raising or lowering passengers.

9. *"Freight elevator"* means an elevator used for carrying freight and on which only the operator and persons necessary for unloading and loading the freight are permitted to ride.

10. *"Inclined or vertical wheelchair lift"* means a lift used as part of an accessible route in or at a public building as specified in the American society of mechanical engineers safety codes for elevators and escalators, A17.1.

11. *"Inspector"* means an inspector employed by the division for the purpose of administering this chapter.

12. *"Lift"* means a device consisting of a power-driven endless belt, provided with steps or platforms and handholds attached to it for the transportation of persons from floor to floor.

13. *"Material lift elevator"* means an elevator limited in use to the movement of materials.

14. *"Moving walk"* means a type of passenger-carrying device on which passengers stand or walk, and in which the passenger-carrying surface remains parallel to its direction in motion and is

uninterrupted.

15. “*New installation*” means a conveyance the construction or relocation of which is begun, or for which an application for a new installation permit is filed, on or after the effective date of rules relating to those permits adopted by the commissioner under authority of this chapter. All other installations are existing installations.

16. “*Owner*” means the owner of a conveyance, unless the conveyance is a new installation or is undergoing major alterations, in which case the owner shall be considered the person responsible for the installation or alteration of the conveyance until the conveyance has passed final inspection by the division.

17. “*Passenger elevator*” means an elevator that is used to carry persons other than the operator and persons necessary for loading and unloading.

18. “*Safety board*” means the elevator safety board created in section 89A.13.

19. “*Special inspector*” means an inspector commissioned by the labor commissioner, and not employed by the division.

2007 Acts, ch 16, §2  
Section amended

### 89A.2 Scope of chapter.

The provisions of this chapter shall not apply to any conveyance installed in any single private dwelling residence, to conveyances subject to regulation under 875 IAC 26.1 and 29 C.F.R. § 1926.552, to lifts subject to regulation under chapter 88, to material lift elevators existing in the same location since prior to January 1, 1975, or to conveyances over which an agency of the federal government is asserting similar enforcement jurisdiction. Provisions of this chapter supersede conflicting provisions contained in building codes of this state or any subdivision thereof.

2007 Acts, ch 16, §3  
Section amended

### 89A.3 Rules.

1. The safety board may adopt rules governing maintenance, construction, alteration, and installation of conveyances, and the inspection and testing of new and existing installations as necessary to provide for the public safety, and to protect the public welfare.

2. The safety board shall adopt, amend, or repeal rules pursuant to chapter 17A as it deems necessary for the administration of this chapter, which shall include but not be limited to rules providing for:

- a. Classifications of types of conveyances.
- b. Maintenance, inspection, testing, and operation of the various classes of conveyances.
- c. Construction of new conveyances.
- d. Alteration of existing conveyances.
- e. Minimum safety requirements for all existing conveyances.

f. Control or prevention of access to conveyances or dormant conveyances.

g. The reporting of accidents and injuries arising from the use of conveyances.

h. The adoption of procedures for the issuance of variances.

i. The amount of fees charged and collected for inspection, permits, and commissions. Fees shall be set at an amount sufficient to cover costs as determined from consideration of the reasonable time required to conduct an inspection, reasonable hourly wages paid to inspectors, and reasonable transportation and similar expenses.

3. The safety board shall adopt rules for conveyances according to the applicable provisions of the American society of mechanical engineers safety codes for elevators and escalators, A17.1 and A17.3, as the safety board deems necessary. In adopting rules the safety board may adopt the American society of mechanical engineers safety codes, or any part of the codes, by reference.

4. The safety board may adopt rules permitting existing passenger and freight elevators to be modified into material lift elevators.

5. A rule adopted pursuant to this section which adopts standards by reference to another publication shall be exempt from the requirements of section 17A.6, subsection 4, if the following conditions exist:

a. The cost of the publication is an unreasonable expense when compared to the anticipated usage of the publication.

b. A copy of the publication is available from an entity located within the state capitol complex.

c. The rule identifies the location where the publication is available.

d. The administrative rules coordinator approves the exemption.

6. The commissioner shall furnish copies of the rules adopted pursuant to this chapter to any person who requests them, without charge, or upon payment of a charge not to exceed the actual cost of printing of the rules.

7. The safety board may adopt rules permitting inclined or vertical wheelchair lifts in churches and houses of worship to service more than one floor.

8. The commissioner may adopt rules pursuant to chapter 17A relating to the denial, issuance, revocation, and suspension of special inspector commissions.

2007 Acts, ch 16, §4  
Former subsection 1 amended and editorially divided into subsections 1 and 2  
Former subsection 2 amended, divided, and redesignated as subsections 3 and 4  
Former subsections 3 – 6 renumbered as 5 – 8

### 89A.5 Registration of conveyances.

The owner of every existing conveyance, whether or not dormant, shall register the conveyance with the commissioner, giving type, contract load and speed, name of manufacturer, its location, and

the purpose for which it is used, and other information the commissioner may require. Registration shall be made in a format required by the division.

2007 Acts, ch 16, §5  
Section amended

#### **89A.6 Inspections — reports — nonliability.**

All new and existing conveyances, except dormant conveyances, shall be tested and inspected in accordance with the following schedule:

1. Every new or altered conveyance shall be inspected and tested before the operating permit is issued.

2. Every existing conveyance registered with the commissioner shall be inspected within one year after the effective date of the registration, except that the safety board may extend by rule the time specified for making inspections.

3. Every conveyance shall be inspected not less frequently than annually, except that the safety board may adopt rules providing for inspections of conveyances at intervals other than annually.

4. The inspections required by subsections 1 to 3 shall be made only by inspectors or special inspectors. An inspection by a special inspector may be accepted by the commissioner in lieu of a required inspection by an inspector.

5. A report of every inspection shall be filed with the commissioner by the inspector or special inspector, in a format required by the commissioner, after the inspection has been completed and within the time provided by rule, but not to exceed thirty days. The report shall include all information required by the commissioner to determine whether the conveyance is in compliance with applicable rules. For the inspection required by subsection 1, the report shall indicate whether the conveyance has been installed in accordance with the detailed plans and specifications approved by the commissioner, and meets the requirements of the applicable rules. The failure of a special inspector to inform the commissioner of violations shall not subject the commissioner to liability for any damages incurred.

6. In addition to the inspections required by subsections 1 to 3, the safety board may provide by rule for additional inspections as the safety board deems necessary to enforce the provisions of this chapter.

2007 Acts, ch 16, §6  
Section amended

#### **89A.7 Alteration permits.**

The owner shall submit to the commissioner detailed plans, specifications, and other information the commissioner may require for each conveyance to be altered, together with an application for an alteration permit, in a format required by the commissioner. Repairs or replacements necessary

for normal maintenance are not alterations, and may be made on existing installations with parts equivalent in material, strength, and design to those replaced and no plans or specifications or application need be filed for the repairs or replacements. However, this section does not authorize the use of any conveyance contrary to an order issued pursuant to section 89A.10, subsections 2 and 3.

2007 Acts, ch 16, §7  
Section amended

#### **89A.9 Operating permits.**

1. Operating permits shall be issued by the commissioner to the owner of every conveyance when the inspection report indicates compliance with the applicable provisions of this chapter. However, a permit shall not be issued if the fees required by this chapter have not been paid. Permits shall be issued within thirty days after filing of the inspection report required by section 89A.6, unless the time is extended for cause by the division. A conveyance shall not be operated after the thirty days or after an extension granted by the commissioner has expired, unless an operating permit has been issued.

2. The operating permit shall indicate the type of equipment for which it is issued, and in the case of elevators shall state whether passenger or freight, and also shall state the contract load and speed for each conveyance. The permit shall be posted conspicuously in the car of an elevator, or on or near a dumbwaiter, escalator, moving walk, or lift.

2007 Acts, ch 16, §8  
Section amended and former unnumbered paragraphs 1 and 2 editorially designated as subsections 1 and 2

#### **89A.10 Enforcement orders by commissioner — injunction.**

1. If an inspection report indicates a failure to comply with applicable rules, or with the detailed plans and specifications approved by the commissioner, the commissioner may, upon giving notice, order the owner thereof to make the changes necessary for compliance.

2. If the owner does not make the changes necessary for compliance as required in subsection 1 within the period specified by the commissioner, the commissioner, upon notice, may suspend or revoke the operating permit, or may refuse to issue the operating permit for the conveyance. The commissioner shall notify the owner of any action to suspend, revoke, or refuse to issue an operating permit and the reason for the action by service in the same manner as an original notice or by certified mail. An owner may appeal the commissioner's initial decision to the safety board. The decision of the safety board shall be considered final agency action pursuant to chapter 17A.

3. If the commissioner has reason to believe that the continued operation of a conveyance constitutes an imminent danger which could reason-



ably be expected to seriously injure or cause death to any person, in addition to any other remedies, the commissioner may apply to the district court in the county in which such imminently dangerous condition exists for a temporary order for the purpose of enjoining such imminently dangerous conveyance. Upon hearing, if deemed appropriate by the court, a permanent injunction may be issued to insure that such imminently dangerous conveyance be prevented or controlled. Upon the elimination or rectification of such imminently dangerous condition, the temporary or permanent injunction shall be vacated.

2007 Acts, ch 16, §9  
Subsections 2 and 3 amended

#### **89A.11 Nonconforming conveyances.**

The safety board, pursuant to rule, may grant exceptions and variances from the requirements of rules adopted for any conveyance. Exceptions or variations shall be reasonably related to the age of the conveyance, and may be conditioned upon a repair or modification of the conveyance deemed necessary by the safety board to assure reasonable safety. However, an exception or variance shall not be granted except to prevent undue hardship. Such conveyances shall be subject to orders issued pursuant to section 89A.10.

2007 Acts, ch 16, §10  
Section amended

#### **89A.12 Access to conveyances.**

Every owner of a conveyance subject to regulation by this chapter shall grant access to that conveyance to the commissioner and personnel of the division. Inspections shall be permitted at reasonable times, with or without prior notice.

2007 Acts, ch 16, §11  
Section amended

#### **89A.13 Elevator safety board.**

1. An elevator safety board is created within the division of labor services in the department of workforce development to formulate definitions and rules for the safe and proper installation, repair, maintenance, alteration, use, and operation of conveyances in this state.

2. The safety board is composed of nine members, one of whom shall be the commissioner or the commissioner's designee. The governor shall appoint the remaining eight members of the board, subject to senate confirmation, to staggered four-year terms which shall begin and end as provided in section 69.19. The members shall be as follows: two representatives from an elevator manufacturing company or its authorized representative; two representatives from elevator servicing companies; one building owner or manager; one representative employed by a local government in this state who is knowledgeable about building codes in this state; one representative of workers actively involved in the installation, maintenance,

and repair of elevators; and one licensed mechanical engineer.

3. A vacancy in membership shall be filled in the same manner as the original appointment. The members shall serve without salary, but shall be reimbursed for actual and necessary expenses incurred in the performance of official duties as a member.

4. The members of the safety board shall select a chairperson, vice chairperson, and a secretary from their membership. However, neither the commissioner nor the commissioner's designee shall serve as chairperson. The safety board shall meet at least quarterly but may meet as often as necessary. Meetings shall be set by a majority of the safety board or upon the call of the chairperson, or in the chairperson's absence, upon the call of the vice chairperson. A majority of the safety board members shall constitute a quorum.

5. The owner or user of equipment regulated under this chapter may appeal a notice of defect or an inspection report to the safety board within thirty days after the issuance of the notice or report. Safety board action constitutes final agency action for purposes of chapter 17A.

6. The safety board shall adopt rules pursuant to chapter 17A necessary to administer the duties of the board.

7. Not later than July 1, 2005, and every three years thereafter, the safety board shall conduct a comprehensive review of existing conveyance rules, regulations, and standards.

2007 Acts, ch 16, §12  
Confirmation, see §2.32  
Subsections 1 and 7 amended

#### **89A.14 Continuing duty of owner.**

Every conveyance shall be maintained by the owner in a safe operating condition and in conformity with the rules adopted by the safety board.

2007 Acts, ch 16, §13  
Section amended

#### **89A.15 Inspections by local authorities.**

A city or other governmental subdivision shall not make or maintain any ordinance, bylaw, or resolution providing for the licensing of special inspectors. An ordinance or resolution relating to the inspection, construction, installation, alteration, maintenance, or operation of conveyances within the limits of the city or governmental subdivision which conflicts with this chapter or with rules adopted pursuant to this chapter is void. The commissioner, in the commissioner's discretion, may accept inspections by local authorities in lieu of inspections required by section 89A.6, but only upon a showing by the local authority that applicable laws and rules will be consistently and literally enforced and that inspections will be performed by special inspectors.

2007 Acts, ch 16, §14  
Section amended

**89A.18 Civil penalty.**

If upon notice and hearing the commissioner determines that an owner has operated a conveyance after an order of the commissioner that suspends, revokes, or refuses to issue an operating permit for the conveyance has become final under section 89A.10, subsection 2, the commissioner may assess a civil penalty against the owner in an amount not exceeding five hundred dollars, as determined by the commissioner. An order assessing a civil penalty is subject to appeal under section 89A.10, subsection 2, in the same manner and

to the same extent as decisions referred to in that subsection. The commissioner may commence an action in the district court to enforce payment of the civil penalty. A record of assessment against or payment of a civil penalty by any person for a violation of this section shall not be admissible as evidence in any court in any civil action. Revenue from the penalty provided in this section shall be remitted to the treasurer of state for deposit in the state general fund.

2007 Acts, ch 16, §15  
Section amended

**CHAPTER 91****LABOR SERVICES DIVISION****91.4 Duties and powers.**

The duties of said commissioner shall be:

1. To safely keep all records, papers, documents, correspondence, and other property pertaining to or coming into the commissioner's hands by virtue of the office, and deliver the same to the commissioner's successor, except as otherwise provided.

2. To collect, assort, and systematize statistical details relating to programs of the division of labor services.

3. To issue from time to time bulletins containing information of importance to the industries of the state and to the safety of wage earners.

4. To conduct and to cooperate with other interested persons and organizations in conducting educational programs and projects on employment safety.

5. The director of the department of workforce development, in consultation with the labor commissioner, shall, at the time provided by law, make an annual report to the governor setting forth in appropriate form the business and expense of the division of labor services for the preceding year, the number of disputes or violations processed by the division and the disposition of the disputes or violations, and other matters pertaining to the division which are of public interest, together with recommendations for change or amendment of the laws in this chapter and chapters 88, 88A, 88B, 89, 89A, 89B, 90A, 91A, 91C, 91D, 91E, 92, and 94A, and section 85.68, and the recommendations, if any, shall be transmitted by the governor to the first general assembly in session after the report is filed.

6. The commissioner, with the assistance of the office of the attorney general if requested by the commissioner, may commence a civil action in any court of competent jurisdiction to enforce the statutes under the commissioner's jurisdiction.

7. The division of labor services may sell documents printed by the division at cost according to

rules established by the labor commissioner pursuant to chapter 17A. Receipts from the sale shall be deposited to the credit of the division and may be used by the division for administrative expenses.

8. Except as provided in chapter 91A, the commissioner may recover interest, court costs, and any attorney fees incurred in recovering any amounts due. The recovery shall only take place after final agency action is taken under chapter 17A, or upon judicial review, after final disposition of the case by the court. Attorney fees recovered in an action brought under the jurisdiction of the commissioner shall be deposited in the general fund of the state. The commissioner is exempt from the payment of any filing fee or other court costs including but not limited to fees paid to county sheriffs.

9. The commissioner may establish rules pursuant to chapter 17A to assess and collect interest on fees, penalties, and other amounts due the division. The commissioner may delay or, following written notice, deny the issuance of a license, commission, registration, certificate, or permit authorized under chapter 88A, 89, 89A, 90A, 91C, or 94A if the applicant for the license, commission, registration, certificate, or permit owes a liquidated debt to the commissioner.

10. Serve as an ex officio member of the state fire service and emergency response council, or appoint a designee to serve as an ex officio member of such council, to assist the council in the development of rules relating to fire fighting training standards and any other issues relating to occupational safety and health standards for fire fighters.

2007 Acts, ch 211, §34  
Subsection 5 amended

**91.16 Violations — penalties.**

Persons violating any of the provisions of this chapter shall be punished as in this section provid-

ed, respectively:

1. Any owner, superintendent, manager, or person in charge of any factory, mill, workshop, store, mine, hotel, restaurant, cafe, railway, business house, public or private work, who shall refuse to allow the labor commissioner or any inspector or employee of the division of labor services to enter the same, or who shall hinder or deter the commissioner, inspector, or employee in collecting information which it is that person's duty to collect shall be guilty of a simple misdemeanor.

2. Any officer or employee of the division of labor services, or any person making unlawful use of

names or information obtained by virtue of the person's office, shall be guilty of a serious misdemeanor.

3. Any owner, operator, or manager of a factory, mill, workshop, mine, store, railway, business house, public or private work, who shall neglect or refuse for thirty days after receipt of notice from the commissioner to furnish any reports or returns the commissioner may require to enable the commissioner to discharge the commissioner's duties shall be guilty of a simple misdemeanor.

2007 Acts, ch 22, §24  
Subsection 1 amended

## CHAPTER 91A

### WAGE PAYMENT COLLECTION

#### 91A.3 Mode of payment.

1. An employer shall pay all wages due its employees, less any lawful deductions specified in section 91A.5, at least in monthly, semimonthly, or biweekly installments on regular paydays which are at consistent intervals from each other and which are designated in advance by the employer. However, if any of these wages due its employees are determined on a commission basis, the employer may, upon agreement with the employee, pay only a credit against such wages. If such credit is paid, the employer shall, at regular intervals, pay any difference between a credit paid against wages determined on a commission basis and such wages actually earned on a commission basis. These regular intervals shall not be separated by more than twelve months. A regular payday shall not be more than twelve days, excluding Sundays and legal holidays, after the end of the period in which the wages were earned. An employer and employee may, upon written agreement which shall be maintained as a record, vary the provisions of this subsection.

2. The wages paid under subsection 1 shall be paid in United States currency or by written instrument issued by the employer and negotiable on demand at full face value for such currency, unless the employee has agreed in writing to receive a part of or all wages in kind or in other form.

3. *a.* The wages paid under subsection 1 shall be sent to the employee by mail or be paid at the employee's normal place of employment during normal employment hours or at a place and hour mutually agreed upon by the employer and employee, or the employee may elect to have the wages sent for direct deposit, on or by the regular payday of the employee, into a financial institution designated by the employee. An employee hired on or after July 1, 2005, may be required, as a condition of employment, to participate in direct deposit of the employee's wages in a financial in-

stitution of the employee's choice unless any of the following conditions exist:

(1) The costs to the employee of establishing and maintaining an account for purposes of the direct deposit would effectively reduce the employee's wages to a level below the minimum wage provided under section 91D.1.

(2) The employee would incur fees charged to the employee's account as a result of the direct deposit.

(3) The provisions of a collective bargaining agreement mutually agreed upon by the employer and the employee organization prohibit the employer from requiring an employee to sign up for direct deposit as a condition of hire.

*b.* If the employer fails to send an employee's wages for direct deposit on or by the regular payday in accordance with this subsection, the employer is liable for the amount of any overdraft charge if the overdraft is created on the employee's account because of the employer's failure to send the wages on or by the regular payday. The overdraft charges may be the basis for a claim under section 91A.10 and for damages under section 91A.8.

4. The wages paid under subsection 1 may be delivered to a designee of the employee who is so designated in writing or may be sent to the employee by any reasonable means requested by the employee in writing. A designee under this subsection shall not also be an assignee or buyer of wages under section 539.4 nor a garnisher of the employee under chapter 642, unless the designee complies with the provisions of section 539.4 and chapter 642.

5. If an employee is absent from the normal place of employment on the regular payday, the employer shall, upon demand of the employee made within the first seven days following the regular payday, pay the wages, less any lawful deductions specified in section 91A.5, which were due on

that regular payday. However, if demand is not made within this seven-day period, the employer shall, upon demand of the employee, pay the wages which were due on a regular payday within the first seven days following the day on which demand is made.

6. Expenses by the employee which are authorized by the employer and incurred by the employee shall either be reimbursed in advance of expenditure or be reimbursed not later than thirty days after the employee's submission of an expense claim. If the employer refuses to pay all or part of each claim, the employer shall submit to the employee a written justification of such refusal within the same time period in which expense claims are paid under this subsection.

7. If a farm labor contractor contracts with a person engaged in the production of seed or feed grains to remove unwanted or genetically deviant plants or corn tassels or to hand pollinate plants, and fails to pay all wages due the employees of the farm labor contractor, the person engaged in the production of seed or feed grains shall also be liable to the employees for wages not paid by the farm labor contractor.

2007 Acts, ch 29, §1  
2006 amendment to subsection 3, unnumbered paragraph 1, applies retroactively to July 1, 2005, for employees hired on or after that date; 2006 Acts, ch 1083, §4

Subsection 3, unnumbered paragraph 1, paragraphs a - c, and unnumbered paragraph 2 editorially redesignated as paragraph a, subparagraphs (1) - (3), and paragraph b

Subsection 3, paragraph b amended

## CHAPTER 91D

### MINIMUM WAGE

#### **91D.1 Minimum wage requirements — exceptions.**

1. *a.* The state hourly wage shall be at least \$6.20 as of April 1, 2007, and \$7.25 as of January 1, 2008.

*b.* Every employer, as defined in the federal Fair Labor Standards Act of 1938, as amended to January 1, 2007, shall pay to each of the employer's employees, as defined in the federal Fair Labor Standards Act of 1938, as amended to January 1, 2007, the state hourly wage stated in paragraph "a", or the current federal minimum wage, pursuant to 29 U.S.C. § 206, as amended, whichever is greater.

*c.* For purposes of determining whether an employee of a restaurant, hotel, motel, inn, or cabin, who customarily and regularly receives more than thirty dollars a month in tips is receiving the minimum hourly wage rate prescribed by this section, the amount paid the employee by the employer shall be deemed to be increased on account of the tips by an amount determined by the employer, not to exceed forty percent of the applicable minimum wage. An employee may file a written appeal with the labor commissioner if the amount of tips received by the employee is less than the amount determined by the employer under this subsection.

*d.* An employer is not required to pay an employee the applicable state hourly wage provided

in paragraph "a" until the employee has completed ninety calendar days of employment with the employer. An employee who has completed ninety calendar days of employment with the employer prior to April 1, 2007, or January 1, 2008, shall earn the applicable state hourly minimum wage as of that date. An employer shall pay an employee who has not completed ninety calendar days of employment with the employer an hourly wage of at least \$5.30 as of April 1, 2007, and \$6.35 as of January 1, 2008.

2. The exemptions from the minimum wage requirements stated in 29 U.S.C. § 213 shall apply, except that the exemption in 29 U.S.C. § 213(a)(2) shall only apply to an enterprise which is comprised of one or more retail or service establishments whose annual gross volume of sales made or business done is less than sixty percent of the amount stated in 29 U.S.C. § 203(s)(2), exclusive of excise taxes at the retail level that are separately stated.

3. The labor commissioner shall adopt rules to implement and administer this section.

4. This section shall be enforced pursuant to chapter 91A.

2007 Acts, ch 1, §1 - 3  
Labor commissioner shall not impose liquidated damages pursuant to chapter 91A for employer violations of 2007 amendments to this section committed prior to July 1, 2007; 2007 Acts, ch 1, §2

Subsection 1, paragraphs a, b, and d amended

## CHAPTER 91E

### NON-ENGLISH SPEAKING EMPLOYEES

#### 91E.1 Definitions.

As used in this chapter:

1. “*Commissioner*” means the labor commissioner, appointed pursuant to section 91.2.
2. “*Employee*” means a natural person who is employed in this state for wages paid on an hourly basis by an employer. An employee does not include a person engaged in agriculture as defined in section 91A.2 or a person engaged in agriculture on a seasonal basis. However, this exemption shall not apply to farm owners who hire workers to work on cropland other than their own.
3. “*Employer*” means a person, as defined in chapter 4, who in this state employs for wages, paid on an hourly basis, one hundred or more natural persons. An employer does not include a cli-

ent, patient, customer, or other person who obtains professional services from a licensed person who provides the services on a fee service basis or as an independent contractor, or the state, or an agency or governmental subdivision of the state.

4. “*Non-English speaking employee*” means an employee who does not speak, read, write, or understand English to the degree necessary for comprehension of the terms, conditions, and daily responsibilities of employment.

5. “*Farm owner*” does not include a person who uses cropland for research or experimental purposes, testing, developing, or producing seeds or plants for sale or resale.

2007 Acts, ch 22, §25  
Subsection 1 amended

## CHAPTER 96

### EMPLOYMENT SECURITY — UNEMPLOYMENT COMPENSATION

#### 96.5 Causes for disqualification.

An individual shall be disqualified for benefits:

1. *Voluntary quitting.* If the individual has left work voluntarily without good cause attributable to the individual’s employer, if so found by the department. But the individual shall not be disqualified if the department finds that:
  - a. The individual left employment in good faith for the sole purpose of accepting other or better employment, which the individual did accept, and the individual performed services in the new employment. Benefits relating to wage credits earned with the employer that the individual has left shall be charged to the unemployment compensation fund. This paragraph applies to both contributory and reimbursable employers, notwithstanding section 96.8, subsection 5.
  - b. Reserved.
  - c. The individual left employment for the necessary and sole purpose of taking care of a member of the individual’s immediate family who was then injured or ill, and if after said member of the family sufficiently recovered, the individual immediately returned to and offered the individual’s services to the individual’s employer, provided, however, that during such period the individual did not accept any other employment.
  - d. The individual left employment because of illness, injury or pregnancy upon the advice of a licensed and practicing physician, and upon knowledge of the necessity for absence immediately notified the employer, or the employer consented to the absence, and after recovering from the illness,

injury or pregnancy, when recovery was certified by a licensed and practicing physician, the individual returned to the employer and offered to perform services and the individual’s regular work or comparable suitable work was not available, if so found by the department, provided the individual is otherwise eligible.

e. The individual left employment upon the advice of a licensed and practicing physician, for the sole purpose of taking a member of the individual’s family to a place having a different climate, during which time the individual shall be deemed unavailable for work, and notwithstanding during such absence the individual secures temporary employment, and returned to the individual’s regular employer and offered the individual’s services and the individual’s regular work or comparable work was not available, provided the individual is otherwise eligible.

f. The individual left the employing unit for not to exceed ten working days, or such additional time as may be allowed by the individual’s employer, for compelling personal reasons, if so found by the department, and prior to such leaving had informed the individual’s employer of such compelling personal reasons, and immediately after such compelling personal reasons ceased to exist the individual returned to the individual’s employer and offered the individual’s services and the individual’s regular or comparable work was not available, provided the individual is otherwise eligible; except that during the time the individual is away from the individual’s work because of the continu-

ance of such compelling personal reasons, the individual shall not be eligible for benefits.

g. The individual left work voluntarily without good cause attributable to the employer under circumstances which did or would disqualify the individual for benefits, except as provided in paragraph "a" of this subsection but, subsequent to the leaving, the individual worked in and was paid wages for insured work equal to ten times the individual's weekly benefit amount, provided the individual is otherwise eligible.

h. The individual has left employment in lieu of exercising a right to bump or oust a fellow employee with less seniority or priority from the fellow employee's job.

i. The individual is unemployed as a result of the individual's employer selling or otherwise transferring a clearly segregable and identifiable part of the employer's business or enterprise to another employer which does not make an offer of suitable work to the individual as provided under subsection 3. However, if the individual does accept, and works in and is paid wages for, suitable work with the acquiring employer, the benefits paid which are based on the wages paid by the transferring employer shall be charged to the unemployment compensation fund provided that the acquiring employer has not received, or will not receive, a partial transfer of experience under the provisions of section 96.7, subsection 2, paragraph "b". Relief of charges under this paragraph applies to both contributory and reimbursable employers, notwithstanding section 96.8, subsection 5.

j. The individual is a temporary employee of a temporary employment firm who notifies the temporary employment firm of completion of an employment assignment and who seeks reassignment. Failure of the individual to notify the temporary employment firm of completion of an employment assignment within three working days of the completion of each employment assignment under a contract of hire shall be deemed a voluntary quit unless the individual was not advised in writing of the duty to notify the temporary employment firm upon completion of an employment assignment or the individual had good cause for not contacting the temporary employment firm within three working days and notified the firm at the first reasonable opportunity thereafter.

To show that the employee was advised in writing of the notification requirement of this paragraph, the temporary employment firm shall advise the temporary employee by requiring the temporary employee, at the time of employment with the temporary employment firm, to read and sign a document that provides a clear and concise explanation of the notification requirement and the consequences of a failure to notify. The document shall be separate from any contract of employment and a copy of the signed document shall be provided to the temporary employee.

For purposes of this paragraph:

(1) "*Temporary employee*" means an individual who is employed by a temporary employment firm to provide services to clients to supplement their workforce during absences, seasonal workloads, temporary skill or labor market shortages, and for special assignments and projects.

(2) "*Temporary employment firm*" means a person engaged in the business of employing temporary employees.

2. *Discharge for misconduct.* If the department finds that the individual has been discharged for misconduct in connection with the individual's employment:

a. The individual shall be disqualified for benefits until the individual has worked in and has been paid wages for insured work equal to ten times the individual's weekly benefit amount, provided the individual is otherwise eligible.

b. Provided further, if gross misconduct is established, the department shall cancel the individual's wage credits earned, prior to the date of discharge, from all employers.

c. Gross misconduct is deemed to have occurred after a claimant loses employment as a result of an act constituting an indictable offense in connection with the claimant's employment, provided the claimant is duly convicted thereof or has signed a statement admitting the commission of such an act. Determinations regarding a benefit claim may be redetermined within five years from the effective date of the claim. Any benefits paid to a claimant prior to a determination that the claimant has lost employment as a result of such act shall not be considered to have been accepted by the claimant in good faith.

3. *Failure to accept work.* If the department finds that an individual has failed, without good cause, either to apply for available, suitable work when directed by the department or to accept suitable work when offered that individual. The department shall, if possible, furnish the individual with the names of employers which are seeking employees. The individual shall apply to and obtain the signatures of the employers designated by the department on forms provided by the department. However, the employers may refuse to sign the forms. The individual's failure to obtain the signatures of designated employers, which have not refused to sign the forms, shall disqualify the individual for benefits until requalified. To requalify for benefits after disqualification under this subsection, the individual shall work in and be paid wages for insured work equal to ten times the individual's weekly benefit amount, provided the individual is otherwise eligible.

a. (1) In determining whether or not any work is suitable for an individual, the department shall consider the degree of risk involved to the individual's health, safety, and morals, the individual's physical fitness, prior training, length of unemployment, and prospects for securing local work in the individual's customary occupation, the dis-

tance of the available work from the individual's residence, and any other factor which the department finds bears a reasonable relation to the purposes of this paragraph. Work is suitable if the work meets all the other criteria of this paragraph and if the gross weekly wages for the work equal or exceed the following percentages of the individual's average weekly wage for insured work paid to the individual during that quarter of the individual's base period in which the individual's wages were highest:

(a) One hundred percent, if the work is offered during the first five weeks of unemployment.

(b) Seventy-five percent, if the work is offered during the sixth through the twelfth week of unemployment.

(c) Seventy percent, if the work is offered during the thirteenth through the eighteenth week of unemployment.

(d) Sixty-five percent, if the work is offered after the eighteenth week of unemployment.

(2) However, the provisions of this paragraph shall not require an individual to accept employment below the federal minimum wage.

b. Notwithstanding any other provision of this chapter, no work shall be deemed suitable and benefits shall not be denied under this chapter to any otherwise eligible individual for refusing to accept new work under any of the following conditions:

(1) If the position offered is vacant due directly to a strike, lockout, or other labor dispute;

(2) If the wages, hours, or other conditions of the work offered are substantially less favorable to the individual than those prevailing for similar work in the locality;

(3) If as a condition of being employed, the individual would be required to join a company union or to resign from or refrain from joining any bona fide labor organization.

#### 4. *Labor disputes.*

a. For any week with respect to which the department finds that the individual's total or partial unemployment is due to a stoppage of work which exists because of a labor dispute at the factory, establishment, or other premises at which the individual is or was last employed, provided that this subsection shall not apply if it is shown to the satisfaction of the department that:

(1) The individual is not participating in or financing or directly interested in the labor dispute which caused the stoppage of work; and

(2) The individual does not belong to a grade or class of workers of which, immediately before the commencement of the stoppage, there were members employed at the premises at which the stoppage occurs, any of whom are participating in or financing or directly interested in the dispute.

b. Provided, that if in any case separate branches of work which are commonly conducted as separate businesses in separate premises are conducted in separate departments of the same

premises, each such department shall, for the purposes of this subsection, be deemed to be a separate factory, establishment, or other premises.

#### 5. *Other compensation.*

a. For any week with respect to which the individual is receiving or has received payment in the form of any of the following:

(1) Wages in lieu of notice, separation allowance, severance pay, or dismissal pay.

(2) Compensation for temporary disability under the workers' compensation law of any state or under a similar law of the United States.

(3) A governmental or other pension, retirement or retired pay, annuity, or any other similar periodic payment made under a plan maintained or contributed to by a base period or chargeable employer where, except for benefits under the federal Social Security Act or the federal Railroad Retirement Act of 1974 or the corresponding provisions of prior law, the plan's eligibility requirements or benefit payments are affected by the base period employment or the remuneration for the base period employment. However, if an individual's benefits are reduced due to the receipt of a payment under this subparagraph, the reduction shall be decreased by the same percentage as the percentage contribution of the individual to the plan under which the payment is made.

b. Provided, that if the remuneration is less than the benefits which would otherwise be due under this chapter, the individual is entitled to receive for the week, if otherwise eligible, benefits reduced by the amount of the remuneration. Provided further, if benefits were paid for any week under this chapter for a period when benefits, remuneration or compensation under paragraph "a", subparagraph (1), (2), or (3), were paid on a retroactive basis for the same period, or any part thereof, the department shall recover the excess amount of benefits paid by the department for the period, and no employer's account shall be charged with benefits so paid. However, compensation for service-connected disabilities or compensation for accrued leave based on military service by the beneficiary with the armed forces of the United States, irrespective of the amount of the benefit, does not disqualify any individual otherwise qualified from any of the benefits contemplated herein. A deduction shall not be made from the amount of benefits payable for a week for individuals receiving federal social security pensions to take into account the individuals' contributions to the pension program.

6. *Benefits from other state.* For any week with respect to which or a part of which an individual has received or is seeking unemployment benefits under an unemployment compensation law of another state or of the United States, provided that if the appropriate agency of such other state or of the United States finally determines that the individual is not entitled to such unemployment benefits, this disqualification shall not apply.

7. *Vacation pay.*

a. When an employer makes a payment or becomes obligated to make a payment to an individual for vacation pay, or for vacation pay allowance, or as pay in lieu of vacation, such payment or amount shall be deemed “wages” as defined in section 96.19, subsection 41, and shall be applied as provided in paragraph “c” hereof.

b. When, in connection with a separation or layoff of an individual, the individual’s employer makes a payment or payments to the individual, or becomes obligated to make a payment to the individual as, or in the nature of, vacation pay, or vacation pay allowance, or as pay in lieu of vacation, and within ten calendar days after notification of the filing of the individual’s claim, designates by notice in writing to the department the period to which the payment shall be allocated; provided, that if such designated period is extended by the employer, the individual may again similarly designate an extended period, by giving notice in writing to the department not later than the beginning of the extension of the period, with the same effect as if the period of extension were included in the original designation. The amount of a payment or obligation to make payment, is deemed “wages” as defined in section 96.19, subsection 41, and shall be applied as provided in paragraph “c” of this subsection 7.

c. Of the wages described in paragraph “a” (whether or not the employer has designated the period therein described), or of the wages described in paragraph “b”, if the period therein described has been designated by the employer as therein provided, a sum equal to the wages of such individual for a normal workday shall be attributed to, or deemed to be payable to the individual with respect to, the first and each subsequent workday in such period until such amount so paid or owing is exhausted. Any individual receiving or entitled to receive wages as provided herein shall be ineligible for benefits for any week in which the sums, so designated or attributed to such normal workdays, equal or exceed the individual’s weekly benefit amount. If the amount so designated or attributed as wages is less than the weekly benefit amount of such individual, the individual’s benefits shall be reduced by such amount.

d. Notwithstanding contrary provisions in paragraphs “a”, “b”, and “c”, if an individual is separated from employment and is scheduled to receive vacation payments during the period of unemployment attributable to the employer and if the employer does not designate the vacation period pursuant to paragraph “b”, then payments made by the employer to the individual or an obligation to make a payment by the employer to the individual for vacation pay, vacation pay allowance or pay in lieu of vacation shall not be deemed wages as defined in section 96.19, subsection 41, for any period in excess of one week and such payments or the value of such obligations shall not be

deducted for any period in excess of one week from the unemployment benefits the individual is otherwise entitled to receive under this chapter. However, if the employer designates more than one week as the vacation period pursuant to paragraph “b”, the vacation pay, vacation pay allowance, or pay in lieu of vacation shall be considered wages and shall be deducted from benefits.

e. If an employer pays or is obligated to pay a bonus to an individual at the same time the employer pays or is obligated to pay vacation pay, a vacation pay allowance, or pay in lieu of vacation, the bonus shall not be deemed wages for purposes of determining benefit eligibility and amount, and the bonus shall not be deducted from unemployment benefits the individual is otherwise entitled to receive under this chapter.

8. *Administrative penalty.* If the department finds that, with respect to any week of an insured worker’s unemployment for which such person claims credit or benefits, such person has, within the thirty-six calendar months immediately preceding such week, with intent to defraud by obtaining any benefits not due under this chapter, willfully and knowingly made a false statement or misrepresentation, or willfully and knowingly failed to disclose a material fact; such person shall be disqualified for the week in which the department makes such determination, and forfeit all benefit rights under the unemployment compensation law for a period of not more than the remaining benefit period as determined by the department according to the circumstances of each case. Any penalties imposed by this subsection shall be in addition to those otherwise prescribed in this chapter.

9. *Athletes — disqualified.* Services performed by an individual, substantially all of which consist of participating in sports or athletic events or training or preparing to so participate, for any week which commences during the period between two successive sport seasons or similar periods, if such individual performs such services in the first of such seasons or similar periods and there is a reasonable assurance that such individual will perform such services in the later of such season or similar periods.

10. *Aliens — disqualified.* For services performed by an alien unless such alien is an individual who was lawfully admitted for permanent residence at the time such services were performed, was lawfully present for the purpose of performing such services, or was permanently residing in the United States under color of law at the time such services were performed, including an alien who is lawfully present in the United States as a result of the application of the provisions of section 212(d)(5) of the Immigration and Nationality Act. Any data or information required of individuals applying for benefits to determine whether benefits are not payable to them because of their alien status shall be uniformly required from all appli-



cants for benefits. In the case of an individual whose application for benefits would otherwise be approved, no determination that benefits to such individual are not payable because of the individual's alien status shall be made except upon a preponderance of the evidence.

2007 Acts, ch 22, §26, 27; 2007 Acts, ch 215, §245, 258  
 Subsection 3, paragraph a amended  
 Subsections 4 and 5 amended

### 96.9 Unemployment compensation fund.

1. *Establishment and control.* There is hereby established as a special fund, separate and apart from all public moneys or funds of this state, an unemployment compensation fund, which shall be administered by the department exclusively for the purposes of this chapter. This fund shall consist of:

- a. All contributions collected under this chapter,
- b. Interest earned upon any moneys in the fund,
- c. Any property or securities acquired through the use of moneys belonging to the fund,
- d. All earnings of such property or securities, and
- e. All money credited to this state's account in the unemployment trust fund pursuant to section 903 of the Social Security Act [42 U.S.C. § 501 to 503, 1103 to 1105, 1321 to 1324]. All moneys in the unemployment compensation fund shall be mingled and undivided.

2. *Accounts and deposits.* The state treasurer shall be ex officio treasurer and custodian of the fund and shall administer such fund in accordance with the directions of the department. The director of the department of administrative services shall issue warrants upon the fund pursuant to the order of the department and such warrants shall be paid from the fund by the treasurer. The treasurer shall maintain within the fund three separate accounts:

- a. A clearing account.
- b. An unemployment trust fund account.
- c. A benefit account.

All moneys payable to the unemployment compensation fund and all interest and penalties on delinquent contributions and reports shall, upon receipt thereof by the department, be forwarded to the treasurer who shall immediately deposit them in the clearing account, but the interest and penalties on delinquent contributions and reports shall not be deemed to be a part of the fund. Refunds of contributions payable pursuant to section 96.14 shall be paid by the treasurer from the clearing account upon warrants issued by the director of the department of administrative services under the direction of the department. After clearance thereof, all other moneys in the clearing account, except interest and penalties on delinquent contributions and reports, shall be immediately deposited with the secretary of the treasury of the

United States to the credit of the account of this state in the unemployment trust fund, established and maintained pursuant to section 904 of the Social Security Act as amended, any provisions of law in this state relating to the deposit, administration, release or disbursement of moneys in the possession or custody of this state to the contrary notwithstanding. Interest and penalties on delinquent contributions and reports collected from employers shall be transferred from the clearing account to the special employment security contingency fund. The benefit account shall consist of all moneys requisitioned from this state's account in the unemployment trust fund for the payment of benefits. Except as herein otherwise provided, moneys in the clearing and benefit account may be deposited by the treasurer, under the direction of the department, in any bank or public depository in which general funds of the state may be deposited, but no public deposit insurance charge or premium shall be paid out of the fund. The treasurer shall give a separate bond conditioned upon the faithful performance of the treasurer's duties as custodian of the fund in an amount fixed by the governor and in form and manner prescribed by law. Premiums for said bond shall be paid from the administration fund.

Interest paid upon the moneys deposited with the secretary of the treasury of the United States shall be credited to the unemployment compensation fund.

3. *Withdrawals.* Moneys shall be requisitioned from this state's account in the unemployment trust fund solely for the payment of benefits and in accordance with regulations prescribed by the department, except that money credited to this state's account pursuant to section 903 of the Social Security Act may, subject to the conditions prescribed in subsection 4 of this section, be used for the payment of expenses incurred for the administration of this chapter. The department shall from time to time requisition from the unemployment trust fund such amounts, not exceeding the amounts standing to the account of this state therein, as the department deems necessary for the payment of benefits for a reasonable future period. Upon receipt thereof the treasurer shall deposit such moneys in the benefit account, and shall disburse such moneys upon warrants drawn by the director of the department of administrative services pursuant to the order of the department for the payment of benefits solely from such benefit account. Expenditures of such moneys from the benefit account and refunds from the clearing account shall not be subject to any provisions of law requiring specific appropriations or other formal release by state officers of money in their custody. All warrants issued by the director of the department of administrative services for the payment of benefits and refunds shall bear the signature of the director of the department of administrative

services. Any balance of moneys requisitioned from the unemployment trust fund which remains unclaimed or unpaid in the benefit account after the expiration of the period for which such sums were requisitioned shall either be deducted from estimates for, and may be utilized for the payment of, benefits during succeeding periods, or, in the discretion of the department, shall be redeposited with the secretary of the treasury of the United States, to the credit of this state's account in the unemployment trust fund, as provided in subsection 2 of this section.

4. *Money credited under section 903 of the Social Security Act.*

a. Money credited to the account of this state in the unemployment trust fund by the secretary of the treasury of the United States pursuant to section 903 of the Social Security Act may not be requisitioned from this state's account or used except for the payment of benefits and for the payment of expenses incurred for the administration of this chapter. Such money may be requisitioned pursuant to subsection 3 of this section for the payment of benefits. Such money may also be requisitioned and used for the payment of expenses incurred for the administration of this chapter but only pursuant to a specific appropriation by the legislature and only if the expenses are incurred and the money is requisitioned after the enactment of an appropriation law which (1) specifies the purposes for which such money is appropriated and the amounts appropriated therefor, (2) limits the period within which such money may be obligated to a period ending not more than two years after the date of the enactment of the appropriation law, and (3) limits the amount which may be obligated during a twelve-month period beginning on July 1 and ending on the next June 30 to an amount which does not exceed the amount by which the aggregate of the amounts transferred to the account of this state pursuant to section 903 of the Social Security Act exceeds the aggregate of the amounts used by this state pursuant to this chapter and charged against the amounts transferred to the account of this state during the same twelve-month period. For purposes of this subsection, amounts used by this state for administration shall be chargeable against transferred amounts at the exact time the obligation is entered into. The use of money appropriated under this subsection shall be accounted for in accordance with standards established by the United States secretary of labor.

b. Money requisitioned as provided herein for the payment of expenses of administration shall be deposited in the employment security administration fund, but, until expended, shall remain a part of the unemployment compensation fund. The treasurer of state shall maintain a separate record of the deposit, obligation, expenditure, and return of funds so deposited. Any money so deposited which either will not be obligated within the

period specified by the appropriation law or remains unobligated at the end of the period, and any money which has been obligated within the period but will not be expended, shall be returned promptly to the account of this state in the unemployment trust fund.

5. *Administration expenses excluded.* Any amount credited to this state's account in the unemployment trust fund under section 903 of the Social Security Act which has been appropriated for expenses of administration pursuant to subsection 4 of this section, whether or not withdrawn from such account, shall not be deemed assets of the unemployment compensation fund for the purpose of computing contribution rates under section 96.7, subsection 3, of this chapter.

6. *Management of funds in the event of discontinuance of unemployment trust fund.* The provisions of subsections 1, 2, and 3 to the extent that they relate to the unemployment trust fund shall be operative only so long as such unemployment trust fund continues to exist and so long as the secretary of the treasury of the United States continues to maintain for this state a separate book account of all funds deposited therein by this state for benefit purposes, together with this state's proportionate share of the earnings of such unemployment trust fund, from which no other state is permitted to make withdrawals. If and when such unemployment trust fund ceases to exist, or such separate book account is no longer maintained, all moneys, properties, or securities therein, belonging to the unemployment compensation fund of this state shall be transferred to the treasurer of the unemployment compensation fund, who shall hold, invest, transfer, sell, deposit, and release such moneys, properties, or securities in a manner approved by the director, treasurer of state, and governor, in accordance with the provisions of this chapter: Provided, that such moneys shall be invested in the following readily marketable classes of securities; such securities as are authorized by the laws of the state of Iowa for the investment of trust funds. The treasurer shall dispose of securities and other properties belonging to the unemployment compensation fund only under the direction of the director, treasurer of state, and governor.

7. *Cancellation of warrants.* The director of the department of administrative services, as of January 1, April 1, July 1, and October 1 of each year, shall stop payment on all warrants for the payment of benefits which have been outstanding and unredeemed by the state treasurer for six months or longer. Should the original warrants subsequently be presented for payment, warrants in lieu thereof shall be issued by the director of the department of administrative services at the discretion of and certification by the department.

8. *Unemployment compensation reserve fund.*

a. A special fund to be known as the unemployment compensation reserve fund is created in the

state treasury. The reserve fund is separate and distinct from the unemployment compensation fund. All moneys collected as reserve contributions, as defined in paragraph "b", shall be deposited in the reserve fund. The moneys in the reserve fund may be used for the payment of unemployment benefits and shall remain available for expenditure in accordance with the provisions of this subsection. The treasurer of state shall be the custodian of the reserve fund and shall disburse the moneys in the reserve fund in accordance with this subsection and the directions of the director of the department of workforce development.

b. If the balance in the reserve fund on July 1 of the preceding calendar year for calendar year 2004 and each year thereafter is less than one hundred fifty million dollars, a percentage of contributions, as determined by the director, shall be deemed to be reserve contributions for the following calendar year. If the percentage of contributions, termed the reserve contribution tax rate, is not zero percent as determined pursuant to this subsection, the combined tax rate of contributions to the unemployment compensation fund and to the unemployment compensation reserve fund shall be divided so that a minimum of fifty percent of the combined tax rate equals the unemployment contribution tax rate and a maximum of fifty percent of the combined tax rate equals the reserve contribution tax rate except for employers who are assigned a combined tax rate of five and four-tenths. For those employers, the reserve contribution tax rate shall equal zero and their combined tax rate shall equal their unemployment contribution rate. When the reserve contribution tax rate is determined to be zero percent, the unemployment contribution rate for all employers shall equal one hundred percent of the combined tax rate. The reserve contributions collected in any calendar year shall not exceed fifty million dollars. The provisions for collection of contributions under section 96.14 are applicable to the collection of reserve contributions. Reserve contributions shall not be deducted in whole or in part by any employer from the wages of individuals in its employ. All moneys collected as reserve contributions shall not become part of the unemployment compensation fund but shall be deposited in the reserve fund created in this subsection.

c. Moneys in the reserve fund shall only be used to pay unemployment benefits to the extent moneys in the unemployment compensation fund are insufficient to pay benefits during a calendar quarter.

d. The interest earned on the moneys in the reserve fund shall be deposited in and credited to the reserve fund.

e. Moneys from interest earned on the unemployment compensation reserve fund shall be used by the department only upon appropriation by the general assembly and for administrative costs to

collect the reserve contributions.

Appropriation of unemployment compensation reserve fund moneys for field office operating funds; 2007 Acts, ch 212, §19  
Section not amended; footnote added

### 96.11 Duties, powers, rules — privilege.

1. *Duties and powers of director.* It shall be the duty of the director to administer this chapter; and the director shall have power and authority to adopt, amend, or rescind pursuant to chapter 17A such rules, to employ such persons, make such expenditures, require such reports, make such investigations, and take such other action as the director deems necessary or suitable to that end. Not later than the fifteenth day of December of each year, the director shall submit to the governor a report covering the administration and operation of this chapter during the preceding fiscal year and shall make such recommendations for amendments to this chapter as the director deems proper. Such report shall include a balance sheet of the moneys in the fund. Whenever the director believes that a change in contribution or benefits rates will become necessary to protect the solvency of the fund, the director shall promptly so inform the governor and the legislature, and make recommendations with respect thereto.

2. *General and special rules.* Each employer shall post and maintain printed statements of all rules of the department in places readily accessible to individuals in the employer's service, and shall make available to each such individual at the time the individual becomes unemployed a printed statement of such rules relating to the filing of claims for benefits. Such printed statements shall be supplied by the department to each employer without cost to the employer.

3. *Publications.* The director shall cause to be printed for distribution to the public the text of this chapter, the department's general rules, its annual reports to the governor, and any other material the director deems relevant and suitable and shall furnish the same to any person upon application therefor.

The department shall prepare and distribute to the public as labor force data, only that data adjusted according to the current population survey and other nonlabor force statistics which the department determines are of interest to the public.

4. *Bonds.* The director may bond any employee handling moneys or signing checks.

5. *Employment stabilization.* The director, with the advice and aid of the appropriate bureaus of the department, shall take all appropriate steps to reduce and prevent unemployment; to encourage and assist in the adoption of practical methods of vocational training, retraining and vocational guidance; to investigate, recommend, advise, and assist in the establishment and operation, by municipalities, counties, school districts, and the state, of reserves for public works to be used in times of business depression and unemployment;

to promote the reemployment of unemployed workers throughout the state in every other way that may be feasible; and to these ends to carry on and publish the results of investigations and research studies.

6. *Records, reports, and confidentiality.*

a. An employing unit shall keep true and accurate work records, containing information required by the department. The records shall be open to inspection and copying by an authorized representative of the department at any reasonable time and as often as necessary. An authorized representative of the department may require from an employing unit a sworn or unsworn report, with respect to individuals employed by the employing unit, which the department deems necessary for the effective administration of this chapter.

b. (1) The department shall hold confidential the information obtained from an employing unit or individual in the course of administering this chapter and the initial determination made by a representative of the department under section 96.6, subsection 2, as to the benefit rights of an individual. The department shall not disclose or open this information for public inspection in a manner that reveals the identity of the employing unit or the individual, except as provided in subparagraph (3) or paragraph "c".

(2) A report or statement, whether written or verbal, made by a person to a representative of the department or to another person administering this law is a privileged communication. A person is not liable for slander or libel on account of the report or statement unless the report or statement is made with malice.

(3) Information obtained from an employing unit or individual in the course of administering this chapter and an initial determination made by a representative of the department under section 96.6, subsection 2, as to benefit rights of an individual shall not be used in any action or proceeding, except in a contested case proceeding or judicial review under chapter 17A. However, the department shall make information, which is obtained from an employing unit or individual in the course of administering this chapter and which relates to the employment and wage history of the individual, available to a county attorney for the county attorney's use in the performance of duties under section 331.756, subsection 5. Information in the department's possession which may affect a claim for benefits or a change in an employer's rating account shall be made available to the interested parties. The information may be used by the interested parties in a proceeding under this chapter to the extent necessary for the proper presentation or defense of a claim.

(4) The department shall hold confidential unemployment insurance information received by the department from an unemployment insurance agency of another state.

c. Subject to conditions as the department by rule prescribes, information obtained from an employing unit or individual in the course of administering this chapter and an initial determination made by a representative of the department under section 96.6, subsection 2, as to benefit rights of an individual may be made available for purposes consistent with the purposes of this chapter to any of the following:

(1) An agency of this or any other state or a federal agency responsible for the administration of an unemployment compensation law or the maintenance of a system of public employment offices.

(2) The internal revenue service of the United States department of the treasury.

(3) The Iowa department of revenue.

(4) The social security administration of the United States department of health and human services.

(5) An agency of this or any other state or a federal agency responsible for the administration of public works or the administration of public assistance to unemployed individuals.

(6) Colleges, universities, and public agencies of this state for use in connection with research of a public nature, provided the department does not reveal the identity of an employing unit or individual.

(7) An employee of the department, a member of the general assembly, or a member of the United States Congress in connection with the employee's or member's official duties.

(8) The United States department of housing and urban development and representatives of a public housing agency.

d. Upon request of an agency of this or another state or of the federal government which administers or operates a program of public assistance or child support enforcement under either the law of this or another state or federal law, or which is charged with a duty or responsibility under the program, and if the agency is required by law to impose safeguards for the confidentiality of information at least as effective as required under this subsection, then the department shall provide to the requesting agency, with respect to any named individual without regard to paragraph "g", any of the following information:

(1) Whether the individual is receiving or has received benefits, or has made an application for benefits under this chapter.

(2) The period, if any, for which benefits were payable and the weekly benefit amount.

(3) The individual's most recent address.

(4) Whether the individual has refused an offer of employment, and, if so, the date of the refusal and a description of the employment refused, including duties, conditions of employment, and the rate of pay.

(5) The individual's wage information.

e. The department may require an agency which is provided information under this subsec-

tion to reimburse the department for the costs of furnishing the information.

*f.* A public official or an agent or contractor of a public official who receives information pursuant to this subsection or a third party other than an agent who acts on behalf of a claimant or employer and who violates this subsection is guilty, upon conviction, of a serious misdemeanor. For the purposes of this subsection, “*public official*” means an official or employee within the executive branch of federal, state, or local government, or an elected official of the federal or a state or local government.

*g.* Information subject to the confidentiality of this subsection shall not be directly released to any authorized agency unless an attempt is made to provide written notification to the individual involved. Information released in accordance with criminal investigations by a law enforcement agency of this state, another state, or the federal government is exempt from this requirement.

*h.* The department and its employees shall not be liable for any acts or omissions resulting from the release of information to any person pursuant to this subsection.

7. *Oaths and witnesses.* In the discharge of the duties imposed by this chapter, the chairperson of the appeal board and any duly authorized representative of the department shall have power to administer oaths and affirmations, take depositions, certify to official acts, and issue subpoenas to compel the attendance of witnesses and the production of books, papers, correspondence, memoranda, and other records deemed necessary as evidence in connection with a disputed claim or the administration of this chapter.

8. *Subpoenas.* In case of contumacy by, or refusal to obey a subpoena issued to any person, any court of this state within the jurisdiction of which the inquiry is carried on or within the jurisdiction of which said person guilty of contumacy or refusal to obey is found or resides or transacts business, upon application by the department, or any member or duly authorized representative thereof, shall have jurisdiction to issue to such person an order requiring such person to appear before the department or any member or duly authorized representative thereof to produce evidence if so ordered or to give testimony touching the matter under investigation or in question; any failure to obey such order of the court may be punished by said court as a contempt thereof.

9. *Protection against self-incrimination.* No person shall be excused from attending and testifying or from producing books, papers, correspondence, memoranda, and other records before the department, or the appeal board, or in obedience to a subpoena in any cause or proceeding provided for in this chapter, on the ground that the testimony or evidence, documentary or otherwise, required of the person may tend to incriminate the person or subject the person to a penalty for forfei-

ture; but no individual shall be prosecuted or subjected to any penalty of forfeiture for or on account of any transaction, matter, or thing concerning which the individual is compelled, after having claimed privilege against self-incrimination, to testify or produce evidence, documentary or otherwise, except that such individual so testifying shall not be exempt from prosecution and punishment for perjury committed in so testifying.

10. *State-federal cooperation.* In the administration of this chapter, the department shall cooperate with the United States department of labor to the fullest extent consistent with the provisions of this chapter, and shall take such action, through the adoption of appropriate rules, regulations, administrative methods and standards, as may be necessary to secure to this state and its citizens all advantages available under the provisions of the Social Security Act that relate to unemployment compensation, the federal Unemployment Tax Act, the Wagner-Peyser Act, and the Federal-State Extended Unemployment Compensation Act of 1970.

In the administration of the provisions of section 96.29 which are enacted to conform with the requirements of the Federal-State Extended Unemployment Compensation Act of 1970, the department shall take such action as may be necessary to insure that the provisions are so interpreted and applied as to meet the requirements of such federal Act as interpreted by the United States department of labor, and to secure to this state the full reimbursement of the federal share of extended benefits paid under this chapter that are reimbursable under the federal Act.

The department shall make such reports, in such form and containing such information as the United States department of labor may from time to time require, and shall comply with such provisions as the United States department of labor may from time to time find necessary to assure the correctness and verification of such reports; and shall comply with the regulations prescribed by the United States department of labor governing the expenditures of such sums as may be allotted and paid to this state under Title III of the Social Security Act for the purpose of assisting in administration of this chapter.

The department may make its records relating to the administration of this chapter available to the railroad retirement board, and may furnish the railroad retirement board such copies thereof as the railroad retirement board deems necessary for its purposes. The department may afford reasonable cooperation with every agency of the United States charged with the administration of any unemployment insurance law. The railroad retirement board or any other agency requiring such services and reports from the department shall pay the department such compensation therefor as the department determines to be fair and reasonable.

11. *Destruction of records.* The department may destroy or dispose of such original reports or records as have been properly recorded or summarized in the permanent records of the department and are deemed by the director and the state records commission to be no longer necessary to the proper administration of this chapter. Wage records of the individual worker or transcripts therefrom may be destroyed or disposed of, if approved by the state records commission, two years after the expiration of the period covered by such wage records or upon proof of the death of the worker. Such destruction or disposition shall be made only by order of the director in consultation with the state records commission. Any moneys received from the disposition of such records shall be deposited to the credit of the employment security administration fund, subject to rules promulgated by the department.

12. *Unemployment benefits contested case hearing records.* Notwithstanding the provisions of section 17A.12 to the contrary, the recording of oral proceedings of a hearing conducted before an administrative law judge pursuant to section 96.6, subsection 3, in which the decision of the administrative law judge is not appealed to the employment appeal board, shall be filed with and maintained by the department for at least two years from the date of decision.

13. *Purging uncollectible overpayments.* Notwithstanding any other provision of this chapter, the department shall review all outstanding overpayments of benefit payments annually. The department may determine as uncollectible and purge from its records any remaining unpaid balances of outstanding overpayments which are ten years or older from the date of the overpayment decision.

14. *Access to available jobs list.* The department shall make available for consultation by the public, at each of the department's offices, a list of current job openings listed with the department, provided that the list shall comply with the confidentiality requirements of subsection 6, or those mandated by the federal government.

15. *Special contractor numbers.* For purposes of contractor registration under chapter 91C, the department shall provide for the issuance of special contractor numbers to contractors for whom employer accounts are not required under this chapter. A contractor who is not in compliance with the requirements of this chapter shall not be issued a special contractor number.

16. *Reimbursement of setoff costs.* The department shall include in the amount set off in accordance with section 8A.504, for the collection of an overpayment created pursuant to section 96.3, subsection 7, or section 96.16, subsection 4, an additional amount for the reimbursement of setoff costs incurred by the department of administra-

tive services.

2007 Acts, ch 77, §1, 2  
 Subsection 6, paragraph b, NEW subparagraph (4)  
 Subsection 6, paragraph f amended

**96.14 Priority — refunds.**

1. *Interest.* Any employer who shall fail to pay any contribution and at the time required by this chapter and the rules of the department shall pay to the department in addition to such contribution, interest thereon at the rate of one percent per month and one-thirtieth of one percent for each day or fraction thereof computed from the date upon which said contribution should have been paid.

2. *Penalties.* Any employer who shall fail to file a report of wages paid to each of the employer's employees for any period in the manner and within the time required by this chapter and the rules of the department or any employer who the department finds has filed an insufficient report and fails to file a sufficient report within thirty days after a written request from the department to do so shall pay a penalty to the department.

a. The penalty shall become effective with the first day the report is delinquent or, where a report is insufficient, with the thirty-first day following the written request for a sufficient report.

b. The penalty for failing to file a sufficient report shall be in addition to any penalty incurred for a delinquent report where the delinquent report is also insufficient.

c. The amount of the penalty for delinquent and insufficient reports shall be computed based on total wages in the period for which the report was due and shall be computed as follows:

Days Delinquent or Insufficient	Penalty Rate
1 – 60	0.1%
61 – 120	0.2%
121 – 180	0.3%
181 – 240	0.4%
241 or over	0.5%

d. A penalty shall not be less than ten dollars for the first delinquent report or the first insufficient report not made sufficient within thirty days after a request to do so. The penalty shall not be less than twenty-five dollars for the second delinquent or insufficient report, and not less than fifty dollars for each delinquent or insufficient report thereafter, until four consecutive calendar quarters of reports are timely and sufficiently filed. Interest, penalties, and cost shall be collected by the department in the same manner as provided by this chapter for contributions.

e. If the department finds that any employer has willfully failed to pay any contribution or part thereof when required by this chapter and the rules of the department, with intent to defraud the

department, then such employer shall in addition to such contribution or part thereof, pay a contribution equal to fifty percent of the amount of such contribution or part thereof, as the case may be.

f. The department may cancel any interest or penalties if it is shown to the satisfaction of the department that the failure to pay a required contribution or to file a required report was not the result of negligence, fraud, or intentional disregard of the law or the rules of the department.

3. *Lien of contributions — collection.* Whenever any employer liable to pay contributions refuses or neglects to pay the same, the amount, including any interest, together with the costs that may accrue in addition thereto, shall be a lien in favor of the state upon all property and rights to property, whether real or personal, belonging to said employer. An assessment of the unpaid contributions, interest and penalty shall be applied as provided in section 96.7, subsection 3, paragraphs “a” and “b”, and the lien shall attach as of the date the assessment is mailed or personally served upon the employer and shall continue for ten years, or until the liability for the amount is satisfied, unless sooner released or otherwise discharged. The lien may, within ten years from the date the lien attaches, be extended for up to an additional ten years by filing a notice during the ninth year with the appropriate county official of any county. However, the department may release any lien, when after diligent investigation and effort it determines that the amount due is not collectible.

In order to preserve the aforesaid lien against subsequent mortgagees, purchasers or judgment creditors, for value and without notice of the lien, on any property situated in a county, the department shall file with the recorder of the county, in which said property is located, a notice of said lien.

The county recorder of each county shall prepare and keep in the recorder’s office an index to show the following data, under the names of employers, arranged alphabetically:

- a. The name of the employer.
- b. The name “*State of Iowa*” as claimant.
- c. Time notice of lien was received.
- d. Date of notice.
- e. Amount of lien then due.
- f. When satisfied.

The recorder shall endorse on each notice of lien the day, hour, and minute when received and shall index the notice in the index and shall record the lien in the manner provided for recording real estate mortgages, and the lien shall be effective from the time of the indexing of the lien.

The department shall pay a recording fee as provided in section 331.604, for the recording of the lien, or for its satisfaction.

Upon the payment of contributions as to which the department has filed notice with a county recorder, the department shall forthwith file with said recorder a satisfaction of said contributions

and the recorder shall enter said satisfaction on the notice on file in the recorder’s office and indicate said fact on the index aforesaid.

The department shall, substantially as provided in this chapter and chapter 626, proceed to collect all contributions as soon as practicable after they become delinquent, except that no property of the employer is exempt from payment of the contributions.

If, after due notice, any employer defaults in any payment of contributions or interest thereon, the amount due may be collected by civil action in the name of the department and the employer adjudged in default shall pay the costs of such action. Civil actions brought under this section to collect contributions or interest thereon from an employer shall be heard by the court at the earliest possible date and shall be entitled to preference upon the calendar of the court over all other civil actions except petitions for judicial review under this chapter and cases arising under the workers’ compensation law of this state.

It is expressly provided that the foregoing remedies of the state shall be cumulative and that no action taken by the department shall be construed to be an election on the part of the state or any of its officers to pursue any remedy hereunder to the exclusion of any other remedy provided by law.

The courts of this state shall recognize and enforce liabilities for unemployment contributions, penalties, interest and benefit overpayments imposed by other states which extend a like comity to this state. The department may sue in the courts of any other jurisdiction which extends such comity to collect unemployment contributions, penalties, interest and benefit overpayments due this state. The officials of other states which, by statute or otherwise, extend a like comity to this state may sue in the district court to collect for such contributions, penalties, interest and benefit overpayments. In any such case the director, as agent for and on behalf of any other state, may institute and conduct such suit for such other state. Venue of such proceedings shall be the same as for actions to collect delinquent contributions, penalties, interest and benefit overpayments due under this chapter. A certificate by the secretary of any such state attesting the authority of such official to collect the contributions, penalties, interest and benefit overpayments, is conclusive evidence of such authority. The requesting state shall pay the court costs.

If a political subdivision or a political subdivision instrumentality becomes delinquent in the payment of contributions, any payments owed as a government employer, penalty, interest and costs for more than two calendar quarters, the amount of such delinquency shall be deducted from any further moneys due the employer by the state. Such deduction shall be made by the director of the department of administrative services upon certification of the amount due. A copy of the

certification will be mailed to the employer.

If an amount due from a governmental entity of this state remains due and unpaid for a period of one hundred twenty days after the due date, the director shall take action as necessary to collect the amount and shall levy against any funds due the governmental entity from the state treasurer, director of the department of administrative services, or any other official or agency of this state or against an account established by the entity in any bank. The official, agency or bank shall deduct the amount certified by the director from any accounts or deposits or any funds due the delinquent governmental entity without regard to any prior claim and shall promptly forward the amount to the director for the fund. However, the director shall notify the delinquent entity of the director's intent to file a levy by certified mail at least ten days prior to filing the levy on any funds due the entity from any state official or agency.

4. *Priorities under legal dissolutions or distributions.* In the event of any distribution of an employer's assets pursuant to an order of any court under the laws of this state, including any receivership, assignment for benefit of creditors, adjudicated insolvency, composition, or similar proceeding, contributions then or thereafter due shall be paid in full prior to all other claims except taxes and claims for wages preferred as provided by statute. In the event of an employer's adjudication in bankruptcy, judicially confirmed extension proposal, or composition, under the federal Bankruptcy Act of 1898, as amended, contributions then or thereafter due shall be entitled to such priority as is provided in section 64 "a" of that Act [11 U.S.C. § 104 "b", as amended].

5. *Refunds, compromises and settlements.* If the department finds that an employer has paid contributions, interest on contributions, or penalties, which have been erroneously paid or if the employer has overpaid contributions because the employer's contribution rate was subsequently reduced pursuant to section 96.7, subsection 2, paragraph "e", solely due to benefits initially charged against but later removed from an employer's account, and the employer has filed an application for refund, the department shall refund the erroneous payment or overpayment. Refunds so made shall be charged to the fund to which the collections have been credited, and shall be paid to the employer without interest. A claim for refund shall be made within three years from the date of payment. For like cause, refunds, compromises, and settlements may be made by the department on its own initiative within three years of the date of the payment or assessment. If the department finds that the contribution that has been assessed against an employer is of doubtful collectibility or may not be collected in full, the department may institute a proceeding in the district court in the

county in which the employer against which the tax is levied is located, requesting authority to compromise the contribution. Notice of the filing of an application shall be given to the interested parties as the court may prescribe. The court upon hearing may authorize the department to compromise and settle its claim for the contribution and shall fix the amount to be received by the department in full settlement of the claim and shall authorize the release of the department's lien for the contribution.

6. *Nonresident employing units.* Any employing unit which is a nonresident of the state of Iowa and for which services are performed in insured work within the state of Iowa and any resident employer for which such services are performed and who thereafter leaves the state of Iowa by having such services performed within the state of Iowa shall be deemed:

a. To agree that such employing unit shall be subject to the jurisdiction of the district court of the state of Iowa over all civil actions and proceedings against such employing unit for all purposes of this chapter, and

b. To appoint the secretary of state of this state as its lawful attorney upon whom may be served all original notices of suit and other legal processes pertaining to such actions and proceedings, and

c. To agree that any original notice of suit or any other legal process so served upon such nonresident employing unit shall be of the same legal force and validity as if personally served on it in this state.

7. *Original notice — form.* The original notice of suit filed with the secretary of state shall be in form and substance the same as now provided in suits against residents of this state, except that the part of the notice pertaining to the return day shall be in substantially the following form:

And unless you appear and defend in the district court of Iowa in and for . . . . . county at the courthouse in . . . . ., Iowa, before noon of the sixtieth day following the filing of this notice with the secretary of state of this state, you will be adjudged in default, your default entered of record, and judgment rendered against you for the relief sought in plaintiff's petition.

8. *Manner of service.* Plaintiff in any such action shall cause the original notice of suit to be served as follows:

a. By filing a copy of said original notice of suit with said secretary of state, together with a fee of four dollars, and

b. By mailing to the defendant, and to each of the defendants if more than one, within ten days after said filing with the secretary of state, by restricted certified mail addressed to the defendant



at the defendant's last known residence or place of abode, a notification of the said filing with the secretary of state.

9. *Notification to nonresident — form.* The notification, provided for in subsection 7, shall be in substantially the following form, to wit:

To . . . . . (Here insert the name of each defendant and the defendant's residence or last known place of abode as definitely as known.)

You will take notice that an original notice of suit against you, a copy of which is hereto attached, was duly served upon you at Des Moines, Iowa, by filing a copy of said notice on the . . . . . day of . . . . . (month), . . . . (year), with the secretary of state of the state of Iowa.

Dated at . . . . ., Iowa, this . . . . . day of . . . . . (month), . . . . (year).

Plaintiff.  
By . . . . .  
Attorney for Plaintiff.

10. *Optional notification.* In lieu of mailing said notification to the defendant in a foreign state, plaintiff may cause said notification to be personally served in the foreign state on the defendant by any adult person not a party to the suit, by delivering said notification to the defendant or by offering to make such delivery in case defendant refuses to accept delivery.

11. *Proof of service.* Proof of the filing of a copy of said original notice of suit with the secretary of state, and proof of the mailing or personal delivery of said notification to said nonresident shall be made by affidavit of the party doing said acts. All affidavits of service shall be endorsed upon or attached to the originals of the papers to which they relate. All proofs of service, including the restricted certified mail return receipt, shall be forthwith filed with the clerk of the district court.

12. *Actual service within this state.* The foregoing provisions relative to service of original notice of suit on nonresidents shall not be deemed to prevent actual personal service in this state upon the nonresident in the time, manner, form, and under the conditions provided for service on residents.

13. *Venue of actions.* Actions against nonresidents as contemplated by this law may be brought in Polk county, or in the county in which such services were performed.

14. *Continuances.* The court in which such action is pending shall grant such continuances to a nonresident defendant as may be necessary to afford the defendant reasonable opportunity to defend said action.

15. *Duty of secretary of state.* The secretary of state shall keep a record of all notices of suit filed with the secretary, shall not permit said filed

notices to be taken from the secretary's office except on an order of court, and shall, on request, and without fee, furnish any defendant with a certified copy of the notice in which the person is a defendant.

16. *Injunction upon nonpayment.* Any employer or employing unit refusing or failing to make and file required reports or to pay any contributions, interest or penalty under the provisions of this chapter, after ten days' written notice sent by the department to the employer's or employing unit's last known address by certified mail, may be enjoined from operating any business in the state while in violation of this chapter upon the complaint of the department in the district court of a county in which the employer or employing unit has or had a place of business within the state, and any temporary injunction enjoining the continuance of such business may be granted without notice and without a bond being required from the department. Such injunction may enjoin any employer or employing unit from operating a business unit until the delinquent contributions, interest or penalties shall have been made and filed or paid; or the employer shall have furnished a good and sufficient bond conditioned upon the payment of such delinquencies in such an amount and containing such terms as may be determined by the court; or the employer has entered into a plan for the liquidation of such delinquencies as the court may approve, provided that such injunction may be reinstated upon the employer's failure to comply with the terms of said plan.

2007 Acts, ch 22, §28  
Subsection 2 amended

**96.17 Counsel.**

1. *Legal services.* In any civil action to enforce the provisions of this chapter, the department and the state may be represented by any qualified attorney who is a regular salaried employee of the department and is designated by it for this purpose or, at the department's request, by the attorney general. In case the governor designates special counsel to defend on behalf of the state, the validity of this chapter, the expenses and compensation of such special counsel employed by the department in connection with such proceeding may be charged to the unemployment compensation administration fund.

2. *County attorney.* All criminal actions for violations of any provision of this chapter, or of any rules issued by the department pursuant thereto, shall be prosecuted by the prosecuting attorney of any county in which the employer has a place of business or the violator resides, or, at the request of the department, shall be prosecuted by the attorney general.

3. *Indemnification.* Any member of the department or any employee of the department shall be indemnified for any damages and legal expenses incurred as a result of the good faith perfor-

mance of their official duties, for any claim for civil damages not specifically covered by the Iowa tort claims Act, chapter 669. Any payment described herein shall be paid from the special employment

security contingency fund in section 96.13, subsection 3.

2007 Acts, ch 22, §29  
Subsection 3 amended

## CHAPTER 97

### OLD-AGE AND SURVIVORS' INSURANCE SYSTEM

#### 97.52 Administration agreements.

The Iowa public employees' retirement system created in section 97B.1 may enter into agreements whereby services performed by the system and its employees under this chapter and chapters 97B and 97C shall be equitably apportioned among the funds provided for the administration

of those chapters. The money spent for personnel, rentals, supplies, and equipment used by the system in administering the chapters shall be equitably apportioned and charged against the funds.

2007 Acts, ch 22, §30  
Section amended

## CHAPTER 97A

### PUBLIC SAFETY PEACE OFFICERS' RETIREMENT, ACCIDENT, AND DISABILITY SYSTEM

#### 97A.3 Membership in system — re-employment.

1. All peace officer members of the division of state patrol and the division of criminal investigation or the predecessor divisions or subunits in the department of public safety, excepting the members of the clerical force, who are employed by the state of Iowa on July 4, 1949, and all persons thereafter employed as members of such divisions or the predecessor divisions or subunits in the department of public safety or division of narcotics enforcement or division of state fire marshal or the predecessor divisions or subunits, except the members of the clerical force, shall be members of this system, except as otherwise provided in subsection 3. Effective July 1, 1994, gaming enforcement officers employed by the division of criminal investigation for excursion boat and gambling structure gambling enforcement activities and fire prevention inspector peace officers employed by the department of public safety shall be members of this system, except as otherwise provided in subsection 3 or section 97B.42B. Such members shall not be required to make contributions under any other pension or retirement system of the state of Iowa, anything to the contrary notwithstanding.

2. Should any member in any period of five consecutive years after last becoming a member, be absent from service for more than four years, or should a member become a beneficiary or die, the person shall thereupon cease to be a member of this system.

3. *a.* As used in this section, unless the context otherwise requires, "reemployed" or "re-

employment" means the employment of a person in a position which would otherwise be included as a membership position under subsection 1, after the person has commenced receiving a service retirement allowance under section 97A.6.

*b.* If a person is reemployed, the person shall not become an active member of the system upon reemployment, and the person so reemployed and the state of Iowa shall not make contributions to the system based upon the person's compensation for reemployment. A person who is so reemployed shall continue to receive the service retirement allowance, and the service retirement allowance shall not be recalculated based upon the person's reemployment. Notwithstanding section 97B.1A or any other provision of law to the contrary, a person reemployed as provided in this subsection shall be exempt from chapter 97B.

4. Effective July 1, 1979, a person shall not become a member of the system unless that person has passed the physical and mental examination given under the provisions of section 80.15 and unless that person has received a diploma for satisfactory completion of a training school held pursuant to the provisions of section 80.13.

2007 Acts, ch 188, §1  
Subsection 1 amended

#### 97A.7 Management of funds.

1. The board of trustees shall be the trustees of the several funds created by this chapter as provided in section 97A.8 and shall have full power to invest and reinvest such funds subject to the terms, conditions, limitations, and restrictions imposed by subsection 2 of this section and chap-

ter 12F, and subject to like terms, conditions, limitations, and restrictions said trustees shall have full power to hold, purchase, sell, assign, transfer, or dispose of any of the securities and investments in which any of the funds created herein shall have been invested, as well as of the proceeds of said investments and any moneys belonging to said funds. The board of trustees may authorize the treasurer of state to exercise any of the duties of this section. When so authorized the treasurer of state shall report any transactions to the board of trustees at its next monthly meeting.

2. The several funds created by this chapter may be invested in any investments authorized for the Iowa public employees' retirement system in section 97B.7A.

3. The treasurer of the state shall be the custodian of the several funds. All payments from said funds shall be made by the treasurer only upon vouchers signed by two persons designated by the board of trustees. A duly attested copy of the resolution of the board of trustees designating such

persons and bearing on its face specimen signatures of such persons shall be filed with the treasurer of state as the treasurer's authority for making payments on such vouchers. No voucher shall be drawn unless it shall previously have been allowed by resolution of the board of trustees.

4. A member of the board of trustees or an employee of the department of public safety shall not have a direct interest in the gains or profits of any investment made by the board of trustees. A trustee shall not receive any pay or emolument for the trustee's services. A trustee or employee of the department of public safety shall not directly or indirectly use the assets of the system except to make current and necessary payments as authorized by the board of trustees, nor shall a trustee or employee of the department of public safety become an endorser or surety or become in any manner an obligor for moneys loaned by or borrowed from the board of trustees.

2007 Acts, ch 39, §9  
Subsection 1 amended

## CHAPTER 97B

### IOWA PUBLIC EMPLOYEES' RETIREMENT SYSTEM (IPERS)

#### **97B.4 Administration of chapter — powers and duties of system — immunity.**

1. *Chief executive officer.* The system, through the chief executive officer, shall administer this chapter. The chief executive officer shall also be the system's statutory designee with respect to the rulemaking power.

2. *General authority.*

a. The system may adopt, amend, waive, or rescind rules, employ persons, execute contracts with outside parties, make expenditures, require reports, make investigations, and take other action it deems necessary for the administration of the retirement system in conformity with the requirements of this chapter, the applicable provisions of the Internal Revenue Code, and all other applicable federal and state laws. The rules shall be effective upon compliance with chapter 17A.

b. The system may delegate to any person such authority as it deems reasonable and proper for the effective administration of this chapter, and may bond any person handling moneys or signing checks under this chapter.

c. In administering this chapter, the system may enter into a biennial agreement with the department of administrative services concerning the sharing of resources between the system and department which are of benefit to each and which are consistent with the mission of the system and the department. The budget program for the system shall be established by the chief executive officer in consultation with the board and other staff

of the system and shall be compiled and submitted by the system pursuant to section 8.23.

3. *Personnel.*

a. *Chief investment officer.* The chief executive officer, following consultation with the board, shall employ a chief investment officer who shall be appointed pursuant to chapter 8A, subchapter IV, and shall be responsible for administering the investment program for the retirement fund pursuant to the investment policies of the board.

b. *Chief benefits officer.* The chief executive officer, following consultation with the benefits advisory committee, shall employ a chief benefits officer who shall be appointed pursuant to chapter 8A, subchapter IV, and shall be responsible for administering the benefits and other services provided under the retirement system.

c. *Actuary.* The system shall employ an actuary who shall be selected by the board and shall serve at the pleasure of the board. The actuary shall be the technical advisor for the system on matters regarding the operation of the retirement fund.

d. *System employees.* Subject to other provisions of this chapter, the system may employ all other personnel as necessary for the administration of the retirement system. The maximum number of full-time equivalent employees specified by the general assembly for the system for administration of the retirement system for a fiscal year shall not be reduced by any authority other than the general assembly. The personnel of the

system shall be appointed pursuant to chapter 8A, subchapter IV. The system shall not appoint or employ a person who is an officer or committee member of a political party organization or who holds or is a candidate for a partisan elective public office.

*e. Legal advisors.* The system may employ attorneys and contract with attorneys and legal firms for the provision of legal counsel and advice in the administration of this chapter and chapter 97C.

*f. Outside advisors.* The system may execute contracts with persons outside state government, including investment advisors, consultants, and managers, in the administration of this chapter. However, a contract with an investment manager or investment consultant shall not be executed by the system pursuant to this paragraph without the prior approval by the board of the hiring of the investment manager or investment consultant.

#### 4. Reports.

*a. Annual report to governor.* Not later than the thirty-first day of December of each year, the system shall submit to the governor a report covering the administration and operation of this chapter during the preceding fiscal year and shall make recommendations for amendments to this chapter. The report shall include a balance sheet of the moneys in the retirement fund. The report shall also include information concerning the investment management expenses for the retirement fund for each fiscal year expressed as a percent of the market value of the retirement fund investment assets, including the information described in section 97B.7, subsection 3, paragraph “d”. The information provided under this paragraph shall also include information on the investment policies and investment performance of the retirement fund. In providing this information, to the extent possible, the system shall include the total investment return for the entire fund, for portions of the fund managed by investment managers, and for internally managed portions of the fund, and the cost of managing the fund per thousand dollars of assets. The performance shall be based upon market value, and shall be contrasted with relevant market indices and with performances of pension funds of similar asset size.

*b. Annual statement to members.* The system shall prepare and distribute to the members, at the expense of the retirement fund, an annual statement of the member’s account and, in such a manner as the system deems appropriate, other information concerning the retirement system.

*c. Actuarial investigation.* During calendar year 2002, and every four years thereafter, the system shall cause an actuarial investigation to be made of all experience under the retirement system. Pursuant to such an investigation, the system shall, from time to time, determine upon an actuarial basis the condition of the retirement sys-

tem and shall report to the general assembly its findings and recommendations.

*d. Annual valuation of assets.* The system shall cause an annual actuarial valuation to be made of the assets and liabilities of the retirement system and shall prepare an annual statement of the amounts to be contributed under this chapter, and shall publish annually such valuation of the assets and liabilities and the statement of receipts and disbursements of the retirement system. Based upon the actuarial methods and assumptions adopted by the board for the annual valuation, the system shall certify to the governor the contribution rates determined thereby as the rates necessary and sufficient for members and employers to fully fund the benefits and retirement allowances being credited.

*5. Investments.* The system, through the chief investment officer, shall invest, subject to chapter 12F and in accordance with the investment policy and goal statement established by the board, the portion of the retirement fund which, in the judgment of the system, is not needed for current payment of benefits under this chapter subject to the requirements of section 97B.7A.

*6. Old records.* The system may destroy or dispose of such original reports or records as have been properly recorded or summarized in the permanent records of the system and are deemed by the chief executive officer to be no longer necessary to the proper administration of this chapter. The destruction or disposition shall be made only by order of the chief executive officer. Records of deceased members of the retirement system may be destroyed ten years after the later of the final payment made to a third party on behalf of the member or the death of the member. Any moneys received from the disposition of these records shall be deposited to the credit of the retirement fund subject to rules adopted by the system.

*7. Immunity.* The system, employees of the system, the board, the members of the board, and the treasurer of state are not personally liable for actions or omissions under this chapter that do not involve malicious or wanton misconduct even if those actions or omissions violate the standards established in section 97B.7A.

2007 Acts, ch 39, §10  
Subsection 5 amended

#### **97B.42B Transfer to chapter 97A — options for certain public safety employees.**

1. Commencing July 1, 1994, a person who is newly hired in the following positions in the department of public safety shall be a member of the Iowa department of public safety peace officers’ retirement, accident, and disability system established in chapter 97A:

*a.* Gaming enforcement officers employed by the division of criminal investigation for excursion boat and gambling structure gambling enforce-

ment activities.

b. Fire prevention inspector peace officers.

2. Commencing July 1, 1994, notwithstanding any other provision of law to the contrary, a member who is employed in a position specified in subsection 1 prior to July 1, 1994, may elect coverage under the Iowa department of public safety peace officers' retirement, accident, and disability system established in chapter 97A, in lieu of continuing contributions to the Iowa public employees' retirement system, or may remain a member of the Iowa public employees' retirement system. A member who is employed in a position specified in subsection 1 prior to July 1, 1994, must file an election for coverage under the Iowa department of public safety peace officers' retirement, accident, and disability system with the board of trustees established in section 97A.5 on or before July 1, 1995, or the employee shall remain a member under this chapter and shall not be eligible to elect to participate in the system established pursuant to chapter 97A at a later date pursuant to this section. The board of trustees established in section 97A.5 shall notify the system of elections received pursuant to this section, and the board of trustees and the system shall cooperate to facilitate the implementation of this section. Coverage under chapter 97A shall commence, and coverage as an active member under this chapter shall cease, when the election has been approved by the board of trustees established in section 97A.5.

3. If an employee elects coverage under chapter 97A as provided in subsection 2 and the election is approved by the board of trustees established in section 97A.5, membership in the Iowa public employees' retirement system shall cease, and the employee shall be transferred to membership in the Iowa department of public safety peace officers' retirement, accident, and disability system. The system shall transfer the accumulated contributions of these employees to the treasurer of state for deposit in the pension accumulation fund established in section 97A.8. However, employer contributions which were made with respect to the employees while the employees were members of the Iowa public employees' retirement system shall remain in the fund established in section 97B.7, and any costs pertaining to the pay-

ment of employer contributions to the system established in chapter 97A with respect to the period of time during which the employees were members of the Iowa public employees' retirement system, or any other costs related to the transfer, shall be borne by the system established in chapter 97A, notwithstanding any other provision of law to the contrary.

4. Notwithstanding any other provision of law to the contrary, if the board of trustees established in section 97A.5 approves an election pursuant to subsection 2, the employees transferred from coverage under this chapter to coverage under the system established in chapter 97A shall receive credit for years of service under chapter 97A for those years of service during which the employees were members of the Iowa public employees' retirement system and employed in positions specified in subsection 1. In addition, notwithstanding the limitation on covered wages provided in section 97B.1A, subsection 26, compensation which was paid to an employee in a position specified in subsection 1 while the employee was a member pursuant to this chapter shall be included in determining the average final compensation of the employee pursuant to chapter 97A, if applicable. Employees whose membership is transferred pursuant to this section and the employer, the department of public safety, shall not be required to pay the difference in the employee and employer contributions in effect for the period of time in which the employees were members pursuant to this chapter, as compared to the employee and employer contributions then in effect for members of the system established in chapter 97A.

5. It is the intent of the general assembly that in administering the provisions of this section, the board of trustees established in section 97A.5 and the system shall interpret this section in a manner which provides that the employees whose membership is transferred shall not lose benefits which would have otherwise accrued had the employees been members of the system established in chapter 97A during the period of time in which the employees were actually members of the Iowa public employees' retirement system.

2007 Acts, ch 188, §2  
Subsection 1, paragraph a amended

## CHAPTER 97C

### FEDERAL SOCIAL SECURITY ENABLING ACT

#### **97C.19 Apportionment of expense.**

The money spent for personnel, rentals, supplies, and equipment used by the state agency in administering this chapter and chapters 97 and 97B shall be equitably apportioned and charged

against the funds provided for the administration of this chapter and those chapters.

2007 Acts, ch 22, §31  
Section amended

## CHAPTER 99B

### GAMES OF SKILL OR CHANCE, AND RAFFLES

#### 99B.1 Definitions.

As used in this chapter, unless the context otherwise requires:

1. *“Amusement concession”* means any place where a single game of skill or game of chance is conducted by a person for profit, and includes the area within which are confined the equipment, playing area and other personal property necessary for the conduct of the game.

2. *“Amusement device”* means an electrical or mechanical device possessed and used in accordance with section 99B.10. When possessed and used in accordance with that section, an amusement device is not a game of skill or game of chance, and is not a gambling device.

3. *“Applicant”* means an individual or an organization.

4. *“Authorized”* means approved as a concession by the Iowa state fair board or a fair conducting a fair event as provided in chapter 174.

5. *“Bingo”* means a game, whether known as bingo or any other name, in which each participant uses one or more cards each of which is marked off into spaces arranged in horizontal and vertical rows of spaces, with each space being designated by number, letter, or combination of numbers and letters, no two cards being identical, with the players covering spaces as the operator of the game announces the number, letter, or combination of numbers and letters appearing on an object selected by chance, either manually or mechanically, from a receptacle in which have been placed objects bearing numbers, letters, or combinations of numbers and letters corresponding to the system used for designating the spaces, with the winner of each game being the player or players first properly covering a predetermined and announced pattern of spaces on a card being used by the player or players. Each determination of a winner by the method described in the preceding sentence is a single bingo game at any bingo occasion.

6. *“Bingo occasion”* means a single gathering or session at which successive bingo games are played. A bingo occasion commences when the operator of the game begins to announce the number, letter, or combination of numbers or letters through which the winner of a single bingo game will be determined.

7. *“Bona fide social relationship”* as used herein means a real, genuine, unfeigned social relationship between two or more persons wherein each person has an established knowledge of the other, which has not arisen for the purpose of gambling.

8. *“Bookmaking”* as used herein means the taking or receiving of any bet or wager upon the re-

sult of any trial or contest of skill, speed, power or endurance of human, beast, fowl or motor vehicle, which is not a wager or bet pursuant to section 99B.12, subsection 2, paragraph “c”, or which is laid off, placed, given, received or taken, by an individual who was not present when the wager or bet was undertaken, or by any publicly or privately owned enterprise where such wagers or bets may be undertaken.

9. A person *“conducts”* a specified activity if that person owns, promotes, sponsors, or operates a game or activity. A natural person does not *“conduct”* a game or activity if the person is merely a participant in a game or activity which complies with section 99B.12.

10. *“Controlling shareholder”* means either of the following:

a. A person who directly or indirectly owns or controls ten percent or more of any class of stock of a license applicant.

b. A person who directly or indirectly has an interest of ten percent or more in the ownership or profits of a license applicant.

11. *“Department”* means the department of inspections and appeals.

12. *“Distributor”* means, for the purposes of sections 99B.10, 99B.10A, and 99B.10B, any person that owns electrical and mechanical amusement devices registered as provided in section 99B.10, subsection 1, paragraph “f”, that are offered for use at more than a single location or premises.

13. *“Eligible applicant”* means an applicant who meets all of the following requirements:

a. The applicant’s financial standing and good reputation are within the standards established by the department by rule under chapter 17A so as to satisfy the director of the department that the applicant will comply with this chapter and the rules applicable to operations under it.

b. The applicant is a citizen of the United States and a resident of this state, or a corporation licensed to do business in this state, or a business that has an established place of business in this state or that is doing business in this state.

c. The applicant has not been convicted of a felony. However, if the applicant’s conviction occurred more than five years before the date of the application for a license, and if the applicant’s rights of citizenship have been restored by the governor, the director of the department may determine that the applicant is an eligible applicant.

If the applicant is an organization, then the requirements of paragraphs “a”, “b”, and “c” apply to its officers, directors, partners and controlling shareholders.

14. *“Fair”* means an annual fair and exposi-

tion held by the Iowa state fair board and any fair event conducted by a fair under the provisions of chapter 174.

15. “*Game of chance*” means a game whereby the result is determined by chance and the player in order to win aligns objects or balls in a prescribed pattern or order or makes certain color patterns appear and specifically includes but is not limited to the game defined as bingo. Game of chance does not include a slot machine.

16. “*Game of skill*” means a game whereby the result is determined by the player directing or throwing objects to designated areas or targets, or by maneuvering water or an object into a designated area, or by maneuvering a dragline device to pick up particular items, or by shooting a gun or rifle.

17. “*Gross receipts*” means the total revenue received from the sale of rights to participate in a game of skill, game of chance, or raffle and admission fees or charges.

18. “*Manufacturer*” means, for the purposes of sections 99B.10, 99B.10A, and 99B.10B, any person engaged in business in this state who originally produces an electrical and mechanical amusement device required to be registered under section 99B.10, subsection 1, paragraph “f”, or individual components for use in such a device.

19. “*Manufacturer’s representative*” means, for the purposes of sections 99B.10, 99B.10A, and 99B.10B, any person engaged in business in this state who promotes or sells electrical and mechanical amusement devices required to be registered under section 99B.10, subsection 1, paragraph “f”, or individual components for use in such devices on behalf of a manufacturer of such devices or components.

20. “*Merchandise*” includes lottery tickets or shares sold or authorized under chapter 99G. The value of the ticket or share is the price of the ticket or share as established by the Iowa lottery authority pursuant to chapter 99G.

21. “*Net receipts*” means gross receipts less amounts awarded as prizes and less state and local sales tax paid upon the gross receipts. Reasonable expenses, charges, fees, taxes other than the state and local sales tax, and deductions allowed by the department shall not exceed twenty-five percent of net receipts.

22. “*Net rent*” means the total rental charge minus reasonable expenses, charges, fees, and deductions allowed by the department.

23. “*Owner*” means, for the purposes of sections 99B.10A and 99B.10B, any person who owns an operable electrical and mechanical amusement device required to be registered under section 99B.10, subsection 1, paragraph “f”.

24. “*Posted*” means that the person conducting a game has caused to be placed near the front or playing area of the game a sign at least thirty inches by thirty inches, with permanent material and

lettering, stating at the top in letters at least three inches high: “Rules of the Game”. Thereunder there shall be set forth in large, easily readable print, the name of the game, the price to play the game, the complete rules for the game and the name and permanent mailing address of the owner of the game.

25. “*Qualified organization*” means any licensed organization which dedicates the net receipts of a game of skill, game of chance or raffle as provided in section 99B.7 and meets the requirements of section 99B.7, subsection 1, paragraph “m”.

26. “*Raffle*” means a lottery in which each participant buys a ticket for a chance at a prize with the winner determined by a random method and the winner is not required to be present to win. “*Raffle*” does not include a slot machine.

27. “*Social games*” means and includes only the activities permitted by section 99B.12, subsection 2.

28. “*Unrelated entity*” means a person that has a separate and distinct state charter and tax identification number from any other person and, if the person is an individual, an individual that is not related by law or by consanguinity.

2007 Acts, ch 173, §1  
Subsections 12, 18, 19, and 23 amended

#### **99B.6 Games where liquor or beer is sold.**

1. Except as provided in subsections 5, 6, 7, 8, and 9, gambling is unlawful on premises for which a class “A”, class “B”, class “C”, or class “D” liquor control license, or class “B” beer permit has been issued pursuant to chapter 123 unless all of the following are complied with:

a. The holder of the liquor control license or beer permit has submitted an application for a license and an application fee of one hundred fifty dollars, and has been issued a license, and prominently displays the license on the premises.

b. The holder of the liquor control license or beer permit or any agent or employee of the license or permit holder does not participate in, sponsor, conduct or promote, or act as cashier or banker for any gambling activities, except as a participant while playing on the same basis as every other participant.

c. Gambling other than social games is not engaged in on the premises covered by the license or permit.

d. Concealed numbers or conversion charts are not used to play any game, and a game is not adapted with any control device to permit manipulation of the game by the operator in order to prevent a player from winning or to predetermine who the winner will be, and the object of the game is attainable and possible to perform under the rules stated from the playing position of the player.

e. The game must be conducted in a fair and honest manner.

*f.* No person receives or has any fixed or contingent right to receive, directly or indirectly, any amount wagered or bet or any portion of amounts wagered or bet, except an amount which the person wins as a participant while playing on the same basis as every other participant.

*g.* No cover charge, participation charge or other charge is imposed upon a person for the privilege of participating in or observing gambling, and no rebate, discount, credit, or other method is used to discriminate between the charge for the sale of goods or services to participants in gambling and the charge for the sale of goods or services to nonparticipants. Satisfaction of an obligation into which a member of an organization enters to pay at regular periodic intervals a sum fixed by that organization for the maintenance of that organization is not a charge which is prohibited by this paragraph.

*h.* No participant wins or loses more than a total of fifty dollars or more consideration equivalent thereto in one or more games or activities permitted by this section at any time during any period of twenty-four consecutive hours or over that entire period. For the purpose of this paragraph a person wins the total amount at stake in any game, wager or bet, regardless of any amount that person may have contributed to the amount at stake.

*i.* No participant is participating as an agent of another person.

*j.* A representative of the department or a law enforcement agency is immediately admitted, upon request, to the premises with or without advance notice.

*k.* A person under the age of twenty-one years shall not participate in the gambling except pursuant to sections 99B.3, 99B.4, 99B.5, and 99B.7. Any licensee knowingly allowing a person under the age of twenty-one to participate in the gambling prohibited by this paragraph or any person knowingly participating in gambling with a person under the age of twenty-one, is guilty of a simple misdemeanor.

2. The holder of a license issued pursuant to this section is strictly accountable for complying with subsection 1. Proof of an act constituting a violation is grounds for revocation of the license issued pursuant to this section if the holder of the license permitted the violation to occur when the licensee knew or had reasonable cause to know of the act constituting the violation.

3. A participant in a social game which is not in compliance with this section shall be liable for a criminal penalty only if that participant has knowledge of or reason to know the facts constituting the violation.

4. The holder of a license issued pursuant to this section and every agent of that licensee who is required by the licensee to exercise control over the use of the premises who knowingly permits or

engages in acts or omissions which constitute a violation of subsection 1 commits a serious misdemeanor. A licensee has knowledge of acts or omissions if any agent of the licensee has knowledge of those acts or omissions.

5. Lottery tickets or shares authorized pursuant to chapter 99G may be sold on the premises of an establishment that serves or sells alcoholic beverages, wine, or beer as defined in section 123.3.

6. A qualified organization may conduct games of skill, games of chance, or raffles pursuant to section 99B.7 in an establishment that serves or sells alcoholic beverages, wine, or beer as defined in section 123.3 if the games or raffles are conducted pursuant to this chapter or rules adopted pursuant to this chapter.

7. The holder of a liquor control license or beer permit may conduct a sports betting pool if the game is publicly displayed and the rules of the game, including the cost per participant and the amount of the winning is conspicuously displayed on or near the pool. No participant may wager more than five dollars and the maximum winnings to all participants from the pool shall not exceed five hundred dollars. The provisions of subsection 1, except paragraphs "c" and "h" and the prohibition of the use of concealed numbers in paragraph "d", are applicable to pools conducted under this subsection. If a pool permitted by this subsection involves the use of concealed numbers, the numbers shall be selected by a random method and no person shall be aware of the numbers at the time wagers are made in the pool. All moneys wagered shall be awarded to participants. For purposes of this subsection, "pool" means a game in which the participants select a square on a grid corresponding to numbers on two intersecting sides of the grid and winners are determined by whether the square selected corresponds to numbers relating to an athletic event in the manner prescribed by the rules of the game.

8. Gambling games authorized under chapter 99F may be conducted on an excursion gambling boat or gambling structure which is licensed as an establishment that serves or sells alcoholic beverages, wine, or beer as defined in section 123.3 if the gambling games are conducted pursuant to chapter 99F and rules adopted under chapter 99F. Notwithstanding section 123.3, subsection 26, paragraph "b", a person holding a federal gambling permit and licensed to conduct gambling games pursuant to chapter 99F may hold a liquor license.

9. Pari-mutuel wagering authorized under chapter 99D may be conducted within a racetrack enclosure which is licensed as an establishment that serves or sells alcoholic beverages as defined in section 123.3 if the pari-mutuel wagering is conducted pursuant to chapter 99D and rules adopted under chapter 99D.



**99B.7B Card game tournaments conducted by qualified organizations representing veterans.**

1. As used in this section, unless the context otherwise requires:

*a.* “*Card game*” means only poker, pinochle, pitch, gin rummy, bridge, euchre, hearts, or cribbage.

*b.* “*Qualified organization representing veterans*” means any licensed organization representing veterans, which is a post, branch, or chapter of a national association of veterans of the armed forces of the United States which is a federally chartered corporation, dedicates the net receipts of a game of skill, game of chance, or raffle as provided in section 99B.7, is exempt from federal income taxes under section 501(c)(19) of the Internal Revenue Code as defined in section 422.3, has an active membership of not less than twelve persons, and does not have a self-perpetuating governing body and officers.

2. Notwithstanding any provision of this chapter to the contrary, card game tournaments lawfully may be conducted by a qualified organization representing veterans if all of the following are complied with:

*a.* The organization conducting the card game tournament has been issued a license pursuant to subsection 4 and prominently displays that license in the playing area of the card game tournament.

*b.* The card games to be conducted during a card game tournament, including the rules of each card game and how winners are determined, shall be displayed prominently in the playing area of the card game tournament. Each card game shall be conducted in a fair and honest manner and shall not be operated on a build-up or pyramid basis. Every participant in a card game tournament must be given the same chances of winning the tournament and shall not be allowed any second chance entries or multiple entries in the card game tournament.

*c.* Participation in a card game tournament conducted by a qualified organization representing veterans shall only be open to members of the qualified organization representing veterans and guests of members of the qualified organization participating in the tournament, subject to the requirements of this section. The total number of members and guests participating in a card game tournament shall not exceed the occupancy limit of the premises where the card game tournament is being conducted. Participants in a card game tournament shall be at least twenty-one years of age.

*d.* (1) If the card game tournament is limited to one guest for each member of the qualified organization representing veterans participating in the tournament, then the requirements of this subparagraph shall apply. The cost to participate

in a card game tournament shall be limited to one hundred dollars and shall be the same for every participant in the card game tournament. Cash or merchandise prizes may be awarded during a card game tournament and shall not exceed one thousand dollars and no participant shall win more than a total of five hundred dollars.

(2) If the card game tournament is not limited to one guest for each member of the qualified organization representing veterans participating in the tournament, then the requirements of this subparagraph shall apply. The cost to participate in a card game tournament shall be limited to twenty-five dollars and shall be the same for every participant in the card game tournament. Cash or merchandise prizes may be awarded during a card game tournament and shall not exceed three hundred dollars and no participant shall win more than a total of two hundred dollars.

(3) A qualified organization representing veterans shall distribute amounts awarded as prizes on the day they are won and merchandise prizes shall not be repurchased. An organization conducting a card game tournament shall only display prizes in the playing area of the card game tournament that can be won.

*e.* The qualified organization representing veterans shall conduct each card game tournament and any card game conducted during the tournament and shall not contract with or permit another person to conduct the card game tournament or any card game during the tournament. In addition, the card game tournament and any card game conducted during the tournament shall be conducted on the premises of the qualified organization representing veterans as identified in the license application pursuant to subsection 4.

*f.* No person receives or has any fixed or contingent right to receive, directly or indirectly, any profit, remuneration, or compensation from or related to a game in a card game tournament, except any amount which the person may win as a participant on the same basis as the other participants.

*g.* A qualified organization representing veterans licensed under this section shall not hold more than two card game tournaments per month and shall not hold a card game tournament within seven calendar days of another card game tournament conducted by that qualified organization representing veterans. Card game tournaments held under an annual game night license shall not count toward the limit of one card game tournament per week for a license holder. A qualified organization representing veterans shall be allowed to hold only one card game tournament during any period of twenty-four consecutive hours, starting from the time the card game tournament begins.

*h.* At the conclusion of each card game tournament, the person conducting the card game tournament shall announce the gross receipts received, the total amount of money withheld for ex-

penses, and the amount withheld for state taxes.

*i.* The person conducting the card game tournament does none of the following:

(1) Hold, currently, another license issued under this section.

(2) Own or control, directly or indirectly, any class of stock of another person who has been issued a license to conduct games under this section.

(3) Have, directly or indirectly, an interest in the ownership or profits of another person who has been issued a license to conduct games under this section.

3. The qualified organization representing veterans licensed to hold card game tournaments under this section shall keep a journal of all dates of events, amount of gross receipts, amount given out as prizes, expenses, amount collected for taxes, and the amount collected as revenue.

*a.* The qualified organization representing veterans shall dedicate and distribute the net receipts from each card game tournament as provided in section 99B.7, subsection 3, paragraph “*b*”.

*b.* Each qualified organization representing veterans shall withhold that portion of the gross receipts subject to taxation pursuant to section 423.2, subsection 4, which shall be kept in a separate account and sent to the state along with the organization’s quarterly report.

*c.* A qualified organization representing veterans licensed to conduct card game tournaments is allowed to withhold no more than five percent of the gross receipts from each card game tournament for qualified expenses. Qualified expenses include but are not limited to the purchase of supplies and materials used in conducting card games. Any money collected for expenses and not used by the end of the calendar year shall be donated for educational, civic, public, charitable, patriotic, or religious uses as described in section 99B.7, subsection 3, paragraph “*b*”. The qualified organization representing veterans shall attach a receipt for any donation made to the fourth quarter quarterly report required to be submitted pursuant to section 99B.2.

*d.* Each qualified organization representing veterans licensed under this section shall make recordkeeping and all deposit receipts available as provided in section 99B.2, subsection 2.

4. An organization wishing to conduct card game tournaments pursuant to this section as a qualified organization representing veterans shall submit an application and annual license fee of one hundred dollars to the department. The application shall identify the premises where the card game tournaments are to be conducted and the occupancy limit of the premises, and shall include documentation that the qualified organization representing veterans has conducted regular meetings of the organization at the premises during the previous eight months.

5. *a.* A person under twenty-one years of age who participates in a card game tournament in vi-

olation of this section is deemed to violate the legal age for gambling wagering provisions under section 725.19, subsection 1.

*b.* The department shall revoke, for a period of one year, the license of a qualified organization representing veterans to conduct card game tournaments under this section if the licensee knowingly permits a person under the age of twenty-one years to participate in a card game tournament.

2007 Acts, ch 119, §1  
NEW section

### 99B.8 Annual game night.

1. Games of skill, games of chance, and card games lawfully may be conducted during a period of sixteen consecutive hours within a period of twenty-four consecutive hours once each year by any person. The games may be conducted at any location except one for which a license is required pursuant to section 99B.3 or section 99B.5, but only if all of the following are complied with:

*a.* The sponsor of the event has been issued a license pursuant to subsection 3 and prominently displays that license on the premises covered by the license.

*b.* A bona fide social or employment relationship exists between the sponsor and all of the participants.

*c.* No participant pays any consideration of any nature, either directly or indirectly, to participate in the games.

*d.* All money or other items wagered are provided to the participant free by the sponsor.

*e.* The person conducting the game receives no consideration, either directly or indirectly, other than goodwill.

*f.* During the entire time activities permitted by this section are being engaged in, no other gambling is engaged in at the same location.

2. The other provisions of this section notwithstanding, if the games are conducted by a qualified organization also licensed under section 99B.7, the sponsor may charge an entrance fee or a fee to participate in the games, and participants may wager their own funds and pay an entrance or other fee for participation, provided that a participant may not expend more than a total of two hundred fifty dollars for all fees and wagers. The provisions of section 99B.7, subsection 3, paragraphs “*b*” and “*c*”, shall apply to games conducted by a qualified organization pursuant to this section.

3. The department of inspections and appeals may issue a license pursuant to this section only once during a calendar year to any one person. The license may be issued only upon submission to the department of an application and a license fee of twenty-five dollars.

4. However, an organization may sponsor one or more game nights using play money for participation by students without the organization obtaining a license otherwise required by this section if the organization obtains prior approval for

the game night from the board of directors of the accredited public school or the authorities in charge of the nonpublic school accredited by the state board of education for whose students the game night is to be held.

5. However, notwithstanding subsection 1, paragraphs “b” and “c”, if the games are conducted by a qualified organization issued a license pursuant to subsection 3, the sponsor may charge an entrance fee to a participant and the sponsor need not have a bona fide social relationship with the participant.

6. *a.* Notwithstanding any provision of section 99B.7 to the contrary, if the games are conducted by an eligible qualified organization issued a license pursuant to subsection 3, the sponsor may award cash or merchandise prizes in any games of skill, games of chance, or card games lawfully conducted during the annual game night in an aggregate amount not to exceed ten thousand dollars and no participant shall win more than a total of five thousand dollars.

*b.* For purposes of this subsection, an “*eligible qualified organization*” means any of the following:

(1) A qualified organization representing veterans as defined in section 99B.7B.

(2) A qualified organization that represents volunteer emergency services providers as defined in section 100B.31.

(3) A qualified organization that is exempt from federal income tax under section 501(c)(3) of the Internal Revenue Code and that has conducted an annual game night during the period beginning January 1, 2001, and ending December 31, 2006.

2007 Acts, ch 119, §2, 3  
Subsection 1, unnumbered paragraph 1 amended  
NEW subsection 6

### **99B.9 Gambling in public places.**

1. Except as otherwise permitted by section 99B.3, 99B.5, 99B.6, 99B.7, 99B.7B, 99B.8, 99B.11, or 99B.12A, it is unlawful to permit gambling on any premises owned, leased, rented, or otherwise occupied by a person other than a government, governmental agency, or governmental subdivision, unless all of the following are complied with:

*a.* The person occupying the premises as an owner or tenant has submitted an application for a license and an application fee of one hundred dollars, and has been issued a license for those premises, and prominently displays the license on the premises.

*b.* The holder of the license or any agent or employee of the license holder does not participate in, sponsor, conduct, or promote, or act as cashier or banker for any gambling activities.

*c.* Gambling other than social games is not engaged in on the premises covered by the license or permit.

*d.* Concealed numbers or conversion charts are not used to play any game, and a game is not adapted with any control device to permit manipulation of the game by the operator in order to prevent a player from winning or to predetermine who the winner will be, and the object of the game is attainable and possible to perform under the rules stated from the playing position of the player.

*e.* The game must be conducted in a fair and honest manner.

*f.* No person receives or has any fixed or contingent right to receive directly or indirectly any amount wagered or bet or any portion of amounts wagered or bet, except an amount which the person wins as a participant while playing on the same basis as every other participant.

*g.* No cover charge, participation charge or other charge is imposed upon a person for the privilege of participating in or observing gambling, and no rebate, discount, credit, or other method is used to discriminate between the charge for the sale of goods or services to participants in gambling and the charge for the sale of goods or services to nonparticipants. Satisfaction of an obligation into which a member of an organization enters to pay at regular periodic intervals a sum fixed by that organization for the maintenance of that organization is not a charge which is prohibited by this paragraph.

*h.* No participant wins or loses more than a total of fifty dollars or other consideration equivalent thereto in all games and activities at any one time during any period of twenty-four consecutive hours or over that entire period. For the purpose of this paragraph, a person wins the total amount at stake in any game, wager or bet, regardless of any amount that person may have contributed to the amount at stake.

*i.* No participant is participating as an agent of another person.

*j.* A representative of the department or a law enforcement agency is immediately admitted, upon request, to the premises with or without advance notice.

2. The holder of a license issued pursuant to this section shall be strictly accountable for maintaining compliance with subsection 1, and proof of any violation shall constitute grounds for revocation of the license issued pursuant to this section, whether or not the holder of the license had knowledge of the facts constituting the violation.

3. A participant in a social game which is not in compliance with this section shall be liable for a criminal penalty only if that participant has knowledge of or reason to know the facts constituting the violation.

4. The holder of a license issued pursuant to this section and every agent of that licensee who is required by the licensee to exercise control over the use of the premises who knowingly permits

acts or omissions which constitute a violation of subsection 1 commits a serious misdemeanor. A licensee has knowledge of acts or omissions if any agent of the licensee has knowledge of those acts or omissions.

5. This section shall not apply to premises or portions of premises constituting the living quarters of the actual residence of an individual if that individual is a participant in the activities permitted by this section.

2007 Acts, ch 119, §4  
Subsection 1, unnumbered paragraph 1 amended

#### **99B.10 Electrical and mechanical amusement devices — penalties.**

1. It is lawful to own, possess, and offer for use by any person at any location an electrical or mechanical amusement device and the use of the electrical or mechanical amusement device shall not be deemed gambling, but only if all of the following are complied with:

*a.* A prize of merchandise exceeding five dollars in value shall not be awarded for use of the device. However, a mechanical or amusement device may be designed or adapted to award a prize or one or more free games or portions of games without payment of additional consideration by the participant.

*b.* A prize of cash shall not be awarded for use of the device.

*c.* An amusement device shall not be designed or adapted to cause or to enable a person to cause the release of free games or portions of games when designated as a potential award for use of the device, and shall not contain any meter or other measurement device for recording the number of free games or portions of games which are awarded.

*d.* An amusement device shall not be designed or adapted to enable a person using the device to increase the chances of winning free games or portions of games by paying more than is ordinarily required to play the game.

*e.* An amusement device required to be registered as provided in paragraph “*f*”, shall not be placed into operation without first obtaining a new amusement device registration tag if electronic or mechanical components have been adapted, altered, or replaced and such adaptation, alteration, or replacement changes the operational characteristics of the amusement device including but not limited to the game being changed.

*f.* (1) Each electrical and mechanical amusement device in operation or distributed in this state that awards a prize, as provided in this section, where the outcome is not primarily determined by the skill or knowledge of the operator, is registered by the department as provided by this lettered paragraph and is only located on premises for which a class “A”, class “B”, class “C”, special class “C”, or class “D” liquor control license or class “B” or class “C” beer permit has been issued pursu-

ant to chapter 123. For an organization that meets the requirements of section 99B.7, subsection 1, paragraph “*m*”, no more than four, and for all other persons, no more than two electrical and mechanical amusement devices registered as provided by this lettered paragraph shall be permitted or offered for use in any single location or premises for which a class “A”, class “B”, class “C”, or class “D” liquor control license or class “B” or class “C” beer permit has been issued pursuant to chapter 123.

(2) Each person owning an electrical and mechanical amusement device in this state shall obtain a registration tag for each electrical and mechanical amusement device owned that is required to be registered as provided in this lettered paragraph. Upon receipt and approval of an application and a fee of twenty-five dollars for each device required to be registered, the department shall issue an annual registration tag. A registration may be renewed annually upon submission of a registration application and payment of the annual registration fee and compliance with this chapter and the rules adopted pursuant to this chapter.

(3) The number of electrical and mechanical amusement devices registered by the department under this lettered paragraph shall not exceed the total number of devices registered by the department as of April 28, 2004. In addition, the department shall not initially register an electrical and mechanical amusement device that is required to be registered as provided in this lettered paragraph to an owner for a location for which only a class “B” or class “C” beer permit has been issued pursuant to chapter 123 on or after April 28, 2004.

(4) A person owning or leasing an electrical and mechanical amusement device required to be registered under this lettered paragraph shall only own or lease an electrical and mechanical amusement device that is required to be registered that has been purchased from a manufacturer, manufacturer’s representative, or distributor registered with the department under section 99B.10A.

(5) An owner at a location for which only a class “B” or class “C” beer permit has been issued pursuant to chapter 123 shall not relocate an amusement device registered as provided in this lettered paragraph to a location other than the location of the device on April 28, 2004, and shall not transfer, assign, sell, or lease an amusement device registered as provided in this lettered paragraph to another person for which only a class “B” or class “C” beer permit has been issued pursuant to chapter 123 after April 28, 2004.

*g.* A person owning or leasing an electrical and mechanical amusement device required to be registered under paragraph “*f*”, shall display the registration tag as required by rules adopted by the department.

*h.* A person owning or leasing an electrical and mechanical amusement device required to be reg-

istered under paragraph “f” shall not allow the electrical and mechanical amusement device to be operated or made available for operation with an expired registration.

i. A person owning or leasing an electrical and mechanical amusement device required to be registered under paragraph “f”, or an employee of a person owning or leasing an electrical and mechanical amusement device required to be registered under paragraph “f”, shall not advertise or promote the availability of the device to the public as anything other than an electrical and mechanical amusement device pursuant to rules adopted by the department.

j. A person owning or leasing an electrical and mechanical amusement device required to be registered under paragraph “f” shall not relocate and place into operation an amusement device in any location other than a location which has been issued an appropriate liquor control license in good standing and to which the device has been appropriately registered with the department.

k. Any awards given for use of an amusement device shall only be redeemed on the premises where the device is located and only for merchandise sold in the normal course of business for the premises.

l. Each electrical or mechanical amusement device required to be registered as provided by this section shall include on the device a counting mechanism which establishes the volume of business of the device. The department and the department of public safety shall have access to the information provided by the counting mechanism.

m. Each electrical or mechanical amusement device required to be registered as provided by this section at a location for which only a class “B” or class “C” beer permit has been issued pursuant to chapter 123 shall include on the device a security mechanism which prevents the device from being operated by a person until action is taken by the owner or owner’s designee to allow the person to operate the device.

n. An electrical or mechanical amusement device required to be registered as provided in this section shall not be a gambling device, as defined in section 725.9, or a device that plays poker, blackjack, or keno.

o. Any other requirements as determined by the department by rule. Rules adopted pursuant to this lettered paragraph shall be formulated in consultation with affected state agencies and industry and consumer groups.

2. A person who violates any provision of subsection 1, except as specified in subsection 3, commits a serious misdemeanor.

3. A person who violates any provision of subsection 1, paragraph “a”, “c”, “g”, “h”, “i”, “j”, “k”, or “m”, shall be subject to the following:

a. For a first offense under an applicable paragraph, the person commits a simple misdemeanor,

punishable as a scheduled violation pursuant to section 805.8C, subsection 4, paragraph “b”.

b. For a second or subsequent offense under the same applicable paragraph, the person commits a serious misdemeanor.

4. Notwithstanding any provision of this section to the contrary, it is lawful for an individual other than an owner or promoter of an amusement device to operate an amusement device, whether or not the amusement device is owned, possessed, or offered for use in compliance with this section.

2007 Acts, ch 173, §2

Use of amusement devices registered prior to April 28, 2004, at non-liquor control locations until July 1, 2005; limitations on sale of such devices on and after that date; 2004 Acts, ch 1118, §10, 11; 2004 Acts, ch 1175, §396  
Section amended

### **99B.10A Electrical and mechanical amusement device manufacturers, distributors, and for-profit owners — registration.**

1. A person engaged in business in this state as a manufacturer, manufacturer’s representative, distributor, or for-profit owner of electrical and mechanical amusement devices required to be registered as provided in section 99B.10, subsection 1, paragraph “f”, shall register with the department. Each person who registers with the department under this section shall pay an annual registration fee in an amount as provided in subsection 2. Registration shall be submitted on application forms designated by the department that shall contain the information required by the department by rule. The department shall adopt rules establishing the criteria for approval or denial of a registration application and providing for the submission of information to the department by a person registered pursuant to this section if information in the initial registration is changed, including discontinuing the business in this state.

2. For purposes of this section, the annual registration fee shall be as follows:

a. For a manufacturer or manufacturer’s representative, two thousand five hundred dollars.

b. For a distributor, five thousand dollars.

c. For an owner of no more than two electrical and mechanical amusement devices registered as provided in section 99B.10, subsection 1, paragraph “f”, at a single location or premises that is not an organization that meets the requirements of section 99B.7, subsection 1, paragraph “m”, two thousand five hundred dollars.

2007 Acts, ch 173, §3, 4

Subsection 1 amended

Subsection 2, paragraph c amended

### **99B.10B Revocation of registration — electrical and mechanical amusement devices — suspension of liquor license or beer permit.**

1. The department may deny, suspend, or revoke a registration issued pursuant to section 99B.10 or 99B.10A, if the department finds that an applicant, registrant, or an agent of a registrant

violated or permitted a violation of a provision of section 99B.10, 99B.10A, or 99B.10C, or a departmental rule adopted pursuant to chapter 17A, or for any other cause for which the director of the department would be or would have been justified in refusing to issue a registration, or upon the conviction of a person of a violation of this chapter or a rule adopted under this chapter which occurred on the premises where the registered amusement device is or is to be located. However, the denial, suspension, or revocation of a registration for one amusement device does not require, but may result in, the denial, suspension, or revocation of the registration for a different amusement device held by the same distributor or owner.

2. *a.* The department shall revoke a registration issued pursuant to section 99B.10 or 99B.10A, for a period of ten years if a person commits an offense of awarding a cash prize in violation of section 99B.10, subsection 1, paragraph “b”, pursuant to rules adopted by the department. A person whose registration is revoked under this subsection who is a person for which a class “A”, class “B”, class “C”, special class “C”, or class “D” liquor control license has been issued pursuant to chapter 123 shall have the person’s liquor control license suspended for a period of fourteen days in the same manner as provided in section 123.50, subsection 3, paragraph “a”. A person whose registration is revoked under this subsection who is a person for which only a class “B” or class “C” beer permit has been issued pursuant to chapter 123 shall have the person’s class “B” or class “C” beer permit suspended and that person’s sales tax permit suspended for a period of fourteen days in the same manner as provided in section 123.50, subsection 3, paragraph “a”.

*b.* If a person owning or employed by an establishment having a class “A”, class “B”, class “C”, special class “C”, or class “D” liquor control license issued pursuant to chapter 123 commits an offense of awarding a cash prize in violation of section 99B.10, subsection 1, paragraph “b”, pursuant to rules adopted by the department, the liquor control license of the establishment shall be suspended for a period of fourteen days in the same manner as provided in section 123.50, subsection 3, paragraph “a”. If a person owning or employed by an establishment having a class “B” or class “C” beer permit issued pursuant to chapter 123 awards a cash prize in violation of section 99B.10, subsection 1, paragraph “b”, pursuant to rules adopted by the department, the beer permit of the establishment and the establishment’s sales tax permit shall be suspended for a period of fourteen days in the same manner as provided in section 123.50, subsection 3, paragraph “a”.

3. *a.* The process for denial, suspension, or revocation of a registration issued pursuant to section 99B.10 or 99B.10A, shall commence by deliv-

ering to the applicant or registrant by certified mail, return receipt requested, or by personal service a notice setting forth the proposed action and the particular reasons for such action.

*b.* (1) If a written request for a hearing is not received within thirty days after the mailing or service of the notice, the denial, suspension, or revocation of a registrant shall become effective pending a final determination by the department. The proposed action in the notice may be affirmed, modified, or set aside by the department in a written decision.

(2) If a request for a hearing is timely received by the department, the applicant or registrant shall be given an opportunity for a prompt and fair hearing before the department and the denial, suspension, or revocation shall be deemed suspended until the department makes a final determination. However, the director of the department may suspend a registration prior to a hearing if the director finds that the public integrity of the registered activity is compromised or there is a risk to public health, safety, or welfare. In addition, at any time during or prior to the hearing, the department may rescind the notice of the denial, suspension, or revocation upon being satisfied that the reasons for the denial, suspension, or revocation have been or will be removed. On the basis of any such hearing, the proposed action in the notice may be affirmed, modified, or set aside by the department in a written decision. The procedure governing hearings authorized by this paragraph shall be in accordance with the rules promulgated by the department and chapter 17A.

*c.* A copy of the final decision of the department shall be sent by certified mail, return receipt requested, or served personally upon the applicant or registrant. The applicant or registrant may seek judicial review in accordance with the terms of the Iowa administrative procedure Act, chapter 17A.

*d.* If the department finds cause for denial of a registration issued pursuant to section 99B.10 or 99B.10A, the applicant shall not reapply for the same registration for a period of two years. If the department finds cause for a suspension or revocation, the registration shall be suspended or revoked for a period not to exceed two years.

2007 Acts, ch 173, §5 – 7  
 Subsection 1 stricken and rewritten  
 Subsection 2 amended  
 NEW subsection 3

### **99B.10C Electrical and mechanical amusement devices — persons under twenty-one — penalties.**

1. A person under the age of twenty-one years shall not participate in the operation of an electrical and mechanical amusement device. A person who violates this subsection commits a scheduled violation under section 805.8C, subsection 4.

2. A person owning or leasing an electrical and mechanical amusement device, or an employee of a person owning or leasing an electrical and mechanical amusement device, who knowingly allows a person under the age of twenty-one years to participate in the operation of an electrical and mechanical amusement device, or a person who knowingly participates in the operation of an electrical and mechanical amusement device with a person under the age of twenty-one years, is guilty of a simple misdemeanor.

3. For purposes of this section, an electrical and mechanical amusement device means an electrical and mechanical amusement device required to be registered as provided in section 99B.10, subsection 1, paragraph “f”.

2007 Acts, ch 173, §8  
Subsections 2 and 3 amended

#### 99B.12 Games between individuals.

1. Except in instances where because of the location of the game or the circumstances of the game section 99B.3, section 99B.5, section 99B.6, section 99B.7, section 99B.7B, section 99B.8, or section 99B.9 is applicable, individuals may participate in gambling specified in subsection 2, but only if all of the following are complied with:

a. The gambling is incidental to a bona fide social relationship between all participants.

b. The gambling is not participated in, either wholly or in part, on or in any property subject to chapter 297, relating to schoolhouses and schoolhouse sites.

c. All participants in the gambling are individuals, and no participant may participate as the agent of another person.

d. The gambling shall be fair and honest, and shall not be designed, devised or adapted to permit predetermination of the winner, or to prevent a participant from winning, and no concealed numbers or conversion charts may be used to determine the winner of any game.

e. No person receives or has any fixed or contingent right to receive, directly or indirectly, any profit, remuneration, or compensation from or as a result of the gambling, except any amount which the person may win as a participant on the same basis as the other participants.

f. No person may participate in any wager, bet or pool which relates to an athletic event or contest and which is authorized or sponsored by one or more schools, educational institutions, or interscholastic athletic organizations if the person is a coach, official, player or contestant in the athletic event or contest.

g. No participant wins or loses more than a total of fifty dollars or other consideration equivalent thereto in one or more games or activities permitted by this section at any time during any period of twenty-four consecutive hours or over that entire period. For the purpose of this paragraph a person wins the total amount at stake in any

game, wager or bet, regardless of any amount that person may have contributed to the amount at stake.

h. No participant pays an entrance fee, cover charge, or other charge for the privilege of participating in gambling, or for the privilege of gaining access to the location in which gambling occurs.

i. In any game requiring a dealer or operator, the participants must have the option to take their turn at dealing or operating the game in a regular order according to the standard rules of the game.

2. Games which are permitted by this section are limited to the following:

a. Card and parlor games, including but not limited to poker, pinochle, pitch, gin rummy, bridge, euchre, hearts, cribbage, dominoes, checkers, chess, backgammon, pool, and darts. However, it shall be unlawful gambling for any person to engage in bookmaking, or to play any punchboard, pushcard, pull-tab, or slot machine, or to play craps, chuck-a-luck, roulette, klondike, blackjack, chemin de fer, baccarat, faro, equality, three-card monte, or any other game, except poker, which is customarily played in gambling casinos and in which the house customarily provides a banker, dealer, or croupier to operate the game, or a specially designed table upon which to play the game.

b. Games of skill and games of chance, except those prohibited by paragraph “a” of this subsection.

c. Wagers or bets between two or more individuals who are physically in the presence of each other with respect to a contest specified in section 99B.11, subsection 2, except as provided in subsection 1, paragraph “g”, or with respect to any other event or outcome which does not depend upon gambling or the use of a gambling device unlawful in this state.

3. An individual may not be convicted of a violation of this section unless the individual had knowledge of or reason to know the facts constituting the violation.

2007 Acts, ch 119, §5  
Subsection 1, unnumbered paragraph 1 amended

#### 99B.18 Company games.

Games of skill, games of chance, and card games may be conducted on premises either licensed or unlicensed and no license fee shall be required if a bona fide social, employment, trade or professional association relationship exists between the sponsors and the participants and the participants pay no consideration of any nature, either directly or indirectly, to participate in the games, and only “play” money or other items of no intrinsic value which may be wagered are provided to the participant free, and the sponsor conducting the game receives no consideration, either directly or indirectly, other than goodwill.

A gambling device intended for use or used as provided in this section is exempt from the provisions of section 725.9, subsection 2.

Section not amended; internal reference change applied

## CHAPTER 99D

### PARI-MUTUEL WAGERING

#### **99D.5 Creation of state racing and gaming commission.**

1. A state racing and gaming commission is created within the department of inspections and appeals consisting of five members who shall be appointed by the governor subject to confirmation by the senate, and who shall serve not to exceed a three-year term at the pleasure of the governor. The term of each member shall begin and end as provided in section 69.19.

2. A vacancy on the commission shall be filled as provided in section 2.32.

3. Not more than three members of the commission shall belong to the same political party. A member of the commission shall not have a financial interest in a racetrack.

4. Commission members are each entitled to receive an annual salary of ten thousand dollars. Members shall also be reimbursed for actual expenses incurred in the performance of their duties to a maximum of thirty thousand dollars per year for the commission. Each member shall be covered by the blanket surety bond of the state purchased pursuant to section 8A.321, subsection 12.

5. A member or a holder of an official's license shall not knowingly:

*a.* Have a pecuniary, equitable, or other interest in or engage in a business or employment which would be a conflict of interest or interfere or conflict with the proper discharge of the duties of the commission including any of the following:

(1) A business which does business with a licensee.

(2) A business issued a concession operator's license.

*b.* Participate directly or indirectly as an owner, owner-trainer, trainer of a horse or dog, or jockey of a horse in a race meeting conducted in this state.

*c.* Place a wager on an entry in a race or on a gambling game operated on an excursion gambling boat or gambling structure.

A violation of this subsection is a serious misdemeanor. In addition, the individual may be subject to disciplinary actions pursuant to the commission rules.

6. A member, employee, or appointee of the commission, spouse of a member, employee, or appointee of the commission, or a family member related within the second degree of affinity or consanguinity to a member, employee, or appointee of the commission shall not do either of the following:

*a.* Hold an occupational license except an official's license.

*b.* Enter directly or indirectly into any business dealing, venture, or contract with an owner or lessee of a racetrack.

A member who knowingly approves of a violation of this subsection is guilty of a serious misdemeanor.

2007 Acts, ch 188, §4  
Internal reference change applied  
Subsection 5, paragraph c amended

#### **99D.6 Chairperson — administrator — employees — duties — bond.**

The commission shall elect in July of each year one of its members as chairperson for the succeeding year. The commission shall appoint an administrator of the commission subject to confirmation by the senate. The administrator shall serve a four-year term. The term shall begin and end in the same manner as set forth in section 69.19. A vacancy shall be filled for the unexpired portion of the term in the same manner as a full-term appointment is made. The administrator may hire other assistants and employees as necessary to carry out the commission's duties. Employees in the positions of equine veterinarian, canine veterinarian, and equine steward shall be exempt from the merit system provisions of chapter 8A, subchapter IV, and shall not be covered by a collective bargaining agreement. Some or all of the information required of applicants in section 99D.8A, subsections 1 and 2, may also be required of employees of the commission if the commission deems it necessary. The administrator shall keep a record of the proceedings of the commission and preserve the books, records, and documents entrusted to the administrator's care. The administrator shall be covered by the blanket surety bond of the state purchased pursuant to section 8A.321, subsection 12. The compensation and employment terms of the administrator shall be set by the governor, taking into consideration the level of knowledge and experience of the administrator. The commission shall have its headquarters in the city of Des Moines and shall meet in July of each year and at other times and places as it finds necessary for the discharge of its duties.

2007 Acts, ch 215, §26  
Confirmation, see §2.32  
Section amended

#### **99D.22 Native horses or dogs.**

1. A licensee shall hold at least one race on each racing day limited to Iowa-foaled horses or Iowa-whelped dogs as defined by the department of agriculture and land stewardship using standards consistent with this section. However, if sufficient competition cannot be had among that class of horses or dogs on any day, another race for the day may be substituted. A sum equal to twelve percent of the purse won by an Iowa-foaled horse or Iowa-whelped dog shall be used to promote the horse and dog breeding industries. The twelve



percent shall be withheld by the licensee from the breakage and shall be paid at the end of the race meeting to the state department of agriculture and land stewardship which in turn shall deposit it in a special fund to be known as the Iowa horse and dog breeders fund. The department shall pay the amount deposited in the fund that is withheld from the purse won by an Iowa-foaled horse to the breeder of the winning Iowa-foaled horse by December 31 of each calendar year. The department shall pay the amount deposited in the fund that is withheld from the purse won by an Iowa-whelped dog to the breeder of the winning Iowa-whelped dog by March 31 of each calendar year. For the purposes of this section, the breeder of a horse shall be considered to be the owner of the brood mare at the time the foal is dropped.

2. For the purposes of this chapter, the following shall be considered in determining if a horse is an Iowa-foaled thoroughbred horse, quarter horse, or standardbred horse:

*a.* All thoroughbred horses, quarter horses, or standardbred horses foaled in Iowa prior to January 1, 1985, which are registered by the jockey club, American quarter horse association, or United States trotting association as Iowa foaled shall be considered to be Iowa foaled.

*b.* After January 1, 1985, eligibility for brood mare residence shall be achieved by meeting at least one of the following rules:

(1) Thirty days residency until the foal is inspected, if in foal to a registered Iowa stallion.

(2) Thirty days residency until the foal is inspected for brood mares which are bred back to registered Iowa stallions.

(3) Continuous residency from December 31 until the foal is inspected if the mare was bred by other than an Iowa registered stallion and is not bred back to an Iowa registered stallion.

*c.* To be eligible for registration as an Iowa thoroughbred, quarter horse, or standardbred stallion, the following requirements shall be met:

(1) Stallion residency from January 1 through July 31 for the year of registration. However, horses going to stud for the first year shall be eligible upon registration with residency to continue through July 31.

(2) At least fifty-one percent of an Iowa registered stallion shall be owned by bona fide Iowa residents.

*d.* State residency shall not be required for owners of brood mares.

3. To facilitate the implementation of this section, the department of agriculture and land stewardship shall do all of the following:

*a.* Adopt standards to qualify thoroughbred, quarter horse, or standardbred stallions for Iowa breeding. A stallion shall stand for service in the state at the time of the foal's conception and shall not stand for service at any place outside the state during the calendar year in which the foal is conceived.

*b.* Provide for the registration of Iowa-foaled horses and that a horse shall not compete in a race limited to Iowa-foaled horses unless the horse is registered with the department of agriculture and land stewardship. The department may prescribe such forms as necessary to determine the eligibility of a horse.

*c.* The secretary of agriculture shall appoint investigators to determine the eligibility for registration of Iowa-foaled horses.

*d.* Establish a registration fee imposed on each horse which is a thoroughbred, quarter horse, or standardbred which shall be paid by the breeder of the horse. The department shall not impose the registration fee more than once on each horse. The amount of the registration fee shall not exceed thirty dollars. The moneys paid to the department from registration fees shall be considered repayment receipts as defined in section 8.2, and shall be used for the administration and enforcement of this subsection.

4. *a.* The department of agriculture and land stewardship shall adopt rules establishing a schedule of registration fees to be imposed on owners of dogs that are whelped and raised for the first six months of their lives in Iowa for purposes of promoting native dogs as provided in this chapter, including section 99D.12 and this section. The amount of the registration fees shall be imposed as follows:

(1) An owner of a dam registering the dam, twenty-five dollars.

(2) An owner of a litter registering the litter, ten dollars.

(3) An owner of a dog registering the dog, five dollars.

*b.* The moneys paid to the department from registration fees as provided in paragraph "a" shall be considered repayment receipts as defined in section 8.2, and shall be used for the administration and enforcement of programs for the promotion of native dogs.

5. To qualify for the Iowa horse and dog breeders fund, a dog shall have been whelped in Iowa and raised for the first six months of its life in Iowa in a state inspected licensed facility. In addition, the owner of the dog shall have been a resident of the state for at least two years prior to the whelping. The department of agriculture and land stewardship shall adopt rules and prescribe forms to bring Iowa breeders into compliance with residency requirements of dogs and breeders in this subsection.

2007 Acts, ch 211, §35  
Subsection 5 amended

### **99D.25 Drugging or numbing — exception — tests — reports — penalties.**

1. As used in this section, unless the context otherwise requires:

*a.* "Drugging" means administering to a horse or dog any substance foreign to the natural horse

or dog prior to the start of a race. However, in counties with a population of two hundred fifty thousand or more, “*drugging*” does not include administering to a horse the drugs furosemide and phenylbutazone in accordance with section 99D.25A and rules adopted by the commission.

b. “*Numbing*” means the applying of ice or a freezing device or substance to the limbs of a horse or dog within two hours before the start of a race, or a surgical or other procedure which was, at any time, performed in which the nerves of a horse or dog were severed, destroyed, injected, or removed.

c. “*Entered*” means that a horse or dog has been registered as a participant in a specified race, and not withdrawn prior to presentation of the horse or dog for inspection and testing.

2. The general assembly finds that the practice of drugging or numbing a horse or dog prior to a race:

a. Corrupts the integrity of the sport of racing and promotes criminal fraud in the sport;

b. Misleads the wagering public and those desiring to purchase a horse or dog as to the condition and ability of the horse or dog;

c. Poses an unreasonable risk of serious injury or death to the rider of a horse and to the riders of other horses competing in the same race; and

d. Is cruel and inhumane to the horse or dog so drugged or numbed.

3. The following conduct is prohibited:

a. The entering of a horse or dog in a race by the trainer or owner of the horse or dog if the trainer or owner knows or if by the exercise of reasonable care the trainer or owner should know that the horse or dog is drugged or numbed;

b. The drugging or numbing of a horse or dog with knowledge or with reason to believe that the horse or dog will compete in a race while so drugged or numbed. However, the commission may by rule establish permissible trace levels of substances foreign to the natural horse or dog that the commission determines to be innocuous;

c. The willful failure by the operator of a racing facility to disqualify a horse or dog from competing in a race if the operator has been notified that the horse or dog is drugged or numbed, or was not properly made available for tests or inspections as required by the commission; and

d. The willful failure by the operator of a racing facility to prohibit a horse or dog from racing if the operator has been notified that the horse or dog has been suspended from racing.

4. The owners of a horse or dog and their agents and employees shall permit a member of the commission or a person employed or appointed by the commission to make tests as the commission deems proper in order to determine whether a horse or dog has been improperly drugged. The fact that purse money has been distributed prior to the issuance of a test report shall not be deemed

a finding that no chemical substance has been administered unlawfully to the horse or dog earning the purse money. The findings of the commission that a horse or dog has been improperly drugged by a narcotic or other drug are prima facie evidence of the fact. The results of the tests shall be kept on file by the commission for at least one year following the tests.

5. Every horse which suffers a breakdown on the racetrack, in training, or in competition, and is destroyed, and every other horse which expires while stabled on the racetrack under the jurisdiction of the commission, shall undergo a postmortem examination by a veterinarian or a veterinary pathologist at a time and place acceptable to the commission veterinarian to determine the injury or sickness which resulted in euthanasia or natural death. Test samples may be obtained from the carcass upon which the postmortem examination is conducted and shall be sent to a laboratory approved by the commission for testing for foreign substances and natural substances at abnormal levels. When practical, blood and urine test samples should be procured prior to euthanasia. The owner of the deceased horse is responsible for payment of any charges due to conduct the postmortem examination. A record of every postmortem shall be filed with the commission by the veterinarian or veterinary pathologist who performed the postmortem within seventy-two hours of the death. Each owner and trainer accepts the responsibility for the postmortem examination provided herein as a requisite for maintaining the occupational license issued by the commission.

6. Any horse which in the opinion of the commission veterinarian has suffered a traumatic injury or disability such that a controlled program of phenylbutazone administration would not aid in restoring the racing soundness of the horse shall not be allowed to race while medicated with phenylbutazone or with phenylbutazone present in the horse’s bodily systems.

7. A person found within or in the immediate vicinity of a security stall who is in possession of unauthorized drugs or hypodermic needles or who is not authorized to possess drugs or hypodermic needles shall, in addition to any other penalties, be barred from entry into any racetrack in Iowa and any occupational license the person holds shall be revoked.

8. Before a horse is allowed to race using phenylbutazone, the veterinarian attending the horse shall certify to the commission the course of treatment followed in administering the phenylbutazone.

9. The commission shall conduct random tests of bodily substances of horses entered to race each day of a race meeting to aid in the detection of any unlawful drugging. The tests may be conducted both prior to and after a race. The commission

may also test any horse that breaks down during a race and shall perform an autopsy on any horse that is killed or subsequently destroyed as a result of an accident during a race. When practical, blood and urine test samples should be procured prior to euthanasia.

10. Veterinarians must submit daily to the commission veterinarian on a prescribed form a report of all medications and other substances which the veterinarian prescribed, administered, or dispensed for horses registered at a current race meeting. A logbook detailing other professional services performed while on the grounds of a race-track shall be kept by veterinarians and shall be made immediately available to the commission veterinarian or the stewards upon request.

A person who violates this section is guilty of a class "D" felony.

2007 Acts, ch 48, §1, 7  
Subsections 5 and 9 amended

#### **99D.25A Administration of furosemide or phenylbutazone.**

1. As used in this section unless the context otherwise requires:

a. "Bleeder" means, according to its context, any of the following:

(1) A horse which, during a race or exercise, is observed by the commission veterinarian or a licensed practicing veterinarian to be shedding blood from one or both nostrils and in which no upper airway injury is noted during an examination by the commission veterinarian or a licensed practicing veterinarian immediately following such a race or exercise.

(2) A horse which, within one and one-half hours of such a race or exercise, is observed by the commission veterinarian or a licensed practicing veterinarian, through visual or endoscopic examination, to be shedding blood from the lower airway.

(3) A horse which has been certified as a bleeder in another state.

(4) A horse which has furosemide listed on its most recent past performance.

(5) A horse which, by recommendation of a licensed practicing veterinarian, is prescribed furosemide to control or prevent bleeding from the lungs.

b. "Bleeder list" means a tabulation of all bleeders maintained by the commission veterinarian.

c. "Detention barn" means a secured structure designated by the commission.

2. Phenylbutazone shall not be administered to a horse in dosages which would result in concentrations of more than five micrograms of the substance or its metabolites per milliliter of blood.

3. If a horse is to race with phenylbutazone in its system, the trainer, or trainer's designee, shall be responsible for marking the information on the

entry blank for each race in which the horse shall use phenylbutazone. Changes made after the time of entry must be submitted on the prescribed form to the commission veterinarian no later than scratch time.

4. If a test detects concentrations of phenylbutazone in the system of a horse in excess of the level permitted in this section, the commission shall assess a civil penalty against the trainer of at least two hundred dollars for the first offense and at least five hundred dollars for a second offense. The penalty for a third or subsequent offense shall be in the discretion of the commission.

5. Furosemide may be administered to certified bleeders. Upon request, any horse placed on the bleeder list shall, in its next race, be permitted the use of furosemide. Once a horse has raced with furosemide, it must continue to race with furosemide in all subsequent races unless a request is made to discontinue the use. If the use of furosemide is discontinued, the horse shall be prohibited from again racing with furosemide unless it is later observed to be bleeding. Requests for the use of or discontinuance of furosemide must be made to the commission veterinarian by the horse's trainer or assistant trainer on a form prescribed by the commission on or before the day of entry into the race for which the request is made.

6. Once a horse has been permitted the use of furosemide, the horse must be treated with furosemide in the horse's stall, unless the commission provides that a horse must be brought to the detention barn for treatment. After the furosemide treatment, the commission, by rule, may authorize the release of the horse from the horse's stall or detention barn before the scheduled post time. If a horse is brought to the detention barn late, the commission shall assess a civil penalty of one hundred dollars against the trainer.

7. A horse entered to race with furosemide must be treated at least four hours prior to post time. The furosemide shall be administered intravenously by a veterinarian employed by the owner or trainer of the horse. The commission shall adopt rules to ensure that furosemide is administered as provided in this section. The commission shall require that the practicing veterinarian deliver an affidavit signed by the veterinarian which certifies information regarding the treatment of the horse. The affidavit must be delivered to a commission veterinarian within twenty minutes following the treatment. The statement must at least include the name of the practicing veterinarian, the tattoo number of the horse, the location of the barn and stall where the treatment occurred, the race number of the horse, the name of the trainer, and the time that the furosemide was administered. Furosemide shall only be administered in a dose level of no less than one hundred fifty milligrams and no more than five hundred milligrams.

8. A person found within or in the immediate

vicinity of the detention barn or horse stall who is in possession of unauthorized drugs or hypodermic needles or who is not authorized to possess drugs or hypodermic needles shall, in addition to any other penalties, be barred from entry into any

racetrack in Iowa and any occupational license the person holds shall be revoked.

2007 Acts, ch 48, §2 – 5, 7  
 Subsection 1, paragraph a amended  
 Subsections 2, 4, and 7 amended

## CHAPTER 99F

### GAMBLING — EXCURSION GAMBLING BOATS, GAMBLING STRUCTURES, AND RACETRACKS

#### 99F.1 Definitions.

As used in this chapter unless the context otherwise requires:

1. “*Adjusted gross receipts*” means the gross receipts less winnings paid to wagerers.

2. “*Applicant*” means any person applying for an occupational license or applying for a license to operate an excursion gambling boat, or the officers and members of the board of directors of a qualified sponsoring organization located in Iowa applying for a license to conduct gambling games on an excursion gambling boat.

3. “*Cheat*” means to alter the selection of criteria which determine the result of a gambling game or the amount or frequency of payment in a gambling game.

4. “*Commission*” means the state racing and gaming commission created under section 99D.5.

5. “*Distributor*” means a person who sells, markets, or otherwise distributes gambling games or implements of gambling which are usable in the lawful conduct of gambling games pursuant to this chapter, to a licensee authorized to conduct gambling games pursuant to this chapter.

6. “*Division*” means the division of criminal investigation of the department of public safety as provided in section 80.17.

7. “*Dock*” means the location where an excursion gambling boat moors for the purpose of embarking passengers for and disembarking passengers from a gambling excursion.

8. “*Excursion boat*” means a self-propelled, floating vessel that is or has been previously certified for operation as a vessel.

9. “*Excursion gambling boat*” means an excursion boat or moored barge on which lawful gambling is authorized and licensed as provided in this chapter.

10. “*Gambling excursion*” means the time during which gambling games may be operated on an excursion gambling boat whether docked or during a cruise.

11. “*Gambling game*” means any game of chance authorized by the commission. However, for racetrack enclosures, “*gambling game*” does not include table games of chance or video ma-

chines which simulate table games of chance, unless otherwise authorized by this chapter. “*Gambling game*” does not include sports betting.

12. “*Gambling structure*” means any man-made stationary structure approved by the commission that does not include a racetrack enclosure which is subject to land-based building codes rather than maritime or Iowa department of natural resources inspection laws and regulations on which lawful gambling is authorized and licensed as provided in this chapter.

13. “*Gaming floor*” means that portion of an excursion gambling boat, gambling structure, or racetrack enclosure in which gambling games are conducted as designated by the commission.

14. “*Gross receipts*” means the total sums wagered under this chapter.

15. “*Holder of occupational license*” means a person licensed by the commission to perform an occupation which the commission has identified as requiring a license to engage in the excursion gambling boat industry in Iowa.

16. “*Licensee*” means any person licensed under section 99F.7.

17. “*Manufacturer*” means a person who designs, assembles, fabricates, produces, constructs, or who otherwise prepares a product or a component part of a product of any implement of gambling usable in the lawful conduct of gambling games pursuant to this chapter.

18. “*Moored barge*” means a barge or vessel that is not self-propelled.

19. “*Qualified sponsoring organization*” means a nonprofit corporation organized under the laws of this state, whether or not it is exempt from federal income taxation, or a person or association that can show to the satisfaction of the commission that the person or association is eligible for exemption from federal income taxation under section 501(c)(3), 501(c)(4), 501(c)(5), 501(c)(6), 501(c)(7), 501(c)(8), 501(c)(10), or 501(c)(19) of the Internal Revenue Code as defined in section 422.3.

20. “*Racetrack enclosure*” means all real property utilized for the conduct of a race meeting, including the racetrack, grandstand, concession stands, offices, barns, kennels and barn areas, em-

ployee housing facilities, parking lots, and any additional areas designated by the commission.

2007 Acts, ch 188, §5, 6  
NEW subsection 12 and former subsection 12 amended and renumbered as 13  
Former subsections 13 – 19 renumbered as 14 – 20

### 99F.3 Gambling games authorized.

The system of wagering on a gambling game as provided by this chapter is legal, when conducted on an excursion gambling boat, gambling structure, or racetrack enclosure at authorized locations by a licensee as provided in this chapter.

2007 Acts, ch 188, §7  
Section amended

### 99F.4 Powers.

The commission shall have full jurisdiction over and shall supervise all gambling operations governed by this chapter. The commission shall have the following powers and shall adopt rules pursuant to chapter 17A to implement this chapter:

1. To investigate applicants and determine the eligibility of applicants for a license and to select among competing applicants for a license the applicant which best serves the interests of the citizens of Iowa.

2. To license qualified sponsoring organizations, to license the operators of excursion gambling boats, to identify occupations within the excursion gambling boat operations which require licensing, and to adopt standards for licensing the occupations including establishing fees for the occupational licenses and licenses for qualified sponsoring organizations. The fees shall be paid to the commission and deposited in the general fund of the state. All revenue received by the commission under this chapter from license fees and regulatory fees shall be deposited in the general fund of the state and shall be subject to the requirements of section 8.60.

3. To adopt standards under which all excursion gambling boat operations shall be held and standards for the facilities within which the gambling operations are to be held. The commission may authorize the operation of gambling games on an excursion gambling boat which is also licensed to sell or serve alcoholic beverages, wine, or beer as defined in section 123.3.

4. To license the licensee of a pari-mutuel dog or horse racetrack enclosure subject to the provisions of this chapter and rules adopted pursuant to this chapter relating to gambling except as otherwise provided in section 99F.4A.

5. To enter the office, excursion gambling boat, facilities, or other places of business of a licensee to determine compliance with this chapter.

6. To investigate alleged violations of this chapter or the commission rules, orders, or final decisions and to take appropriate disciplinary action against a licensee or a holder of an occupational license for a violation, or institute appropriate

legal action for enforcement, or both. Information gathered during an investigation is confidential during the pendency of the investigation.

7. To require a licensee, an employee of a licensee or holder of an occupational license to remove a person violating a provision of this chapter or the commission rules, orders, or final orders, or other person deemed to be undesirable, from the excursion gambling boat facilities.

8. To require the removal of a licensee, an employee of a licensee, or a holder of an occupational license for a violation of this chapter or a commission rule or engaging in a fraudulent practice.

9. To require a licensee to file an annual balance sheet and profit and loss statement pertaining to the licensee's gambling activities in this state, together with a list of the stockholders or other persons having any beneficial interest in the gambling activities of each licensee.

10. To issue subpoenas for the attendance of witnesses and subpoenas duces tecum for the production of books, records, and other pertinent documents in accordance with chapter 17A, and to administer oaths and affirmations to the witnesses, when, in the judgment of the commission, it is necessary to enforce this chapter or the commission rules.

11. To keep accurate and complete records of its proceedings and to certify the records as may be appropriate.

12. To assess a fine and revoke or suspend licenses.

13. To take any other action as may be reasonable or appropriate to enforce this chapter and the commission rules.

14. To require all licensees of gambling game operations to utilize a cashless wagering system whereby all players' money is converted to tokens, electronic cards, or chips which only can be used for wagering on the excursion gambling boat.

15. To determine the payouts from the gambling games authorized under this chapter. In making the determination of payouts, the commission shall consider factors that provide gambling and entertainment opportunities which are beneficial to the gambling licensees and the general public.

16. To set the payout rate for all slot machines.

17. To define the excursion season and the duration of an excursion. While an excursion gambling boat is docked, passengers may embark or disembark at any time during its business hours.

18. To provide for the continuous recording of all gambling activities on an excursion gambling boat. The recording shall be performed under guidelines set by rule of the division of criminal investigation and the rules may require that all or part of the original recordings be submitted to the division on a timely schedule.

19. To provide for adequate security aboard each excursion gambling boat.

20. Drug testing, as permitted by section 730.5, shall be required periodically, not less than every sixty days, of persons employed as captains, pilots, or physical operators of excursion gambling boats under the provisions of this chapter.

21. To provide that a licensee prominently display at each gambling facility the annual percentage rate of state and local tax revenue collected by state and local government from the gambling facility annually.

22. To require licensees to establish a process to allow a person to be voluntarily excluded for life from an excursion gambling boat and all other licensed facilities under this chapter and chapter 99D. The process established shall require that a licensee disseminate information regarding persons voluntarily excluded to all licensees under this chapter and chapter 99D. The state and any licensee under this chapter or chapter 99D shall not be liable to any person for any claim which may arise from this process. In addition to any other penalty provided by law, any money or thing of value that has been obtained by, or is owed to, a voluntarily excluded person by a licensee as a result of wagers made by the person after the person has been voluntarily excluded shall not be paid to the person but shall be deposited into the gambling treatment fund created in section 135.150.

23. To approve a licensee's application to operate as a moored barge, an excursion boat that will cruise, or an excursion boat that will not cruise, as submitted pursuant to section 99F.7.

24. To conduct a socioeconomic study on the impact of gambling on Iowans, every eight years beginning in calendar year 2013, and issue a report on that study. The commission shall ensure that the results of each study are readily accessible to the public.

25. To license the licensee of a gambling structure subject to the provisions of this chapter and rules adopted pursuant to this chapter relating to gambling and as provided in section 99F.4D.

2007 Acts, ch 188, §8; 2007 Acts, ch 215, §86  
Subsection 24 amended  
NEW subsection 25

#### **99F.4D Gambling games at gambling structures — requirements — licensing.**

1. Unless otherwise provided by this chapter, the provisions of this chapter applicable to an excursion gambling boat shall also apply to a gambling structure.

2. A licensee authorized to conduct gambling games on an excursion boat may convert the license to authorize the conducting of gambling games on a gambling structure with the approval of the commission. In addition, a licensee authorized to conduct gambling games on a moored barge may elect to have the license treated to allow the conducting of gambling games on a gambling structure with the approval of the commission.

2007 Acts, ch 188, §9  
NEW section

#### **99F.5 License to conduct gambling games on excursion gambling boats and at gambling structures — license to operate boat — applications — operating agreements — fee.**

1. A qualified sponsoring organization may apply to the commission for a license to conduct gambling games on an excursion gambling boat or gambling structure as provided in this chapter. A person may apply to the commission for a license to operate an excursion gambling boat. An operating agreement entered into on or after May 6, 2004, between a qualified sponsoring organization and an operator of an excursion gambling boat or gambling structure shall provide for a minimum distribution by the qualified sponsoring organization for educational, civic, public, charitable, patriotic, or religious uses as defined in section 99B.7, subsection 3, paragraph "b", that averages at least three percent of the adjusted gross receipts for each license year. The application shall be filed with the administrator of the commission at least ninety days before the first day of the next excursion season as determined by the commission, shall identify the excursion gambling boat upon which gambling games will be authorized, shall specify the exact location where the excursion gambling boat will be docked, and shall be in a form and contain information as the commission prescribes. The minimum capacity of an excursion gambling boat or gambling structure is two hundred fifty persons.

2. The annual license fee to operate an excursion gambling boat shall be based on the passenger-carrying capacity including crew, for which the excursion gambling boat is registered. For a gambling structure, the annual license fee shall be based on the capacity of the gambling structure. The annual fee shall be five dollars per person capacity.

2007 Acts, ch 188, §10  
Section amended

#### **99F.6 Requirements of applicant — fee — penalty.**

1. A person shall not be issued a license to conduct gambling games on an excursion gambling boat or a license to operate an excursion gambling boat under this chapter, an occupational license, a distributor license, or a manufacturer license unless the person has completed and signed an application on the form prescribed and published by the commission. The application shall include the full name, residence, date of birth and other personal identifying information of the applicant that the commission deems necessary. The application shall also indicate whether the applicant has any of the following:

- a. A record of conviction of a felony.
  - b. An addiction to alcohol or a controlled substance.
  - c. A history of mental illness.
2. An applicant shall submit pictures, finger-

prints, and descriptions of physical characteristics to the commission in the manner prescribed on the application forms. The fingerprints may be submitted to the federal bureau of investigation by the department of public safety through the state criminal history repository for the purpose of a national criminal history check.

3. The commission shall charge the applicant a fee set by the department of public safety, division of criminal investigation, to defray the costs associated with the search and classification of fingerprints required in subsection 2 and background investigations conducted by agents of the division of criminal investigation. This fee is in addition to any other license fee charged by the commission.

4. *a.* Before a license is granted, the division of criminal investigation of the department of public safety shall conduct a thorough background investigation of the applicant for a license to operate a gambling game operation on an excursion gambling boat. The applicant shall provide information on a form as required by the division of criminal investigation. A qualified sponsoring organization licensed to operate gambling games under this chapter shall distribute the receipts of all gambling games, less reasonable expenses, charges, taxes, fees, and deductions allowed under this chapter, as winnings to players or participants or shall distribute the receipts for educational, civic, public, charitable, patriotic, or religious uses as defined in section 99B.7, subsection 3, paragraph “b”. However, a licensee to conduct gambling games under this chapter shall, unless an operating agreement for an excursion gambling boat otherwise provides, distribute at least three percent of the adjusted gross receipts for each license year for educational, civic, public, charitable, patriotic, or religious uses as defined in section 99B.7, subsection 3, paragraph “b”. However, if a licensee who is also licensed to conduct pari-mutuel wagering at a horse racetrack has unpaid debt from the pari-mutuel racetrack operations, the first receipts of the gambling games operated within the racetrack enclosure less reasonable operating expenses, taxes, and fees allowed under this chapter shall be first used to pay the annual indebtedness. The commission shall authorize, subject to the debt payments for horse racetracks and the provisions of paragraph “b” for dog racetracks, a licensee who is also licensed to conduct pari-mutuel dog or horse racing to use receipts from gambling games within the racetrack enclosure to supplement purses for races particularly for Iowa-bred horses pursuant to an agreement which shall be negotiated between the licensee and representatives of the dog or horse owners. For agreements subject to commission approval concerning purses for horse racing beginning on or after January 1, 2006, and ending before January 1, 2021, the agreements shall provide that total annual purses for all horse racing shall be no less than eleven per-

cent of the first two hundred million dollars of net receipts, and six percent of net receipts above two hundred million dollars. Agreements that are subject to commission approval concerning horse purses for a particular period of time beginning on or after January 1, 2006, and ending before January 1, 2021, shall be jointly submitted to the commission for approval. A qualified sponsoring organization shall not make a contribution to a candidate, political committee, candidate’s committee, state statutory political committee, county statutory political committee, national political party, or fund-raising event as these terms are defined in section 68A.102. The membership of the board of directors of a qualified sponsoring organization shall represent a broad interest of the communities. For purposes of this paragraph, “*net receipts*” means the annual adjusted gross receipts from all gambling games less the annual amount of money pledged by the owner of the facility to fund a project approved to receive vision Iowa funds as of July 1, 2004.

*b.* The commission shall authorize the licensees of pari-mutuel dog racetracks located in Dubuque county and Black Hawk county to conduct gambling games as provided in section 99F.4A if the licensees schedule at least one hundred thirty performances of twelve live races each day during a season of twenty-five weeks. For the pari-mutuel dog racetrack located in Pottawattamie county, the commission shall authorize the licensee to conduct gambling games as provided in section 99F.4A if the licensee schedules at least two hundred ninety performances of twelve live races each day during a season of fifty weeks. The commission shall approve an annual contract to be negotiated between the annual recipient of the dog racing promotion fund and each dog racetrack licensee to specify the percentage or amount of gambling game proceeds which shall be dedicated to supplement the purses of live dog races. The parties shall agree to a negotiation timetable to insure no interruption of business activity. If the parties fail to agree, the commission shall impose a timetable. If the two parties cannot reach agreement, each party shall select a representative and the two representatives shall select a third person to assist in negotiating an agreement. The two representatives may select the commission or one of its members to serve as the third party. Alternately, each party shall submit the name of the proposed third person to the commission who shall then select one of the two persons to serve as the third party. All parties to the negotiations, including the commission, shall consider that the dog racetracks were built to facilitate the development and promotion of Iowa greyhound racing dogs in this state and shall negotiate and decide accordingly.

5. Before a license is granted, an operator of an excursion gambling boat shall work with the department of economic development to promote

tourism throughout Iowa. Tourism information from local civic and private persons may be submitted for dissemination.

6. A person who knowingly makes a false statement on the application is guilty of an aggravated misdemeanor.

7. For the purposes of this section, applicant includes each member of the board of directors of a qualified sponsoring organization.

8. *a.* The licensee or a holder of an occupational license shall consent to the search, without a warrant, by agents of the division of criminal investigation of the department of public safety or commission employees designated by the administrator of the commission, of the licensee's or holder's person, personal property, and effects, and premises which are located on the excursion gambling boat or adjacent facilities under control of the licensee, in order to inspect or investigate for violations of this chapter or rules adopted by the commission pursuant to this chapter. The department or commission may also obtain administrative search warrants under section 808.14.

*b.* However, this subsection shall not be construed to permit a warrantless inspection of living quarters or sleeping rooms on the riverboat if all of the following are true:

(1) The licensee has specifically identified those areas which are to be used as living quarters or sleeping rooms in writing to the commission.

(2) Gaming is not permitted in the living quarters or sleeping rooms, and devices, records, or other items relating to the licensee's gaming operations are not stored, kept, or maintained in the living quarters or sleeping rooms.

(3) Alcoholic beverages are not stored, kept, or maintained in the living quarters or sleeping rooms except those legally possessed by the individual occupying the quarters or room.

*c.* The commission shall adopt rules to enforce this subsection.

2007 Acts, ch 48, §6, 7  
Subsection 8, paragraph a amended

### **99F.7 Licenses — terms and conditions — revocation.**

1. If the commission is satisfied that this chapter and its rules adopted under this chapter applicable to licensees have been or will be complied with, the commission shall issue a license for a period of not more than three years to an applicant to own a gambling game operation, to an applicant to operate a gambling structure, and to an applicant to operate an excursion gambling boat. The commission shall decide which of the gambling games authorized under this chapter the commission will permit. The commission shall decide the number, location, and type of gambling structures and excursion gambling boats licensed under this chapter. The commission shall allow the operation of an excursion boat or moored barge on or within one thousand feet of the high water marks of the

ivers, lakes, and reservoirs of this state as established by the commission in consultation with the United States army corps of engineers, the department of natural resources, or other appropriate regulatory agency. The license shall set forth, as applicable, the name of the licensee, the type of license granted, the location of the gambling structure or the place where the excursion gambling boats will operate and dock, and the time and number of days during the excursion season and the off season when gambling may be conducted by the licensee.

2. *a.* An applicant for a license to conduct gambling games on an excursion gambling boat, and each licensee by June 30 of each year thereafter, shall indicate and have noted on the license whether the applicant or licensee will operate a moored barge, an excursion boat that will cruise, or an excursion boat that will not cruise subject to the requirements of this subsection. If the applicant or licensee will operate a moored barge or an excursion boat that will not cruise, the requirements of this chapter concerning cruising shall not apply. If the applicant's or licensee's excursion boat will cruise, the applicant or licensee shall comply with the cruising requirements of this chapter and the commission shall not allow such a licensee to conduct gambling games on an excursion gambling boat while docked during the off season if the licensee does not operate gambling excursions for a minimum number of days during the excursion season. The commission may delay the commencement of the excursion season at the request of a licensee.

*b.* However, an applicant or licensee of an excursion gambling boat that is located in the same county as a racetrack enclosure conducting gambling games shall not be allowed to operate a moored barge unless either of the following applies:

(1) If the licensee is located in the same county as a racetrack enclosure conducting gambling games that had less than one hundred million dollars in adjusted gross receipts from gambling games for the fiscal year beginning July 1, 2003, the licensee of an excursion gambling boat is authorized to operate a moored barge if the licensee, the licensee of the racetrack enclosure, and all other licensees of an excursion gambling boat in that county file an agreement with the commission agreeing to the granting of a table games license under this chapter and permitting all licensees of an excursion gambling boat in the county to operate a moored barge as of a specific date.

(2) If the licensee is located in the same county as a racetrack enclosure conducting gambling games that had one hundred million dollars or more in adjusted gross receipts from gambling games for the fiscal year beginning July 1, 2003, the licensee of an excursion gambling boat is authorized to operate a moored barge the earlier of July 1, 2007, or the date any form of gambling



games, as defined in this chapter, is operational in any state that is contiguous to the county where the licensee is located.

c. A person awarded a new license to conduct gambling games on an excursion gambling boat or gambling structure in the same county as another licensed excursion gambling boat or gambling structure shall only be licensed to operate an excursion gambling boat or gambling structure that is located at a similarly situated site and operated as a substantially similar facility as any other excursion gambling boat or gambling structure in the county.

3. A license shall only be granted to an applicant upon the express conditions that:

a. The applicant shall not, by a lease, contract, understanding, or arrangement of any kind, grant, assign, or turn over to a person the operation of an excursion gambling boat licensed under this section or of the system of wagering described in section 99F.9. This section does not prohibit a management contract approved by the commission.

b. The applicant shall not in any manner permit a person other than the licensee to have a share, percentage, or proportion of the money received for admissions to the excursion gambling boat.

4. The commission shall require, as a condition of granting a license, that an applicant to operate an excursion gambling boat develop and, as nearly as practicable, re-create boats or moored barges that resemble Iowa's riverboat history.

5. The commission shall require that an applicant utilize Iowa resources, goods and services in the operation of an excursion gambling boat. The commission shall develop standards to assure that a substantial amount of all resources and goods used in the operation of an excursion gambling boat emanate from and are made in Iowa and that a substantial amount of all services and entertainment are provided by Iowans.

6. The commission shall, as a condition of granting a license, require an applicant to provide written documentation that, on each excursion gambling boat:

a. An applicant shall make every effort to ensure that a substantial number of the staff and entertainers employed are residents of Iowa.

b. A section is reserved for promotion and sale of arts, crafts, and gifts native to and made in Iowa.

7. It is the intent of the general assembly that employees be paid at least twenty-five percent above the federal minimum wage level.

8. A license shall not be granted if there is substantial evidence that any of the following apply:

a. The applicant has been suspended from operating a game of chance or gambling operation in another jurisdiction by a board or commission of that jurisdiction.

b. The applicant has not demonstrated finan-

cial responsibility sufficient to meet adequately the requirements of the enterprise proposed.

c. The applicant is not the true owner of the enterprise proposed.

d. The applicant is not the sole owner, and other persons have ownership in the enterprise, which fact has not been disclosed.

e. The applicant is a corporation and ten percent of the stock of the corporation is subject to a contract or option to purchase at any time during the period for which the license is to be issued unless the contract or option was disclosed to the commission and the commission approved the sale or transfer during the period of the license.

f. The applicant has knowingly made a false statement of a material fact to the commission.

g. The applicant has failed to meet a monetary obligation in connection with an excursion gambling boat.

9. A license shall not be granted if there is substantial evidence that the applicant is not of good repute and moral character or if the applicant has pled guilty to, or has been convicted of, a felony.

10. a. A licensee shall not loan to any person money or any other thing of value for the purpose of permitting that person to wager on any game of chance.

b. A licensee shall not permit a financial institution, vendor, or other person to dispense cash or credit through an electronic or mechanical device including but not limited to a satellite terminal, as defined in section 527.2, that is located on the gaming floor.

c. When technologically available, a licensee shall ensure that a person may voluntarily bar the person's access to receive cash or credit from a financial institution, vendor, or other person through an electronic or mechanical device including but not limited to a satellite terminal as defined in section 527.2 that is located on the licensed premises.

11. a. A license to conduct gambling games on an excursion gambling boat in a county shall be issued only if the county electorate approves the conduct of the gambling games as provided in this subsection. The board of supervisors, upon receipt of a valid petition meeting the requirements of section 331.306, shall direct the commissioner of elections to submit to the registered voters of the county a proposition to approve or disapprove the conduct of gambling games on an excursion gambling boat in the county. The proposition shall be submitted at a general election or at a special election called for that purpose. To be submitted at a general election, the petition must be received by the board of supervisors at least five working days before the last day for candidates for county offices to file nomination papers for the general election pursuant to section 44.4. If a majority of the county voters voting on the proposition favor the conduct of gambling games, the commission may issue one or more licenses as provided in this chap-

ter. If a majority of the county voters voting on the proposition do not favor the conduct of gambling games, a license to conduct gambling games in the county shall not be issued.

b. If licenses to conduct gambling games and to operate an excursion gambling boat are in effect pursuant to a referendum as set forth in this section and are subsequently disapproved by a referendum of the county electorate, the licenses issued by the commission after a referendum approving gambling games on excursion gambling boats shall remain valid and are subject to renewal for a total of nine years from the date of original issue unless the commission revokes a license at an earlier date as provided in this chapter.

c. If a licensee of a pari-mutuel racetrack who held a valid license issued under chapter 99D as of January 1, 1994, requests a license to operate gambling games as provided in this chapter, the board of supervisors of a county in which the licensee of a pari-mutuel racetrack requests a license to operate gambling games shall submit to the county electorate a proposition to approve or disapprove the operation of gambling games at pari-mutuel racetracks at a special election at the earliest practicable time. If the operation of gambling games at the pari-mutuel racetrack is not approved by a majority of the county electorate voting on the proposition at the election, the commission shall not issue a license to operate gambling games at the racetrack.

d. If the proposition to operate gambling games on an excursion gambling boat or at a racetrack enclosure is approved by a majority of the county electorate voting on the proposition, the board of supervisors shall submit the same proposition to the county electorate at the general election held in 2002 and, unless the operation of gambling games is terminated earlier as provided in this chapter or chapter 99D, at the general election held at each subsequent eight-year interval.

e. After a referendum has been held which defeated a proposal to conduct gambling games on excursion gambling boats or which defeated a proposal to conduct gambling games at a licensed pari-mutuel racetrack enclosure as provided in this section, another referendum on a proposal to conduct gambling games on an excursion gambling boat or at a licensed pari-mutuel racetrack shall not be held for at least eight years.

12. If a docking fee is charged by a city or a county, a licensee operating an excursion gambling boat shall pay the docking fee one year in advance.

13. A licensee shall not be delinquent in the payment of property taxes or other taxes or fees or in the payment of any other contractual obligation or debt due or owed to a city or county.

14. When applicable, an excursion gambling boat operated on inland waters of this state or an

excursion boat that has been removed from navigation and is designated as a permanently moored vessel by the United States coast guard shall be subject to the exclusive jurisdiction of the department of natural resources and meet all of the requirements of chapter 462A and is further subject to an inspection of its sanitary facilities to protect the environment and water quality before a certificate of registration is issued by the department of natural resources or a license is issued or renewed under this chapter.

15. If a licensed excursion boat stops at more than one harbor and travels past a county without stopping at any port in that county, the commission shall require the excursion boat operator to develop a schedule for ports of call in which a county referendum has been approved, and the port of call has the necessary facilities to handle the boat. The commission may limit the schedule to only one port of call per county.

16. Upon a violation of any of the conditions listed in this section, the commission shall immediately revoke the license.

17. The commission shall require each licensee operating gambling games to post in conspicuous locations specified by the commission the average percentage payout from the gambling machines.

2007 Acts, ch 188, §11, 12  
2004 amendment to subsection 11, paragraph e, takes effect May 6, 2004, and applies retroactively to referendums held on or after January 1, 2002; 2004 Acts, ch 1136, §65  
Subsection 1 amended  
Subsection 2, NEW paragraph c

#### **99F.9 Wagering — age restrictions.**

1. Except as permitted in this section, the licensee shall permit no form of wagering on gambling games.

2. Reserved.

3. The licensee may receive wagers only from a person present on a licensed excursion gambling boat, licensed gambling structure, or in a licensed racetrack enclosure.

4. The licensee shall exchange the money of each wagerer for tokens, chips, or other forms of credit to be wagered on the gambling games. However, nickels and quarters of legal tender may be used for wagering in lieu of tokens or other forms of credit. The licensee shall exchange the gambling tokens, chips, or other forms of wagering credit for money at the request of the wagerer.

5. A person under the age of twenty-one years shall not make or attempt to make a wager on an excursion gambling boat, gambling structure, or in a racetrack enclosure and shall not be allowed on the gaming floor of an excursion gambling boat or gambling structure or in the wagering area, as defined in section 99D.2, or on the gaming floor of a racetrack enclosure. However, a person eighteen years of age or older may be employed to work on

the gaming floor of an excursion gambling boat or gambling structure or in the wagering area or on the gaming floor of a racetrack enclosure. A person who violates this subsection with respect to making or attempting to make a wager commits a scheduled violation under section 805.8C, subsection 5.

6. A licensee shall not accept a credit card as defined in section 537.1301, subsection 17, to purchase coins, tokens, or other forms of credit to be wagered on gambling games.

2007 Acts, ch 188, §13  
Subsections 3 and 5 amended

**99F.10 Regulatory fee — local fees — initial license fee.**

1. A qualified sponsoring organization conducting gambling games on an excursion gambling boat or gambling structure licensed under section 99F.7 shall pay the tax imposed by section 99F.11.

2. An excursion gambling boat or gambling structure licensee shall pay to the commission a regulatory fee to be charged as provided in this section.

3. Subject to approval of excursion gambling boat docking by the voters, a city may adopt, by ordinance, an admission fee not exceeding fifty cents for each person embarking on an excursion gambling boat docked within the city, or a county may adopt, by ordinance, an admission fee not exceeding fifty cents for each person embarking on an excursion gambling boat docked outside the boundaries of a city. The admission revenue received by a city or a county shall be credited to the city general fund or county general fund as applicable.

4. In determining the license fees and state regulatory fees to be charged as provided under section 99F.4 and this section, the commission shall use as the basis for determining the amount of revenue to be raised from the license fees and regulatory fees the amount appropriated to the commission plus the cost of salaries for no more than two special agents for each excursion gambling boat or gambling structure and no more than four gaming enforcement officers for each excursion gambling boat or gambling structure with a patron capacity of less than two thousand persons or no more than five gaming enforcement officers for each excursion gambling boat or gambling structure with a patron capacity of at least two thousand persons, plus any direct and indirect support costs for the agents and officers, for the division of criminal investigation's excursion gambling boat or gambling structure activities.

5. No other license tax, permit tax, occupation tax, excursion fee, or taxes on fees shall be levied, assessed, or collected from a licensee by the state or by a political subdivision, except as provided in this chapter.

6. No other excise tax shall be levied, assessed, or collected from the licensee relating to gambling

excursions or admission charges by the state or by a political subdivision, except as provided in this chapter.

7. In addition to any other fees required by this chapter, a person awarded a new license to conduct gambling games pursuant to section 99F.7 on or after January 1, 2004, shall pay the applicable initial license fee to the commission as provided by this subsection. A person awarded a new license shall pay one-fifth of the applicable initial license fee immediately upon the granting of the license, one-fifth of the applicable initial license fee within one year of the granting of the license, one-fifth of the applicable initial license fee within two years of the granting of the license, one-fifth of the applicable initial license fee within three years of the granting of the license, and the remaining one-fifth of the applicable initial license fee within four years of the granting of the license. However, the license fee provided for in this subsection shall not apply when a licensed facility is sold and a new license is issued to the purchaser. Fees paid pursuant to this subsection are not refundable to the licensee. For purposes of this subsection, the applicable initial license fee shall be five million dollars if the population of the county where the licensee shall conduct gambling games is fifteen thousand or less based upon the most recent federal decennial census, shall be ten million dollars if the population of the county where the licensee shall conduct gambling games is more than fifteen thousand and less than one hundred thousand based upon the most recent federal decennial census, and shall be twenty million dollars if the population of the county where the licensee shall conduct gambling games is one hundred thousand or more based upon the most recent federal decennial census. Moneys collected by the commission from an initial license fee paid under this subsection shall be deposited in the rebuild Iowa infrastructure fund created in section 8.57.

2007 Acts, ch 188, §14  
Subsections 1, 2, and 4 amended

**99F.11 Wagering tax — rate — allocations.**

1. A tax is imposed on the adjusted gross receipts received each fiscal year from gambling games authorized under this chapter at the rate of five percent on the first one million dollars of adjusted gross receipts and at the rate of ten percent on the next two million dollars of adjusted gross receipts.

2. The tax rate imposed each fiscal year on any amount of adjusted gross receipts over three million dollars shall be as follows:

a. If the licensee is an excursion gambling boat or gambling structure, twenty-two percent.

b. If the licensee is a racetrack enclosure conducting gambling games and another licensee that is an excursion gambling boat or gambling structure is located in the same county, then the following rate, as applicable:

(1) If the licensee of the racetrack enclosure has not been issued a table games license during the fiscal year or if the adjusted gross receipts from gambling games of the licensee in the prior fiscal year were less than one hundred million dollars, twenty-two percent.

(2) If the licensee of the racetrack enclosure has been issued a table games license during the fiscal year or prior fiscal year and the adjusted gross receipts from gambling games of the licensee in the prior fiscal year were one hundred million dollars or more, twenty-two percent on adjusted gross receipts received prior to the operational date and twenty-four percent on adjusted gross receipts received on or after the operational date. For purposes of this subparagraph, the operational date is the date the commission determines table games became operational at the racetrack enclosure.

c. If the licensee is a racetrack enclosure conducting gambling games and no licensee that is an excursion gambling boat or gambling structure is located in the same county, twenty-four percent.

3. The taxes imposed by this section shall be paid by the licensee to the treasurer of state within ten days after the close of the day when the wagers were made and shall be distributed as follows:

a. If the gambling excursion originated at a dock located in a city, one-half of one percent of the adjusted gross receipts shall be remitted to the treasurer of the city in which the dock is located and shall be deposited in the general fund of the city. Another one-half of one percent of the adjusted gross receipts shall be remitted to the treasurer of the county in which the dock is located and shall be deposited in the general fund of the county.

b. If the gambling excursion originated at a dock located in a part of the county outside a city, one-half of one percent of the adjusted gross receipts shall be remitted to the treasurer of the county in which the dock is located and shall be deposited in the general fund of the county. Another one-half of one percent of the adjusted gross receipts shall be remitted to the treasurer of the Iowa city nearest to where the dock is located and shall be deposited in the general fund of the city.

c. One-half of one percent of the adjusted gross receipts shall be deposited in the gambling treatment fund created in section 135.150.

d. Eight-tenths of one percent of the adjusted gross receipts tax shall be deposited in the county endowment fund created in section 15E.311.

e. Two-tenths of one percent of the adjusted gross receipts tax shall be allocated each fiscal year as follows:

(1) Five hundred twenty thousand dollars is appropriated each fiscal year to the department of cultural affairs with one-half of the moneys allocated for operational support grants and the re-

maining one-half allocated for the community cultural grants program established under section 303.3.

(2) One-half of the moneys remaining after the appropriation in subparagraph (1) is appropriated to the community development division of the department of economic development for the purposes of regional tourism marketing. The moneys appropriated in this subparagraph shall be disbursed to the department in quarterly allotments. However, none of the moneys appropriated under this subparagraph shall be used for administrative purposes.

(3) One-half of the moneys remaining after the appropriation in subparagraph (1) shall be credited, on a quarterly basis, to the general fund of the state for the purpose of funding the endow Iowa tax credit provided in section 15E.305.

f. The remaining amount of the adjusted gross receipts tax shall be credited to the general fund of the state.

2006 Acts, ch 1151, §6, 8; 2007 Acts, ch 100, §1; 2007 Acts, ch 188, §15; 2007 Acts, ch 215, §87

For provisions retroactively applicable to July 1, 2002, relating to taxes owed by racetrack enclosures with over three million dollars in adjusted gross receipts from gambling games for FY 2003 and FY 2004, see 2004 Acts, ch 1136, §63, 65

For provisions relating to FY 2005 and FY 2006 rebuild Iowa infrastructure assessments imposed on licensees of excursion gambling boats licensed to conduct gambling games as of January 1, 2004, see 2004 Acts, ch 1136, §64, 65

2006 amendments to subsection 3 take effect July 1, 2007; 2006 Acts, ch 1151, §8

Subsection 2 amended

Subsection 3, paragraph d amended

Subsection 3, NEW paragraph e and former paragraph e redesignated as f

**99F.12 Licensees — records — reports — supervision.**

1. A licensee shall keep its books and records so as to clearly show all of the following:

a. The total number of admissions for each day of operation.

b. The total amount of money wagered and the adjusted gross receipts for each day of operation.

2. The licensee shall furnish to the commission reports and information as the commission may require with respect to its activities. The gross receipts and adjusted gross receipts from gambling shall be separately handled and accounted for from all other moneys received from operation of an excursion gambling boat or from operation of a racetrack enclosure or gambling structure licensed to conduct gambling games. The commission may designate a representative to board a licensed excursion gambling boat or to enter a racetrack enclosure or gambling structure licensed to conduct gambling games, who shall have full access to all places within the enclosure of the boat, the gambling structure, or the racetrack enclosure, who shall directly supervise the handling and accounting of all gross receipts and adjusted gross receipts from gambling, and who

shall supervise and check the admissions. The compensation of a representative shall be fixed by the commission but shall be paid by the licensee.

3. The books and records kept by a licensee as provided by this section are public records and the examination, publication, and dissemination of the books and records are governed by the provisions of chapter 22.

2007 Acts, ch 188, §16  
Subsection 2 amended

#### **99F.15 Prohibited activities — penalties.**

1. A person is guilty of an aggravated misdemeanor for any of the following:

*a.* Operating a gambling excursion where wagering is used or to be used without a license issued by the commission.

*b.* Operating a gambling excursion where wagering is permitted other than in the manner specified by section 99F.9.

*c.* Acting, or employing a person to act, as a shill or decoy to encourage participation in a gambling game.

2. A person knowingly permitting a person under the age of twenty-one years to make a wager is guilty of a simple misdemeanor.

3. A person wagering or accepting a wager at any location outside an excursion gambling boat, gambling structure, or a racetrack enclosure is in violation of section 725.7.

4. A person commits a class “D” felony and, in addition, shall be barred for life from excursion gambling boats and gambling structures under the jurisdiction of the commission, if the person does any of the following:

*a.* Offers, promises, or gives anything of value or benefit to a person who is connected with an excursion gambling boat or gambling structure operator including, but not limited to, an officer or employee of a licensee or holder of an occupational license pursuant to an agreement or arrangement or with the intent that the promise or thing of value or benefit will influence the actions of the person to whom the offer, promise, or gift was made in order to affect or attempt to affect the outcome of a gambling game, or to influence official action of a member of the commission.

*b.* Solicits or knowingly accepts or receives a promise of anything of value or benefit while the person is connected with an excursion gambling boat or gambling structure including, but not limited to, an officer or employee of a licensee, or holder of an occupational license, pursuant to an understanding or arrangement or with the intent that the promise or thing of value or benefit will influence the actions of the person to affect or attempt to affect the outcome of a gambling game, or to influence official action of a member of the commission.

*c.* Uses a device to assist in any of the following:

(1) In projecting the outcome of the game.

(2) In keeping track of the cards played.

(3) In analyzing the probability of the occurrence of an event relating to the gambling game.

(4) In analyzing the strategy for playing or betting to be used in the game except as permitted by the commission.

*d.* Cheats at a gambling game.

*e.* Manufactures, sells, or distributes any cards, chips, dice, game or device which is intended to be used to violate any provision of this chapter.

*f.* Instructs a person in cheating or in the use of a device for that purpose with the knowledge or intent that the information or use conveyed may be employed to violate any provision of the chapter.

*g.* Alters or misrepresents the outcome of a gambling game on which wagers have been made after the outcome is made sure but before it is revealed to the players.

*h.* Places a bet after acquiring knowledge, not available to all players, of the outcome of the gambling game which is the subject of the bet or to aid a person in acquiring the knowledge for the purpose of placing a bet contingent on that outcome.

*i.* Claims, collects, or takes, or attempts to claim, collect, or take, money or anything of value in or from the gambling games, with intent to defraud, without having made a wager contingent on winning a gambling game, or claims, collects, or takes an amount of money or thing of value of greater value than the amount won.

*j.* Knowingly entices or induces a person to go to any place where a gambling game is being conducted or operated in violation of the provisions of this chapter with the intent that the other person plays or participates in that gambling game.

*k.* Uses counterfeit chips or tokens in a gambling game.

*l.* Knowingly uses, other than chips, tokens, coin, or other methods or credit approved by the commission, legal tender of the United States of America, or uses coin not of the denomination as the coin intended to be used in the gambling games.

*m.* Has in the person’s possession any device intended to be used to violate a provision of this chapter.

*n.* Has in the person’s possession, except a gambling licensee or employee of a gambling licensee acting in furtherance of the employee’s employment, any key or device designed for the purpose of opening, entering, or affecting the operation of a gambling game, drop box, or an electronic or mechanical device connected with the gambling game or for removing coins, tokens, chips or other contents of a gambling game.

5. The possession of more than one of the devices described in subsection 4, paragraphs “c”, “e”, “m”, or “n”, permits a rebuttable inference that

the possessor intended to use the devices for cheating.

6. Except for wagers on gambling games or exchanges for money as provided in section 99F.9, subsection 4, a licensee who exchanges tokens, chips, or other forms of credit to be used on gam-

bling games for anything of value commits a simple misdemeanor.

2007 Acts, ch 188, §17 – 19  
 Subsection 3 amended  
 Subsection 4, unnumbered paragraph 1 amended  
 Subsection 4, paragraphs a and b amended

## CHAPTER 100

### STATE FIRE MARSHAL

#### 100.1 Fire marshal.

The chief officer of the division of state fire marshal in the department of public safety shall be known as the state fire marshal.

The fire marshal's duties shall be as follows:

1. To enforce all laws of the state relating to the suppression of arson, and to apprehend those persons suspected of arson;

2. To investigate into the cause, origin and circumstances of fires;

3. To promote fire safety and reduction of loss by fire through educational methods;

4. To enforce all laws, and the rules and regulations of the Iowa department of public safety, concerned with:

a. The prevention of fires;

b. The storage, transportation, handling, and use of flammable liquids, combustibles, and explosives;

c. The storage, transportation, handling and use of liquid petroleum gas;

d. The electric wiring and heating, and adequate means of exit in case of fire, from churches, schools, hotels, theaters, amphitheaters, asylums, hospitals, health care facilities as defined in section 135C.1, college buildings, lodge halls, public meeting places, and all other structures in which persons congregate from time to time, whether publicly or privately owned;

5. To promulgate fire safety rules. The state fire marshal shall have exclusive right to promulgate fire safety rules as they apply to enforcement or inspection requirements by the state fire marshal, but the rules shall be promulgated only after public hearing. Wherever by any statute the fire marshal or the department of public safety is au-

thorized or required to promulgate, proclaim, or amend rules and minimum standards regarding fire hazards or fire safety or protection in any establishment, building or structure, the rules and standards shall promote and enforce fire safety, fire protection and the elimination of fire hazards as the rules may relate to the use, occupancy and construction of the buildings, establishments or structures. The word "construction" shall include, but is not limited to, electrical wiring, plumbing, heating, lighting, ventilation, construction materials, entrances and exits, and all other physical conditions of the building which may affect fire hazards, safety or protection. The rules and minimum standards shall be in substantial compliance except as otherwise specifically provided in this chapter, with the standards of the national fire protection association relating to fire safety as published in the national fire codes.

6. To adopt rules designating a fee to be assessed to each building, structure, or facility for which a fire safety inspection or plan review by the state fire marshal is required by law. The fee designated by rule shall be set in an amount that is reasonably related to the costs of conducting the applicable inspection or plan review. The fees collected by the state fire marshal shall be deposited in the general fund of the state.

7. To administer the fire extinguishing system contractor, alarm system contractor, and alarm system installer certification program established in chapter 100C.

2007 Acts, ch 197, §1, 50  
 2007 amendment to subsection 7 takes effect January 1, 2008; 2007 Acts, ch 197, §50  
 Subsection 7 amended

## CHAPTER 100B

### FIRE AND EMERGENCY RESPONSE SERVICES TRAINING AND VOLUNTEER DEATH BENEFITS

#### 100B.22 Regional emergency response training centers.

1. a. Regional emergency response training centers shall be established to provide training to

fire fighters and other emergency responders. The lead public agency for the training centers shall be the following community colleges for the following merged areas:

(1) Northeast Iowa community college for merged area I in partnership with the Dubuque county firemen's association and to provide advanced training in agricultural emergency response as such advanced training is funded by the homeland security and emergency management division of the department of public defense.

(2) North Iowa area community college for merged area II in partnership with the Mason City fire department.

(3) Iowa lakes community college for merged area III and northwest Iowa community college for merged area IV.

(4) Iowa central community college for merged area V and to provide advanced training in homeland security as such advanced training is funded by the homeland security and emergency management division of the department of public defense.

(5) Hawkeye community college for merged area VII in partnership with the Waterloo regional hazardous materials training center and to provide advanced training in hazardous materials emergency response as such advanced training is funded by the homeland security and emergency management division of the department of public defense.

(6) Eastern Iowa community college for merged area IX in partnership with the city of Davenport fire department.

(7) Kirkwood community college for merged area X in partnership with the city of Coralville fire department and the Iowa City fire department and to provide advanced training in agricultural terrorism response and mass casualty and fatality response as such advanced training is funded by the homeland security and emergency management division of the department of public defense.

(8) Des Moines area community college for merged area XI and Iowa valley community college for merged area VI and to provide advanced training in operations integration in compliance with the national incident management system as such advanced training is funded by the homeland security and emergency management division of the department of public defense.

(9) Western Iowa technical community college for merged area XII in partnership with the Sioux City fire department and to provide advanced training in emergency responder communications as such advanced training is funded by the homeland security and emergency management division of the department of public defense.

(10) Iowa western community college for merged areas XIII and XIV in partnership with southwestern community college and the Council Bluffs fire department.

(11) Southeastern Iowa community college for merged areas XV and XVI in partnership with Indian hills community college and the city of Fort Madison fire department.

b. The public agencies named in paragraph "a", subparagraphs (1) through (10), shall, in conjunction with the bureau, coordinate fire service training programs as described in section 100B.6 at each training center.

2. a. A lead public agency listed in subsection 1, paragraph "a", subparagraphs (1) through (11), shall submit an application to the bureau in order to be eligible to receive a state appropriation for the agency's training center. The bureau shall prescribe the form of the application and, on or before August 15, 2006, shall provide such application to each lead public agency.

b. An applicant lead public agency shall indicate on the application the location of the proposed training center. An applicant shall also include on the application the location of any existing facilities required in section 100B.23 and located in the training region. The application shall be accompanied by letters from public agencies and private businesses in the merged area stating an intent to participate in, and provide for financial support for, establishment and activities of the training center.

c. By January 10 of each year, the bureau shall submit to the general assembly a list of applications received and the action taken by the bureau on each application. The bureau shall, upon request, provide the applications and supporting documentation submitted by each applicant.

3. a. In selecting a location for a proposed training center, an applicant lead public agency shall consider, and address in the application, all of the following:

(1) The availability and proximity of quality classroom space with adequate audio-visual support.

(2) The availability and adequate supply from area emergency response service entities of equipment which supports training.

(3) A site where limited, safe open burning would not be challenged or prohibited due to environmental issues or community concerns.

(4) Proximity to a medical facility.

(5) The availability of water mains, roadway, drainage, electrical service, and reasonably flat terrain.

(6) Accessibility to area fire departments.

b. The application shall include letters of support for the recommended site from emergency response entities in the region.

4. Applications must be submitted to the bureau by September 15, 2006, in order for a training center to be eligible to receive state funds in the fiscal year beginning July 1, 2006, if funds are appropriated to that training center for that fiscal year. The bureau shall review and approve an application and, if approved, distribute funds appropriated for that training center within thirty days of receiving the application from the applicant.

State funds that have been appropriated for use by a specified training center shall be distributed to that training center as soon as possible after the bureau approves such training center's application.

5. The application shall list the training facilities to be required in order for a training center to provide training to fire fighters and other emergency responders. If a lead agency or a partner of a lead agency already owns or utilizes a required training facility, that facility shall not be duplicated when constructing the required training facilities listed on the application.

cilities listed on the application.

6. The state fire marshal may adopt administrative rules under section 17A.4, subsection 2, and section 17A.5, subsection 2, paragraph "b", to administer this section.

2007 Acts, ch 219, §33  
FY 2007-2008 appropriations for regional emergency response training centers; 2007 Acts, ch 219, §1, 2

Subsection 1, former unnumbered paragraph 1, paragraphs a – k, and unnumbered paragraph 2, redesignated editorially as paragraph a, subparagraphs (1) – (11), and paragraph b respectively

Subsection 1, paragraph a, subparagraphs (3) and (8) amended  
Subsection 3, former unnumbered paragraph 1, paragraphs a – f, and unnumbered paragraph 2, redesignated editorially as paragraph a, subparagraphs (1) – (6), and paragraph b, respectively

## CHAPTER 100C

### FIRE EXTINGUISHING SYSTEM CONTRACTORS AND ALARM SYSTEM CONTRACTORS AND INSTALLERS

#### 100C.1 Definitions.

As used in this chapter, unless the context otherwise requires:

1. "*Alarm system*" means a system or portion of a combination system that consists of components and circuits arranged to monitor and announce the status of a fire alarm, security alarm, or medical alarm or supervisory signal-initiating devices and to initiate the appropriate response to those signals.

2. "*Alarm system contractor*" means a person engaging in or representing oneself as engaging in the activity or business of layout, installation, repair, alteration, addition, maintenance, or maintenance inspection of alarm systems in this state.

3. "*Alarm system installer*" means an employee of an alarm system contractor who is engaged in the layout, installation, repair, alteration, addition, maintenance, or maintenance inspection of alarm systems.

4. "*Automatic dry-chemical extinguishing system*" means a system supplying a powder composed of small particles, usually of sodium bicarbonate, potassium bicarbonate, urea-potassium-based bicarbonate, potassium chloride, or monoammonium phosphate, with added particulate material supplemented by special treatment to provide resistance to packing, resistance to moisture absorption, and the proper flow capabilities.

5. "*Automatic fire extinguishing system*" means a system of devices and equipment that automatically detects a fire and discharges an approved fire extinguishing agent onto or in the area of a fire and includes automatic sprinkler systems, carbon dioxide extinguishing systems, deluge systems, automatic dry-chemical extinguishing systems, foam extinguishing systems, and halogenated extinguishing systems, or other equivalent fire extinguishing technologies recognized by the fire extinguishing system contractors advisory board.

6. "*Automatic sprinkler system*" means an integrated fire protection sprinkler system usually activated by heat from a fire designed in accordance with fire protection engineering standards and includes a suitable water supply. The portion of the system above the ground is a network of specially sized or hydraulically designed piping installed in a structure or area, generally overhead, and to which automatic sprinklers are connected in a systematic pattern.

7. "*Carbon dioxide extinguishing system*" means a system supplying carbon dioxide from a pressurized vessel through fixed pipes and nozzles and includes a manual or automatic actuating mechanism.

8. "*Deluge system*" means a sprinkler system employing open sprinklers attached to a piping system connected to a water supply through a valve that is opened by the operation of a detection system installed in the same area as the sprinklers.

9. "*Fire extinguishing system contractor*" means a person engaging in or representing oneself to the public as engaging in the activity or business of layout, installation, repair, alteration, addition, maintenance, or maintenance inspection of automatic fire extinguishing systems in this state.

10. "*Foam extinguishing system*" means a special system discharging foam made from concentrates, either mechanically or chemically, over the area to be protected.

11. "*Halogenated extinguishing system*" means a fire extinguishing system using one or more atoms of an element from the halogen chemical series of fluorine, chlorine, bromine, and iodine.

12. "*Maintenance inspection*" means periodic inspection and certification completed by a fire extinguishing system contractor. For purposes of this chapter, "maintenance inspection" does not



include an inspection completed by a local building official, fire inspector, or insurance inspector, when acting in an official capacity.

13. “*Responsible managing employee*” means one of the following:

*a.* An owner, partner, officer, or manager employed full-time by a fire extinguishing system contractor who is certified by the national institute for certification in engineering technologies at a level three in fire protection technology, automatic sprinkler system layout, or another certification in automatic sprinkler system layout recognized by rules adopted by the fire marshal pursuant to section 100C.7 or who meets any other criteria established by rule.

*b.* An owner, partner, officer, or manager employed full-time by an alarm system contractor who is certified by the national institute for certification in engineering technologies in fire alarm systems or security systems at a level established by the fire marshal by rule or who meets any other criteria established by rule under this chapter. The rules may provide for separate endorsements for fire, security, and medical alarm systems and may require separate qualifications for each.

2007 Acts, ch 197, §2, 3, 50

NEW subsections 1 – 3 and former subsections 1 – 9 renumbered as 4 – 12

Former subsection 10 stricken, rewritten, and renumbered as 13

### 100C.2 Certification — employees.

1. A person shall not act as a fire extinguishing system contractor without first obtaining a fire extinguishing system contractor’s certificate pursuant to this chapter.

2. A person shall not act as an alarm system contractor without first obtaining an alarm system contractor’s certificate pursuant to this chapter. A person shall not act as an alarm system installer without first obtaining an alarm system contractor’s or alarm system installer’s certificate pursuant to this chapter.

3. *a.* A responsible managing employee may act as a responsible managing employee for only one fire extinguishing system contractor at a time. The responsible managing employee shall not be designated as the responsible managing employee for more than two fire extinguishing system contractors in any twelve-month period.

*b.* A responsible managing employee may act as a responsible managing employee for only one alarm system contractor at a time. The responsible managing employee shall not be designated as the responsible managing employee for more than two alarm system contractors in any twelve-month period.

*c.* A responsible managing employee may serve as the responsible managing employee for a fire extinguishing system contractor and an alarm system contractor at the same time, provided that the fire extinguishing system contractor and the alarm system contractor are the same business,

and that the person designated as the responsible managing employee meets the responsible managing employee criteria established for each certification.

4. *a.* An employee of a certified fire extinguishing system contractor working under the direction of a responsible managing employee is not required to obtain and maintain an individual fire extinguishing system contractor’s certificate.

*b.* An employee of a certified alarm system contractor who is an alarm system installer, and who is not licensed pursuant to chapter 103 shall obtain and maintain certification as an alarm system installer and shall meet and maintain qualifications established by the state fire marshal by rule.

2007 Acts, ch 197, §4, 50

2007 amendments to this section take effect January 1, 2008; 2007 Acts, ch 197, §50

Section amended

### 100C.3 Application — information to be provided.

1. A fire extinguishing system contractor, an alarm system contractor, or an alarm system installer shall apply for a certificate on a form prescribed by the state fire marshal. The application shall be accompanied by a fee in an amount prescribed by rule pursuant to section 100C.7 and shall include all of the following information, as applicable:

*a.* The name, address, and telephone number of the contractor or installer and, in the case of an installer, the name and certification number of the contractor by whom the installer is employed, including all legal and fictitious names.

*b.* Proof of insurance coverage required by section 100C.4.

*c.* The name and qualifications of the person designated as the contractor’s responsible managing employee and of persons designated as alternate responsible managing employees.

*d.* Any other information deemed necessary by the state fire marshal.

2. Upon receipt of a completed application and prescribed fees, if the contractor or installer meets all requirements established by this chapter, the state fire marshal shall issue a certificate to the contractor or installer within thirty days.

3. Certificates shall expire and be renewed as established by rule pursuant to section 100C.7.

4. Any change in the information provided in the application shall be promptly reported to the state fire marshal. When the employment of a responsible managing employee is terminated, the contractor shall notify the state fire marshal within thirty days after termination.

2007 Acts, ch 197, §5, 50

2007 amendments to this section take effect January 1, 2008; 2007 Acts, ch 197, §50

Section amended

### 100C.4 Insurance.

1. A fire extinguishing system contractor shall

maintain general and complete operations liability insurance for the layout, installation, repair, alteration, addition, maintenance, and inspection of automatic fire extinguishing systems in an amount determined by the state fire marshal by rule.

2. An alarm system contractor shall maintain general and complete operations liability insurance for the layout, installation, repair, alteration, addition, maintenance, and inspection of alarm systems in an amount determined by the state fire marshal by rule.

2007 Acts, ch 197, §6, 50  
 Subsection 2 takes effect January 1, 2008; 2007 Acts, ch 197, §50  
 Unnumbered paragraph numbered as subsection 1  
 NEW subsection 2

#### 100C.5 Suspension and revocation.

1. The state fire marshal shall suspend or revoke the certificate of any contractor or installer who fails to maintain compliance with the conditions necessary to obtain a certificate. A certificate may also be suspended or revoked if any of the following occur:

*a.* The employment or relationship of a responsible managing employee with a contractor is terminated, unless the contractor has included a qualified alternate on the application or an application designating a new responsible managing employee is filed with the state fire marshal within six months after the termination.

*b.* The contractor or installer fails to comply with any provision of this chapter.

*c.* The contractor or installer fails to comply with any other applicable codes and ordinances.

2. If a certificate is suspended pursuant to this section, the certificate shall not be reinstated until the condition or conditions which led to the suspension have been corrected.

3. The state fire marshal shall adopt rules pursuant to section 100C.7 for the acceptance and processing of complaints against certificate holders, for procedures to suspend and revoke certificates, and for appeals of decisions to suspend or revoke certificates.

2007 Acts, ch 197, §7, 50  
 2007 amendments to subsection 1 take effect January 1, 2008; 2007 Acts, ch 197, §50  
 Subsection 1 amended

#### 100C.6 Applicability.

This chapter shall not be construed to do any of the following:

1. Relieve any person from payment of any local permit or building fee.

2. Limit the power of the state or a political subdivision of the state to regulate the quality and character of work performed by contractors or installers through a system of fees, permits, and inspections designed to ensure compliance with, and aid in the administration of, state and local building codes or to enforce other local laws for the pro-

tection of the public health and safety.

2007 Acts, ch 197, §8, 50  
 2007 amendment to subsection 2 takes effect January 1, 2008; 2007 Acts, ch 197, §50  
 Subsection 2 amended

#### 100C.7 Administration — rules.

The state fire marshal shall administer this chapter and, after consultation with the fire extinguishing system contractors and alarm systems advisory board, shall adopt rules pursuant to chapter 17A necessary for the administration and enforcement of this chapter.

2007 Acts, ch 197, §9, 50  
 2007 amendment to this section takes effect January 1, 2008; 2007 Acts, ch 197, §50  
 Section amended

#### 100C.10 Fire extinguishing system contractors and alarm systems advisory board.

1. A fire extinguishing system contractors and alarm systems advisory board is established in the division of state fire marshal of the department of public safety and shall advise the division on matters pertaining to the application and certification of contractors and installers pursuant to this chapter.

2. The board shall consist of eleven voting members appointed by the commissioner of public safety as follows:

*a.* Two full-time fire officials of incorporated municipalities or counties.

*b.* One full-time building official of an incorporated municipality or county.

*c.* Three fire extinguishing system contractors, certified pursuant to this chapter, of which at least one shall be a water-based fire sprinkler contractor.

*d.* Three alarm system contractors, certified pursuant to this chapter, at least one of whom shall have experience with fire alarm systems, at least one of whom shall have experience with security alarm systems, and at least one of whom shall have experience with medical alarm systems.

*e.* One professional engineer or architect licensed or registered in the state.

*f.* One representative of the general public.

3. The state fire marshal, or the state fire marshal's designee, and the chairperson of the electrical examining board created in section 103.2 shall be nonvoting ex officio members of the board.

4. The commissioner shall initially appoint two members for two-year terms, two members for four-year terms, and three members for six-year terms. Following the expiration of the terms of initially appointed members, each term thereafter shall be for a period of six years. No member shall serve more than two consecutive terms. Of the appointments to new positions on the board which take effect July 1, 2007, the commissioner shall make the initial appointments for two, four, or six years, at the commissioner's discretion, so that the terms of no more than four board members shall

expire at the same time. If a position on the board becomes vacant prior to the expiration of a member's term, the member appointed to the vacancy shall serve the balance of the unexpired term.

5. Six voting members of the advisory board

shall constitute a quorum. A majority vote of the board shall be required to conduct business.

2007 Acts, ch 126, §20; 2007 Acts, ch 197, §10, 50  
See Code editor's note to §29A.28  
Section amended

## CHAPTER 101B

### CIGARETTE FIRE SAFETY STANDARDS

This chapter ceases to apply if federal fire safety standards preempting this chapter are enacted subsequent to January 1, 2009; see §101B.10

#### 101B.1 Short title.

This chapter shall be known and may be cited as the "*Cigarette Fire Safety Standards Act*".

2007 Acts, ch 166, §1  
NEW section

#### 101B.2 Definitions.

As used in this chapter, unless the context otherwise requires:

1. "*Agent*" means a distributor as defined in section 453A.1 authorized by the department of revenue to purchase and affix stamps pursuant to section 453A.10.
2. "*Cigarette*" means cigarette as defined in section 453A.1.
3. "*Department*" means the department of public safety.
4. "*Manufacturer*" means any of the following:
  - a. An entity that manufactures or otherwise produces cigarettes or causes cigarettes to be manufactured or produced, anywhere, which cigarettes the manufacturer intends to be sold in this state, including cigarettes intended to be sold in the United States through an importer.
  - b. The first purchaser of cigarettes anywhere, that intends to resell in the United States, cigarettes manufactured or produced anywhere, that the original manufacturer did not intend to be sold in the United States.
  - c. An entity that becomes a successor of an entity described in paragraph "a" or "b".
5. "*Quality control and quality assurance program*" means the laboratory procedures implemented to ensure that operator bias, systematic and nonsystematic methodological errors, and equipment-related problems do not affect the results of the repeatability testing, and which program ensures that the testing repeatability remains within the required repeatability values specified in section 101B.4.
6. "*Repeatability*" means the range of values within which the repeat results of cigarette test trials from a single laboratory will fall ninety-five percent of the time.
7. "*Retailer*" means retailer as defined in section 453A.1.

8. "*Sale*" means any transfer of title or possession, exchange or barter, in any manner or by any means or any agreement. In addition to cash and credit sales, the giving of cigarettes as a sample, prize, or gift or the exchanging of cigarettes for any consideration other than money is considered a sale.

9. "*Sell*" means to sell, or to offer or agree to sell.

10. "*Wholesaler*" means wholesaler as defined in section 453A.1.

2007 Acts, ch 166, §2  
NEW section

#### 101B.3 General requirements — administration.

1. Beginning January 1, 2009, cigarettes shall not be sold or offered for sale to any person in this state unless:

- a. The cigarettes have been tested in accordance with the test method prescribed in section 101B.4.
- b. The cigarettes meet the performance standard specified in section 101B.4.
- c. A written certification has been filed by the manufacturer with the department and in accordance with section 101B.5.
- d. The cigarettes have been marked in accordance with section 101B.7.

2. This chapter shall not be construed to prohibit a wholesaler or retailer from selling the wholesaler's or retailer's inventory of cigarettes existing prior to January 1, 2009, provided that the wholesaler or retailer is able to establish both of the following:

- a. Tax stamps were affixed to the cigarettes on inventory pursuant to section 453A.10 before January 1, 2009.
  - b. The inventory of cigarettes was purchased before January 1, 2009, in comparable quantity to the amount of inventory of cigarettes purchased during the same period of the prior year.
3. This chapter shall not be construed to prohibit any person from selling or offering for sale cigarettes that have not been certified by the manufacturer in accordance with section 101B.5 if the

cigarettes are or will be stamped for sale in another state or are packaged for sale outside the United States.

4. The department of public safety shall administer this chapter and may adopt rules pursuant to chapter 17A to administer this chapter. This chapter shall be implemented in accordance with the implementation and substance of the New York fire safety standards for cigarettes.

2007 Acts, ch 166, §3  
NEW section

#### **101B.4 Test method — performance standard — test reports.**

1. *a.* Testing of cigarettes shall be conducted in accordance with ASTM (American society for testing and materials) international standard E2187-04, standard test method for measuring the ignition strength of cigarettes.

*b.* The department may adopt a subsequent ASTM standard test method for measuring the ignition strength of cigarettes upon a finding that the subsequent method does not result in a change in the percentage of full-length burns exhibited by any tested cigarette when compared to the percentage of full-length burns the same cigarette would exhibit when tested in accordance with ASTM international standard E2187-04 and the performance standard in this section.

2. Testing shall be conducted on ten layers of filter paper.

3. The performance standard shall require that no more than twenty-five percent of the cigarettes tested in a test trial shall exhibit full-length burns.

4. Forty replicate tests shall comprise a complete test trial for each cigarette tested.

5. The performance standard required by this section shall only be applied to a complete test trial.

6. *a.* Testing shall be conducted by a laboratory that has been accredited pursuant to international organization for standardization/international electrotechnical commission standard 17025 or other comparable accreditation standard required by the department.

*b.* Laboratories conducting testing in accordance with this section shall implement a quality control and quality assurance program that includes a procedure that will determine the repeatability of the testing results. The testing repeatability shall be no greater than nineteen one-hundredths.

7. This section shall not require additional testing if cigarettes are tested consistent with this chapter for any other purpose.

8. Each cigarette listed in a certification submitted in accordance with section 101B.5 that uses lowered permeability bands in the cigarette paper to achieve compliance with the performance standard pursuant to this section shall have at least two nominally identical bands on the paper

surrounding the tobacco column. At least one complete band shall be located at least fifteen millimeters from the lighting end of the cigarette. For cigarettes on which the bands are positioned by design, there shall be at least two bands fully located at least fifteen millimeters from the lighting end and either ten millimeters from the filter end of the tobacco column, or ten millimeters from the labeled end of the tobacco column for nonfiltered cigarettes.

9. *a.* The manufacturer of a cigarette that the department determines cannot be tested in accordance with the test method prescribed in this section shall propose a test method and performance standard for the cigarette to the department. Upon approval of the proposed test method and a determination by the department that the performance standard proposed by the manufacturer is equivalent to the performance standard prescribed in this section, the manufacturer may employ the test method and performance standard to certify the cigarette in accordance with section 101B.5.

*b.* If the department determines that another state has enacted reduced cigarette ignition propensity standards that include a test method and performance standard that are the same as those contained in this chapter and the department finds that the officials responsible for implementing those requirements have approved the proposed alternative test method and performance standard for a particular cigarette proposed by a manufacturer as meeting the fire safety standards of that state's law or regulation under a legal provision comparable to this subsection, the department shall authorize that manufacturer to employ the alternative test method and performance standard to certify that cigarette for sale in this state, unless the department demonstrates a reasonable basis why the alternative test should not be accepted under this chapter. All other applicable requirements of this chapter shall apply to the manufacturer.

10. A manufacturer shall maintain copies of the reports of all tests conducted on all cigarettes offered for sale for a period of three years and shall make copies of the reports available to the department and the office of the attorney general upon written request.

11. Testing performed or sponsored by the department to determine a cigarette's compliance with the performance standard required by this section shall be conducted in accordance with this section.

2007 Acts, ch 166, §4  
NEW section

#### **101B.5 Certification.**

1. Each manufacturer shall submit a written certification to the department attesting to all of the following:

*a.* Each cigarette listed in the certification has

been tested in accordance with section 101B.4.

b. Each cigarette listed in the certification meets the performance standard pursuant to section 101B.4.

2. Each cigarette listed in the certification shall be described with the following information:

a. The brand or trade name on the package.

b. The style of cigarette, such as light or ultra light.

c. The length of the cigarette in millimeters.

d. The circumference of the cigarette in millimeters.

e. The flavor of the cigarette, such as menthol or chocolate, if applicable.

f. Whether the cigarette is filtered or nonfiltered.

g. The type of cigarette package, such as soft pack or box.

h. The marking approved in accordance with section 101B.7.

i. The name, address, and telephone number of the laboratory, if different than the manufacturer, that conducted the test.

j. The date the testing was performed.

3. Each cigarette certified under this section shall be recertified every three years.

4. The manufacturer shall, upon request, make a copy of the written certification available to the office of the attorney general and the department of revenue for purposes of ensuring compliance with this chapter.

5. For each cigarette listed in a certification, a manufacturer shall pay a fee of one hundred dollars to the department.

6. If a manufacturer has certified a cigarette pursuant to this section, and makes any change to the cigarette thereafter that is likely to alter the cigarette's compliance with the reduced cigarette ignition propensity standards mandated by this chapter, prior to the cigarette being sold or offered for sale in this state, the manufacturer shall retest the cigarette in accordance with the testing standards specified in section 101B.4 and shall maintain records of the retesting as required pursuant to section 101B.4. Any altered cigarette that does not meet the performance standard specified in section 101B.4 shall not be sold in this state.

2007 Acts, ch 166, §5  
NEW section

#### **101B.6 Notification of certification.**

1. A manufacturer certifying cigarettes in accordance with section 101B.5 shall provide a copy of the certification to all wholesalers and agents to whom the manufacturer sells cigarettes, and shall also provide sufficient copies of an illustration of the cigarette packaging marking used by the manufacturer in accordance with section 101B.7 for each retailer to whom the wholesalers or agents sell cigarettes.

2. A wholesaler or agent shall provide a copy of the cigarette packaging markings received from a

manufacturer to all retailers to whom the wholesaler or agent sells cigarettes. A wholesaler, agent, or retailer shall permit the state fire marshal, department of revenue, or the office of the attorney general to inspect markings of cigarette packaging marked in accordance with section 101B.7.

2007 Acts, ch 166, §6  
NEW section

#### **101B.7 Marking of cigarette packaging.**

1. Cigarettes that have been certified by a manufacturer in accordance with section 101B.5 shall be marked to indicate compliance with the requirements of this chapter. The marking shall be in eight point type or larger and consist of one of the following:

a. Modification of the product's universal product code to include a visible mark printed at or around the area of the universal product code. The mark may consist of an alphanumeric or symbolic character or characters permanently stamped, engraved, embossed, or printed in conjunction with the universal product code.

b. Any visible alphanumeric or symbolic character or combination of alphanumeric or symbolic characters permanently stamped, engraved, or embossed upon the cigarette package or cellophane wrap.

c. Printed, stamped, engraved, or embossed text that indicates that the cigarettes meet the standards of this chapter.

2. A manufacturer shall use only one marking, and shall apply the marking uniformly for all packages including but not limited to packs, cartons, and cases and to brands marketed by that manufacturer.

3. The manufacturer shall notify the department of the marking selected.

4. Prior to the certification of any cigarette, a manufacturer shall present its proposed marking to the department for approval. Upon receipt of the request, the department shall approve or disapprove the marking offered. A marking in use and approved for the sale of cigarettes in the state of New York shall be deemed approved. A proposed marking shall be deemed approved if the department fails to act within ten business days of receiving a request for approval.

5. A manufacturer shall not modify its approved marking until the modification has been approved by the department in accordance with this section.

2007 Acts, ch 166, §7  
NEW section

#### **101B.8 Penalties — enforcement.**

1. A manufacturer, wholesaler, agent, or other person who knowingly sells cigarettes at wholesale in violation of section 101B.3 is subject to the following:

a. For a first offense, a civil penalty not to ex-

ceed five thousand dollars for each sale of the cigarettes.

*b.* For each subsequent offense, a civil penalty not to exceed ten thousand dollars for each sale of the cigarettes, provided that the total penalty assessed against any such person shall not exceed fifty thousand dollars in any thirty-day period.

2. A retailer who knowingly sells cigarettes in violation of section 101B.3, is subject to the following:

*a.* For a first offense, a civil penalty not to exceed five hundred dollars for each sale or offer for sale of the cigarettes, and for each subsequent offense a civil penalty not to exceed two thousand dollars for each sale or offer for sale of the cigarettes, provided that the total number of cigarettes sold or offered for sale in such sale does not exceed one thousand cigarettes.

*b.* For a first offense, a civil penalty not to exceed one thousand dollars for each sale or offer for sale of the cigarettes, and for each subsequent offense a civil penalty not to exceed five thousand dollars for each sale or offer for sale of the cigarettes, provided that the total number of cigarettes sold or offered for sale in such sale exceeds one thousand cigarettes, and provided that the penalty against the retailer does not exceed twenty-five thousand dollars in any thirty-day period.

3. A manufacturer who fails to maintain test reports or who fails to make copies of the reports available to the department or the office of the attorney general within sixty days of receiving a written request pursuant to section 101B.4, is subject to a civil penalty not to exceed ten thousand dollars for each day beyond the sixtieth day that the manufacturer fails to provide the test reports.

4. In addition to any penalty prescribed by law, any corporation, partnership, sole proprietorship, limited partnership, or association engaged in the manufacture of cigarettes that knowingly makes a false certification pursuant to section 101B.5 is subject to the following:

*a.* For a first offense, a civil penalty of at least twenty-five thousand dollars.

*b.* For a second or subsequent offense, a civil penalty not to exceed one hundred thousand dollars for each false certification.

5. Any person violating any other provision of this chapter is subject to the following:

*a.* For a first offense, a civil penalty not to exceed one thousand dollars.

*b.* For a second or subsequent offense, a civil penalty not to exceed five thousand dollars for each violation.

6. Any cigarettes that have been sold or offered for sale that do not comply with the performance standard required pursuant to section 101B.4 shall be subject to forfeiture. However, prior to the destruction of any cigarettes forfeited, the

holder of the trademark rights in the cigarette brand shall be permitted to inspect the cigarettes.

7. In addition to any other remedy provided by law, the department of public safety or the office of the attorney general may file an action in district court for a violation of this chapter, including petitioning for injunctive relief or to recover any costs or damages suffered by the state because of a violation of this chapter, including enforcement costs relating to the specific violation and attorney fees. Each violation of the chapter or of rules adopted under this chapter constitutes a separate civil violation for which the department of public safety or the office of the attorney general may seek relief.

8. The department of revenue in the regular course of conducting inspections of a wholesaler, agent, or retailer may inspect cigarettes in the possession or control of the wholesaler, agent, or retailer or on the premises of any wholesaler, agent, or retailer to determine if the cigarettes are marked as required pursuant to section 101B.7. If the cigarettes are not marked as required, the department of revenue shall notify the department of public safety.

9. To enforce the provisions of this chapter, the department of public safety and the office of the attorney general may examine the books, papers, invoices, and other records of any person in possession, control, or occupancy of any premises where cigarettes are placed, sold, or offered for sale, including the stock of cigarettes on the premises.

2007 Acts, ch 166, §8  
NEW section

#### **101B.9 Cigarette fire safety standard fund.**

A cigarette fire safety standard fund is created as a special fund in the state treasury under the control of the department of public safety. The fund shall consist of all moneys recovered from the assessment of civil penalties or certification fees under this chapter. The moneys in the fund shall, in addition to any moneys made available for such purpose, be available, subject to appropriation, to the department of public safety for the purpose of fire safety and prevention programs, including for entry level fire fighter training, equipment, and operations.

2007 Acts, ch 166, §9  
NEW section

#### **101B.10 Applicability — preemption.**

1. This chapter shall cease to be applicable if federal fire safety standards for cigarettes that preempt this chapter are enacted and take effect subsequent to January 1, 2009, and the state fire marshal shall notify the secretary of state and the Code editor if such federal fire safety standards for cigarettes are enacted.

2. Notwithstanding any law to the contrary, political subdivisions shall not adopt or enforce any ordinance, rule, or regulation that conflicts with any provision of this chapter, or with any policy of the state expressed by this chapter, whether

the policy is expressed by inclusion of or exclusion from this chapter.

2007 Acts, ch 166, §10  
NEW section

## CHAPTER 101C

### IOWA PROPANE EDUCATION AND RESEARCH COUNCIL

Chapter to be repealed December 31, 2014; see §101C.14

#### 101C.1 Short title.

This chapter shall be known as and may be cited as the “*Iowa Propane Education and Research Act*”.

2007 Acts, ch 182, §1, 15  
NEW section

#### 101C.2 Definitions.

As used in this chapter, unless the context otherwise requires:

1. “*Council*” means the Iowa propane education and research council established pursuant to section 101C.3.

2. “*Education*” means any activity designed to provide information regarding propane, propane equipment, mechanical and technical practices, and uses of propane to consumers and members of the propane industry.

3. “*Fire marshal*” means the state fire marshal as provided in section 100.1.

4. “*Odorized propane*” means propane to which an odorant has been added.

5. “*Propane*” means a hydrocarbon with a chemical composition that is predominately C<sub>3</sub>H<sub>8</sub>, whether recovered from natural gas or crude oil, and includes liquefied petroleum gases and mixtures.

6. “*Propane industry*” means those persons involved in the production, transportation, and sale of propane, and in the manufacture and distribution of propane utilization equipment.

7. “*Propane industry trade association*” means an organization exempt from tax under section 501(c)(3) or 501(c)(6) of the Internal Revenue Code, that represents the propane industry.

8. “*Public member*” means a member of the council, other than a representative of a retail propane marketer, who represents a significant user of propane, a public safety official, a state regulatory official, or another group knowledgeable about propane.

9. “*Qualified propane industry organization*” means the Iowa propane gas association or any other similarly constituted industry trade association that represents at least thirty-five percent of the total volume of odorized propane sold at retail in this state.

10. “*Research*” means any type of study, inves-

tigation, program, or other activity designed to advance the image, desirability, usage, marketability, efficiency, or safety of propane or to further the development of information related to such activities.

11. “*Retail propane dispenser*” means a person who sells odorized propane to the ultimate consumer but is not engaged primarily in the business of such sales.

12. “*Retail propane marketer*” means a person engaged primarily in the sale of odorized propane to the ultimate consumer or to a retail propane dispenser.

2007 Acts, ch 182, §2, 15  
NEW section

#### 101C.3 Iowa propane education and research council established.

1. The Iowa propane education and research council is established. Members of the council shall be appointed by the governor from a list of nominees submitted by qualified propane industry organizations within thirty days after May 24, 2007, and by December 15 of each year thereafter. The council shall consist of ten voting members, nine of whom represent retail propane marketers and one of whom shall be a public member. Qualified propane industry organizations shall together nominate all members of the council. A vacancy in the unfinished term of a council member shall be filled for the remainder of the term in the same manner as the original appointment was made. Other than the public member, council members shall be full-time employees or owners of a propane industry business or representatives of an agricultural cooperative actively engaged in the propane industry. An employee of a qualified propane industry organization shall not serve as a member of the council. An officer of the board of directors of a qualified propane industry organization or propane industry trade association shall not serve concurrently as a member of the council. The fire marshal or a designee may serve as an ex officio, nonvoting member of the council.

2. In nominating members of the council, qualified propane industry organizations shall give due consideration to nominating council members who are representative of the propane industry, including representation of all of the following:

*a.* Interstate and intrastate retail propane marketers.

*b.* Large and small retail propane marketers, including agricultural cooperatives.

*c.* Diverse geographic regions of the state.

3. The following persons shall be ex officio, nonvoting members of the council designated for three-year terms as follows:

*a.* A professional fire fighter designated by the Iowa association of professional fire chiefs.

*b.* A volunteer fire fighter designated by the Iowa firemen's association.

*c.* An experienced plumber involved in plumbing training programs designated by the Iowa state building and construction trades council.

*d.* A heating, ventilation, and air conditioning professional involved in heating, ventilation, and air conditioning training programs designated by the Iowa state building and construction trades council.

*e.* A community college instructor with experience in conducting fire safety programs designated by the Iowa association of community college presidents.

*f.* A representative of a property and casualty insurance company with experience in insuring sellers of propane gas designated by the Iowa insurance institute.

4. A council member, other than the public member, shall not receive compensation for the council member's service and shall not be reimbursed for expenses relating to the council member's service. The public member shall receive a per diem as specified in section 7E.6 and shall be reimbursed for actual expenses incurred in performing official duties of the council not to exceed forty days per year. A member of the council shall not be a salaried employee of the council or of any organization or agency which receives funds from the council.

5. A council member shall serve a term of three years and shall not serve more than two full consecutive terms. A council member filling an unexpired term may serve not more than a total of seven consecutive years. A former council member may be appointed to the council if the former member has not been a member of the council for a period of at least two years.

6. Initial appointments to the council shall be for terms of one, two, and three years that are staggered to provide for the future appointment of at least two members each year.

7. The voting members of the council shall select a chairperson and other officers as necessary from the voting members and shall adopt rules and bylaws for the conduct of business and the implementation of this chapter. The council may establish committees and subcommittees comprised of members of the council and may establish advisory committees comprised of persons other than council members. The council shall establish procedures for the solicitation of propane industry

comments and recommendations regarding any significant plans, programs, or projects to be funded by the council.

8. The council shall develop programs and projects and enter into agreements for administering such programs and projects as provided in this chapter, including programs to enhance consumer and employee safety and training, provide for research and development of clean and efficient propane utilization equipment, inform and educate the public about safety and other issues associated with the use of propane, and develop programs and projects that provide assistance to persons who are eligible for the low-income home energy assistance program. The programs and projects shall be developed to attain equitable geographic distribution of their benefits to the fullest extent practicable. The costs of the programs and projects shall be paid with funds collected pursuant to section 101C.4. The council shall coordinate its programs and projects with propane industry trade associations and others as the council deems appropriate to provide efficient delivery of services and to avoid unnecessary duplication of activities. Issues concerning propane that are related to research and development, safety, education, and training shall be given priority by the council in the development of programs and projects.

9. At the beginning of each fiscal year, the council shall prepare a budget plan for the next fiscal year, including the probable cost of all programs, projects, and contracts to be undertaken. The council shall submit the proposed budget to the fire marshal for review and comment. The fire marshal may recommend appropriate programs, projects, and activities to be undertaken by the council.

10. The council shall keep minutes, books, and records that clearly reflect all of the acts and transactions of the council which are public records open to public inspection. The books and records shall indicate the geographic areas where benefits were conferred by each individual program or project in detail sufficient to reflect the degree to which each program or project attained equitable geographic distribution of its benefits. The books of the council shall be audited by a certified public accountant at least once each fiscal year and at such other times as the council may designate. The cost of the audit shall be paid by the council. Copies of the audit shall be provided to all council members, all qualified propane industry organizations, and to other members of the propane industry upon request. In addition, a copy of the audit and a report detailing the programs and projects conducted by the council and containing information reflecting the degree to which equitable geographic distribution of the benefits of each program or project was attained shall be submitted each fiscal year to the chief clerk of the house of representatives and the secretary of the senate.



11. The council is subject to the open meetings requirements of chapter 21.

12. The council shall promulgate administrative rules pursuant to chapter 17A which shall have the same force and effect as if adopted by a state agency. Initial rules shall be promulgated on an emergency basis.

13. The council shall also perform the functions required of a state organization under the federal Propane Education and Research Act of 1996, be the repository of funds received under that Act, and separately account for those funds. The council shall coordinate the operation of the program with the federal council as contemplated by 15 U.S.C. § 6405.

2007 Acts, ch 182, §3, 15  
NEW section

#### 101C.4 Funding — assessments.

1. The council and its activities shall be funded by an annual assessment. Upon establishment of the council and each year thereafter the annual assessment shall be made at a rate of one-tenth of one cent on each gallon of odorized propane sold.

2. The owner of odorized propane at the time of odorization or at the time of import shall calculate the amount of the assessment based on the volume of odorized propane sold for use in this state. The assessment, when made, shall be listed as a separate line item on the bill of sale for the odorized propane and titled "Iowa propane education and research assessment". Assessments shall be collected by the owner from purchasers of the odorized propane and shall be paid by the owner to the council on a monthly basis by the twenty-fifth day of the month following the month the assessment was collected. If payment is not made to the council by the due date as required by this subsection, an interest penalty of one percent of any amount unpaid shall be imposed against the owner for each month or fraction of a month after the due date, until final payment is made.

3. Notwithstanding subsection 2, the council may establish an alternative means of collecting such assessments if the council determines that another method would be more efficient or effective and may establish an alternative late payment charge or interest penalty to be imposed on a person who fails to timely pay any amount due under this chapter to the council.

4. Pending the disbursement of assessments collected, the council shall invest moneys collected through assessments and any other moneys received by the council in any of the following:

a. Obligations of the United States or any agency of the United States.

b. General obligations of any state or political subdivision of any state.

c. Any interest-bearing account or certificate of deposit of a bank that is a member of the federal reserve system.

d. Obligations that are fully guaranteed as to

principal and interest by the United States.

2007 Acts, ch 182, §4, 15  
Section takes effect January 1, 2008, or upon adoption of administrative rules implementing this section, whichever occurs first; Code editor advised that rules will be adopted effective January 1, 2008; 2007 Acts, ch 182, §15  
NEW section

#### 101C.5 Referendum for termination of council.

On the council's own initiative or on petition to the council by retail propane marketers representing thirty-five percent of the volume of odorized propane sold in this state, the council shall, at its own expense, arrange for a referendum to be conducted by an independent auditing firm agreed upon by the retail propane marketers, to determine whether the council should be terminated or suspended. Voting rights in the referendum shall be based on the volume of odorized propane sold in this state by each retail propane marketer during the previous calendar year. Each retail propane marketer voting in the referendum shall certify to the independent auditing firm the volume of odorized propane sold by that person as represented by that person's vote. Upon the approval of those retail propane marketers representing more than one-half of the total volume of odorized propane sold in this state, the council shall be terminated or suspended and the general assembly shall consider the repeal of this chapter during its next regular session.

2007 Acts, ch 182, §5, 15  
NEW section

#### 101C.6 Compliance.

The district court is vested with the jurisdiction specifically to enforce this chapter and to prevent or restrain any person from violating this chapter. A successful action for compliance brought under this section may also require payment by the defendant of the costs incurred by the council in bringing the action.

2007 Acts, ch 182, §6, 15  
NEW section

#### 101C.7 Lobbying restrictions.

Moneys collected by the council shall not be used in any manner for influencing legislation or elections, except that the council may recommend changes in this chapter or other statutes that would further the purposes of this chapter to the general assembly.

2007 Acts, ch 182, §7, 15  
NEW section

#### 101C.8 Pricing.

In all cases, the price of propane shall be determined by market forces. Consistent with anti-trust laws, the council shall not take any action regarding, and this chapter shall not be interpreted as establishing, an agreement to pass along to consumers the cost of the assessment provided for in section 101C.4.

2007 Acts, ch 182, §8, 15  
NEW section

**101C.9 Relation to other programs.**

This chapter shall not be construed to preempt or supersede any other program relating to propane education and research organized and operated under the laws of this state. This chapter shall be administered and construed as complementary to the federal Propane Education and Research Act of 1996, 15 U.S.C. § 6401 et seq.

2007 Acts, ch 182, §9, 15  
NEW section

**101C.10 Bond.**

Any person occupying a position of trust under any provision of this chapter shall provide a bond in an amount required by the council. The costs of obtaining the bond shall be paid out of council funds.

2007 Acts, ch 182, §10, 15  
NEW section

**101C.11 Report.**

The council shall prepare and submit an annual report to the fire marshal and the auditor of state summarizing the activities of the council conducted pursuant to this chapter. The report shall show

all income, expenses, and other relevant information concerning assessments collected and expended under this chapter.

2007 Acts, ch 182, §11, 15  
NEW section

**101C.12 Not a state agency.**

The Iowa propane education and research council is not a state agency.

2007 Acts, ch 182, §12, 15  
NEW section

**101C.13 Penalty.**

A person who willfully violates the provisions of this chapter or willfully renders or furnishes a false or fraudulent report, statement, or record required by the fire marshal pursuant to this chapter is guilty of a simple misdemeanor.

2007 Acts, ch 182, §13, 15  
NEW section

**101C.14 Future repeal.**

This chapter is repealed December 31, 2014.

2007 Acts, ch 182, §14, 15  
NEW section

## CHAPTER 103

### ELECTRICIANS AND ELECTRICAL CONTRACTORS

**103.1 Definitions.**

As used in this chapter, unless the context otherwise requires:

1. “*Apprentice electrician*” means any person who, as such person’s principal occupation, is engaged in learning and assisting in the installation, alteration, and repair of electrical wiring, apparatus, and equipment as an employee of a person licensed under this chapter, and who is licensed by the board and is progressing toward completion of an apprenticeship training program registered by the bureau of apprenticeship and training of the United States department of labor. For purposes of this chapter, persons who are not engaged in the installation, alteration, or repair of electrical wiring, apparatus, and equipment, either inside or outside buildings, shall not be considered apprentice electricians.

2. “*Board*” means the electrical examining board created under section 103.2.

3. “*Class A journeyman electrician*” means a person having the necessary qualifications, training, experience, and technical knowledge to wire for or install electrical wiring, apparatus, and equipment and to supervise apprentice electricians and who is licensed by the board.

4. “*Class A master electrician*” means a person having the necessary qualifications, training, experience, and technical knowledge to properly

plan, lay out, and supervise the installation of electrical wiring, apparatus, and equipment for light, heat, power, and other purposes and who is licensed by the board.

5. “*Class B journeyman electrician*” means a person having the necessary qualifications, training, experience, and technical knowledge to wire for or install electrical wiring, apparatus, and equipment who meets and is subject to the restrictions of section 103.12.

6. “*Class B master electrician*” means a person having the necessary qualifications, training, experience, and technical knowledge to properly plan, lay out, and supervise the installation of electrical wiring, apparatus, and equipment who meets and is subject to the restrictions of section 103.10.

7. “*Commercial installation*” means an installation intended for commerce, but does not include a residential installation.

8. “*Electrical contractor*” means a person affiliated with an electrical contracting firm or business who is licensed by the board as either a class A or class B master electrician and who is also registered with the state of Iowa as a contractor.\*

9. “*Industrial installation*” means an installation intended for use in the manufacture or processing of products involving systematic labor or habitual employment and includes installations

in which agricultural or other products are habitually or customarily processed or stored for others, either by buying or reselling on a fee basis.

10. “*Inspector*” means a person certified as an electrical inspector upon such reasonable conditions as may be adopted by the board. The board may permit more than one class of electrical inspector.

11. “*New electrical installation*” means the installation of electrical wiring, apparatus, and equipment for light, heat, power, and other purposes.

12. “*Public use building or facility*” means any building or facility designated for public use, including all property owned and occupied or designated for use by the state of Iowa.

13. “*Residential installation*” means an installation intended for a single-family or two-family residential dwelling or a multifamily residential dwelling not larger than a four-family dwelling.

14. “*Routine maintenance*” means the repair or replacement of existing electrical apparatus or equipment of the same size and type for which no changes in wiring are made.

15. “*Special electrician*” means a person having the necessary qualifications, training, and experience in wiring or installing special classes of electrical wiring, apparatus, equipment, or installations which shall include irrigation system wiring, disconnecting and reconnecting of existing air conditioning and refrigeration, and sign installation and who is licensed by the board.

16. “*Unclassified person*” means any person, other than an apprentice electrician or other person licensed under this chapter, who, as such person’s principal occupation, is engaged in learning and assisting in the installation, alteration, and repair of electrical wiring, apparatus, and equipment as an employee of a person licensed under this chapter, and who is licensed by the board as an unclassified person. For purposes of this chapter, persons who are not engaged in the installation, alteration, or repair of electrical wiring, apparatus, and equipment, either inside or outside buildings, shall not be considered unclassified persons.

2007 Acts, ch 197, §11, 50

\*Contractor registration, see chapter 91C  
NEW section

### 103.2 Electrical examining board created.

1. An electrical examining board is created within the division of state fire marshal of the department of public safety. The board shall consist of eleven voting members appointed by the governor and subject to senate confirmation, all of whom shall be residents of this state.

2. The members shall be as follows:

a. Two members shall be journeyman electricians, one a member of an electrical workers union covered under a collective bargaining agreement

and one not a member of a union.

b. Two members shall be master electricians or electrical contractors, one of whom is a contractor signed to a collective bargaining agreement or a master electrician covered under a collective bargaining agreement and one of whom is a non-union contractor or a master electrician who is not a member of a union.

c. One member shall be an electrical inspector.

d. Two members, one a union member covered under a collective bargaining agreement and one a nonunion member, shall not be a member of any of the aforementioned groups and shall represent the general public.

e. One member shall be the state fire marshal or a representative of the state fire marshal’s office.

f. One member shall be a local building official employed by a political subdivision to perform electrical inspections for that political subdivision.

g. One member shall represent a public utility.

h. One member shall be an engineer licensed pursuant to chapter 542B with a background in electrical engineering.

3. The public members of the board shall be allowed to participate in administrative, clerical, or ministerial functions incident to giving a licensure examination, but shall not determine the content of the examination or determine the correctness of the answers. Professional associations or societies composed of licensed electricians may recommend to the governor the names of potential board members whose profession is representative of that association or society. However, the governor is not bound by the recommendations. A board member shall not be required to be a member of any professional electrician association or society.

2007 Acts, ch 197, §12, 50

Confirmation, see §2.32

NEW section

### 103.3 Terms of office — expenses — counsel.

1. Appointments to the board, other than the state fire marshal or a representative of the state fire marshal’s office, shall be for three-year staggered terms and shall commence and end as provided by section 69.19. The most recently appointed state fire marshal, or a representative of the state fire marshal’s office, shall be appointed to the board on an ongoing basis. Vacancies shall be filled for the unexpired term by appointment of the governor and shall be subject to senate confirmation. Members shall serve no more than three terms or nine years, whichever is least.

2. Members of the board are entitled to receive all actual expenses incurred in the discharge of their duties within the limits of funds appropriated to the board. Each member of the board may also be eligible to receive compensation as provided in section 7E.6.

3. The board shall be entitled to the counsel and services of the attorney general. The board may compel the attendance of witnesses, pay witness fees and mileage, take testimony and proofs, and administer oaths concerning any matter within its jurisdiction.

2007 Acts, ch 197, §13, 50  
Confirmation, see §2.32  
NEW section

**103.4 Organization of the board.**

The board shall elect annually from its members a chairperson and a vice chairperson, and shall hire and provide staff to assist the board in administering this chapter. An executive secretary designated by the board shall report to the state fire marshal for purposes of routine board administrative functions, and shall report directly to the board for purposes of execution of board policy such as application of licensing criteria and processing of applications. The board shall hold at least one meeting quarterly at the location of the board's principal office, and meetings shall be called at other times by the chairperson or four members of the board. At any meeting of the board, a majority of members constitutes a quorum.

2007 Acts, ch 197, §14, 50  
NEW section

**103.5 Official seal — bylaws.**

The board shall adopt and have an official seal which shall be affixed to all certificates of licensure granted.

2007 Acts, ch 197, §15, 50  
NEW section

**103.6 Powers and duties.**

The board shall:

1. Adopt rules pursuant to chapter 17A and in doing so shall be governed by the minimum standards set forth in the most current publication of the national electrical code issued and adopted by the national fire protection association, and amendments to the code, which code and amendments shall be filed in the offices of the secretary of state and the board and shall be a public record. The board shall adopt rules reflecting updates to the code and amendments to the code. The board shall promulgate and adopt rules establishing wiring standards that protect public safety and health and property and that apply to all electrical wiring which is installed subject to this chapter.

2. Revoke, suspend, or refuse to renew any license granted pursuant to this chapter when the licensee:

a. Fails or refuses to pay any examination, license, or renewal fee required by law.

b. Is an electrical contractor and fails or refuses to provide and keep in force a public liability insurance policy and surety bond as required by the board.

c. Violates any political subdivision's inspection ordinances.

The board may, in its discretion, revoke, suspend, or refuse to renew any license granted pursuant to this chapter when the licensee violates any provision of the national electrical code as adopted pursuant to subsection 1, this chapter, or any rule adopted pursuant to this chapter.

3. Adopt rules for continuing education requirements for each classification of licensure established pursuant to this chapter, and adopt all rules, not inconsistent with the law, necessary for the proper performance of the duties of the board.

4. Provide for the amount and collection of fees for inspection and other services.

2007 Acts, ch 197, §16, 50  
Subsections 2 and 4 take effect January 1, 2008; 2007 Acts, ch 197, §50  
NEW section

**103.7 Electrician and installer licensing and inspection fund.**

An electrician and installer licensing and inspection fund is created in the state treasury as a separate fund under the control of the board. All licensing, examination, renewal, and inspection fees shall be deposited into the fund and retained by and for the use of the board. Expenditures from the fund shall be approved by the sole authority of the board in consultation with the state fire marshal. Amounts deposited into the fund shall be considered repayment receipts as defined in section 8.2. Notwithstanding section 8.33, any balance in the fund on June 30 of each fiscal year shall not revert to the general fund of the state, but shall remain available for the purposes of this chapter in subsequent fiscal years. Notwithstanding section 12C.7, subsection 2, interest or earnings on moneys deposited in the fund shall be credited to the fund.

2007 Acts, ch 197, §17, 50  
Section takes effect January 1, 2008; 2007 Acts, ch 197, §50  
NEW section

**103.8 Activities where license required — exceptions.**

Except as provided in sections 103.13 and 103.14, no person shall, for another, plan, lay out, or supervise the installation of wiring, apparatus, or equipment for electrical light, heat, power, and other purposes unless the person is licensed by the board as an electrical contractor, a class A master electrician, or a class B master electrician.

2007 Acts, ch 197, §18, 50  
Section takes effect January 1, 2008; 2007 Acts, ch 197, §50  
NEW section

**103.9 Electrical contractor license.**

1. An applicant for an electrical contractor license shall either be or employ a licensed class A or class B master electrician, and be registered with the state of Iowa as a contractor.

2. A contractor who holds a class B master electrician license shall be licensed subject to the

restrictions of section 103.10.

2007 Acts, ch 197, §19, 50  
Contractor registration, see chapter 91C  
Section takes effect January 1, 2008; 2007 Acts, ch 197, §50  
NEW section

**103.10 Class A master electrician license — qualifications — class B master electrician license.**

1. An applicant for a class A master electrician license shall have at least one year's experience, acceptable to the board, as a licensed class A or class B journeyman electrician.

2. In addition, an applicant shall meet examination criteria based upon the most recent national electrical code adopted pursuant to section 103.6 and upon electrical theory, as determined by the board.

3. *a.* An applicant who can provide proof acceptable to the board that the applicant has been working in the electrical business and involved in planning for, laying out, supervising, and installing electrical wiring, apparatus, or equipment for light, heat, and power prior to 1990 may be granted a class B master electrician license without taking an examination. An applicant who is issued a class B master electrician license pursuant to this section shall not be authorized to plan, lay out, or supervise the installation of electrical wiring, apparatus, and equipment in a political subdivision which, prior to or after January 1, 2008, establishes licensing standards which preclude such work by class B master electricians in the political subdivision. The board shall adopt rules establishing procedures relating to the restriction of a class B master electrician license pursuant to this subsection.

*b.* A class B master electrician may become licensed as a class A master electrician upon successful passage of the examination prescribed in subsection 2.

4. A person licensed to plan, lay out, or supervise the installation of electrical wiring, apparatus, or equipment for light, heat, power, and other purposes and supervise apprentice electricians by a political subdivision preceding January 1, 2008, pursuant to a supervised written examination, and who is currently engaged in the electrical contracting industry, shall be issued an applicable statewide license corresponding to that licensure as a class A master electrician or electrical contractor. The board shall adopt by rule certain criteria for city examination standards satisfactory to fulfill this requirement.

2007 Acts, ch 197, §20, 50  
Section takes effect January 1, 2008; 2007 Acts, ch 197, §50  
NEW section

**103.11 Wiring or installing — supervising apprentices — license required — qualifications.**

Except as provided in section 103.13, no person shall, for another, wire for or install electrical wir-

ing, apparatus, or equipment, or supervise an apprentice electrician or unclassified person, unless the person is licensed by the board as an electrical contractor, a class A master electrician, a class B master electrician, or is licensed as a class A journeyman electrician, or a class B journeyman electrician, and is employed by an electrical contractor, a class A master electrician, a class B master electrician.

2007 Acts, ch 197, §21, 50  
Section takes effect January 1, 2008; 2007 Acts, ch 197, §50  
NEW section

**103.12 Class A journeyman electrician license qualifications — class B journeyman electrician license.**

1. An applicant for a class A journeyman electrician license shall have successfully completed an apprenticeship training program registered by the bureau of apprenticeship and training of the United States department of labor in accordance with the standards established by that department. An applicant may petition the board to receive a waiver of this requirement. The board shall determine a level of on-the-job experience as an unclassified person sufficient to qualify for a waiver.

2. In addition, an applicant shall obtain a score of at least seventy-five percent on an examination prescribed and administered by the board based upon the most recent national electrical code adopted pursuant to section 103.6 and upon electrical theory.

3. *a.* An applicant who can provide proof acceptable to the board that the applicant has been employed as a journeyman electrician since 1990 may be granted a class B journeyman electrician license without taking an examination. An applicant who is issued a class B journeyman electrician license pursuant to this section shall not be authorized to wire for or install electrical wiring, apparatus, and equipment in a political subdivision which, prior to or after January 1, 2008, establishes licensing standards which preclude such work by class B journeyman electricians in the political subdivision. The board shall adopt rules establishing procedures relating to the restriction of a class B journeyman electrician license pursuant to this subsection.

*b.* A class B journeyman electrician may become licensed as a class A journeyman electrician upon successful passage of the examination prescribed in subsection 2.

4. A person licensed to wire for or install electrical wiring, apparatus, or equipment or supervise an apprentice electrician by a political subdivision preceding January 1, 2008, pursuant to a supervised written examination, and who is currently engaged in the electrical contracting industry with at least four years' experience, shall be issued an applicable statewide license corresponding to that licensure as a class A journeyman elec-

trician or a class B journeyman electrician. The board shall adopt by rule certain criteria for city examination standards satisfactory to fulfill this requirement.

2007 Acts, ch 197, §22, 50  
Section takes effect January 1, 2008; 2007 Acts, ch 197, §50  
NEW section

**103.13 Special electrician license — qualifications.**

The board shall by rule provide for the issuance of special electrician licenses authorizing the licensee to engage in a limited class or classes of electrical work, which class or classes shall be specified on the license. Each licensee shall have experience, acceptable to the board, in each such limited class of work for which the person is licensed.

2007 Acts, ch 197, §23, 50  
Section takes effect January 1, 2008; 2007 Acts, ch 197, §50  
NEW section

**103.14 Alarm installations.**

A person who is not licensed pursuant to this chapter may plan, lay out, or install electrical wiring, apparatus, and equipment for components of alarm systems that operate at seventy volt/amps (VA) or less, only if the person is certified to conduct such work pursuant to chapter 100C. Installations of alarm systems that operate at seventy volt/amps (VA) or less are subject to inspection by state inspectors as provided in section 103.31,\* except that reports of such inspections, if the installation being inspected was performed by a person certified pursuant to chapter 100C, shall be submitted to the state fire marshal and any action taken on a report of an inspection of an installation performed by a person certified pursuant to chapter 100C shall be taken by or at the direction of the state fire marshal, unless the installation has been found to exceed the authority granted to the certificate holder pursuant to chapter 100C and therefore to be in violation of this chapter.

2007 Acts, ch 197, §24, 50  
\*§103.31, enacted as §103.32, is effective January 1, 2009; see 2007 Acts, ch 197, §41, 50  
Section takes effect January 1, 2008; 2007 Acts, ch 197, §50  
NEW section

**103.15 Apprentice electrician — unclassified person.**

1. A person shall be licensed by the board and pay a licensing fee to work as an apprentice electrician while participating in an apprenticeship training program registered by the bureau of apprenticeship and training of the United States department of labor in accordance with the standards established by that department. An apprenticeship shall be limited to six years from the date of licensure, unless extended by the board upon a finding that a hardship existed which prevented completion of the apprenticeship program. Such licensure shall entitle the licensee to act as an apprentice to an electrical contractor, a class A mas-

ter electrician, a class B master electrician, a class A journeyman electrician, or a class B journeyman electrician as provided in subsection 3.

2. A person shall be licensed as an unclassified person by the board to perform electrical work if the work is performed under the personal supervision of a person actually licensed to perform such work and the licensed and unclassified persons are employed by the same employer. After one hundred continuous days of employment as a non-licensed unclassified person, the unclassified person must receive a license from the board. Licensed persons shall not permit unclassified persons to perform electrical work except under the personal supervision of a person actually licensed to perform such work. Unclassified persons shall not supervise the performance of electrical work or make assignments of electrical work to unclassified persons. Electrical contractors employing unclassified persons performing electrical work shall maintain records establishing compliance with this section, which shall designate all unclassified persons performing electrical work.

3. Apprentice electricians and unclassified persons shall do no electrical wiring except under the direct personal on-the-job supervision and control and in the immediate presence of a licensee pursuant to this chapter. Such supervision shall include both on-the-job training and related classroom training as approved by the board. The licensee may employ or supervise apprentice electricians and unclassified persons at a ratio not to exceed three apprentice electricians and unclassified persons to one licensee, except that such ratio and the other requirements of this section shall not apply to apprenticeship classroom training.

4. For purposes of this section, “*the direct personal on-the-job supervision and control and in the immediate presence of a licensee*” shall mean the licensee and the apprentice electrician or unclassified person shall be working at the same project location but shall not require that the licensee and apprentice electrician or unclassified person be within sight of one another at all times.

5. An apprentice electrician shall not install, alter, or repair electrical equipment except as provided in this section, and the licensee employing or supervising an apprentice electrician shall not authorize or permit such actions by the apprentice electrician.

2007 Acts, ch 197, §25, 50  
Section takes effect January 1, 2008; 2007 Acts, ch 197, §50  
NEW section

**103.16 License examinations.**

1. Examinations for licensure shall be given as often as deemed necessary by the board, but no less than one time per month. The scope of the examinations and the methods of procedure shall be prescribed by the board. The examinations given by the board shall be the Experior assessment examination, or a successor examination approved

by the board, or an examination prepared by a third-party testing service which is substantially equivalent to the Experior assessment examination, or a successor examination approved by the board.

2. An examination may be given by representatives of the board. As soon as practicable after the close of each examination, a report shall be filed in the office of the secretary of the board by the board. The report shall show the action of the board upon each application and the secretary of the board shall notify each applicant of the result of the applicant's examination. Applicants who fail the examination once shall be allowed to take the examination at the next scheduled time. Thereafter, the applicant shall be allowed to take the examination at the discretion of the board. An applicant who has failed the examination may request, in writing, information from the board concerning the applicant's examination grade and subject areas or questions which the applicant failed to answer correctly, except that if the board administers a uniform, standardized examination, the board shall only be required to provide the examination grade and such other information concerning the applicant's examination results which are available to the board.

2007 Acts, ch 197, §26, 50

Section takes effect January 1, 2008; 2007 Acts, ch 197, §50  
NEW section

### 103.17 Disclosure of confidential information — criminal penalty.

1. A member of the board shall not disclose information relating to the following:

- a. Criminal history or prior misconduct of an applicant.
- b. Information relating to the contents of an examination.

c. Information relating to examination results other than a final score except for information about the results of an examination given to the person who took the examination.

2. A member of the board who willfully communicates or seeks to communicate such information, and any person who willfully requests, obtains, or seeks to obtain such information, is guilty of a simple misdemeanor.

2007 Acts, ch 197, §27, 50

NEW section

### 103.18 License renewal — continuing education.

In order to renew a class A master electrician, class B master electrician, class A journeyman electrician, or class B journeyman electrician license issued pursuant to this chapter, the licensee shall be required to complete eighteen contact hours of continuing education courses approved by the board during the three-year period for which a license is granted. The contact hours shall include a minimum of six contact hours studying

the national electrical code described in section 103.6, and the remaining contact hours may include study of electrical circuit theory, blueprint reading, transformer and motor theory, electrical circuits and devices, control systems, programmable controllers, and microcomputers or any other study of electrical-related material that is approved by the board. Any additional hours studying the national electrical code shall be acceptable. For purposes of this section, "contact hour" means fifty minutes of classroom attendance at an approved course under a qualified instructor approved by the board.

2007 Acts, ch 197, §28, 50

Section takes effect January 1, 2008; 2007 Acts, ch 197, §50  
NEW section

### 103.19 Licenses — expiration — application — fees.

1. Licenses issued pursuant to this chapter shall expire every three years, with the exception of licenses for apprentice electricians and unclassified persons, which shall expire on an annual basis. All license applications shall include the applicant's social security number. The board shall establish the fees to be payable for examination and license issuance and renewal in amounts not to exceed the following:

a. For examinations:

- (1) Class A master electrician, one hundred twenty-five dollars.
- (2) Class A journeyman electrician, sixty dollars.

b. For each year of the three-year license period for issuance and renewal:

- (1) Electrical contractor, one hundred twenty-five dollars.
- (2) Class A master electrician, class B master electrician, one hundred twenty-five dollars.
- (3) Class A journeyman electrician, class B journeyman electrician, or special electrician, twenty-five dollars.

c. For apprentice electricians, twenty dollars.

2. The holder of an expired license may renew the license for a period of three months from the date of expiration upon payment of the license fee plus ten percent of the renewal fee for each month or portion thereof past the expiration date. All holders of licenses expired for more than three months shall apply for a new license.

2007 Acts, ch 197, §29, 50

Section takes effect January 1, 2008; 2007 Acts, ch 197, §50  
NEW section

### 103.20 Licensee status — employment — death.

1. Individuals performing electrical work in a capacity for which licensure is required pursuant to this chapter shall be employed by the authority or company obtaining a permit for the performance of such work, and shall possess a valid license issued by the board.

2. Upon the death of an electrical contractor, a class A master electrician, or a class B master elec-

trician, the board may permit a representative to carry on the business of the decedent for a period not to exceed six months for the purpose of completing work under contract to comply with this chapter. Such representative shall furnish all public liability and property damage insurance required by the board.

2007 Acts, ch 197, §30, 50  
Section takes effect January 1, 2008; 2007 Acts, ch 197, §50  
NEW section

### 103.21 Licenses without examination — reciprocity with other states.

To the extent that any other state which provides for the licensing of electricians provides for similar action, the board may grant licenses, without examination, of the same grade and class to an electrician who has been licensed by such other state for at least one year, upon payment by the applicant of the required fee, and upon the board being furnished with proof that the qualifications of the applicant are equal to the qualifications of holders of similar licenses in this state.

2007 Acts, ch 197, §31, 50  
Section takes effect January 1, 2008; 2007 Acts, ch 197, §50  
NEW section

### 103.22 Chapter inapplicability.

The provisions of this chapter shall not:

1. Apply to a person licensed as an engineer pursuant to chapter 542B, registered as an architect pursuant to chapter 544A, licensed as a landscape architect pursuant to chapter 544B, or designated as lighting certified by the national council on qualifications for the lighting professions providing consultations and developing plans concerning electrical installations who is exclusively engaged in the practice of the person's profession.

2. Require employees of municipal corporations, electric membership or cooperative associations, public utility corporations, rural water associations or districts, railroads, telecommunications companies, franchised cable television operators, or commercial or industrial companies performing manufacturing, installation, and repair work for such employer to hold licenses while acting within the scope of their employment.

3. Require any person doing work for which a license would otherwise be required under this chapter to hold a license issued under this chapter if the person is the holder of a valid license issued by any political subdivision, so long as the person makes electrical installations only in the jurisdictional limits of such political subdivision and such license issued by the political subdivision meets the requirements of this chapter.

4. Apply to the installation, maintenance, repair, or alteration of vertical transportation or passenger conveyors, elevators, moving walks, dumbwaiters, stagelifts, manlifts, or appurtenances thereto beyond the terminals of the controllers. The licensing of elevator contractors or constructors shall not be considered a part of the

licensing requirements of this chapter.

5. Require a license of any person who engages any electrical appliance where approved electrical supply is already installed.

6. Prohibit an owner of property from performing work on the owner's principal residence, if such residence is an existing dwelling rather than new construction and is not larger than a single-family dwelling, or farm property, excluding commercial or industrial installations or installations in public use buildings or facilities, or require such owner to be licensed under this chapter. In order to qualify for inapplicability pursuant to this subsection, a residence shall qualify for the homestead tax exemption.

7. Require that any person be a member of a labor union in order to be licensed.

8. Apply to a person who is qualified pursuant to administrative rules relating to the storage and handling of liquefied petroleum gases while engaged in installing, servicing, testing, replacing, or maintaining propane gas utilization equipment, or gas piping systems of which the equipment is a part, and related or connected accessory systems or equipment necessary to the operation of the equipment.

9. Apply to a person who meets the requirements for a well contractor pursuant to administrative rules while engaged in installing, servicing, testing, replacing, or maintaining a well or well equipment, or piping systems of which the equipment is a part, and related or connected accessory systems or equipment necessary to the operation of the equipment.

10. Apply to a person performing alarm system installations engaged in the design, installation, erection, repair, maintenance, or alteration of class two or class three remote control, signaling, or power-limited circuits, optical fiber cables or other cabling, or communications circuits, including raceways, as defined in the national electrical code for voice, video, audio, and data signals in commercial or residential premises.

2007 Acts, ch 197, §32, 50  
Section takes effect January 1, 2008; 2007 Acts, ch 197, §50  
NEW section

### 103.23 through 103.34 Reserved.

For future text of these sections effective January 1, 2009, see 2007 Acts, ch 197, §33 – 44, 50

### 103.35 Suspension, revocation, or reprimand.

The board, by a simple majority vote of the entire board, may suspend for a period not exceeding two years, or revoke the certificate of licensure of, or reprimand any licensee who is found guilty of any of the following acts or offenses:

1. Fraud in procuring a certificate of licensure.
2. Professional incompetency.

3. Knowingly making misleading, deceptive, untrue, or fraudulent representations in the practice of the licensee's profession or engaging in un-



ethical conduct or practice harmful to the public. Proof of actual injury need not be established.

4. Habitual intoxication or addiction to the use of drugs.

5. Conviction of a felony under the laws of the United States, this state, any other state, territory, or possession of the United States, the District of Columbia, or any foreign country. A copy of the record of conviction or plea of guilty is conclusive evidence of such conviction.

6. Revocation or suspension of licensure, or other disciplinary action by the licensing authority of another state, territory, or possession of the United States, the District of Columbia, or any foreign country. A certified copy of the record or order of suspension, revocation, or other disciplinary action is prima facie evidence of such fact.

7. Fraud in representations as to skill or ability.

8. Use of untruthful or improbable statements in advertisements.

9. Willful or repeated violations of this chapter.

2007 Acts, ch 197, §45, 50  
Section takes effect January 1, 2008; 2007 Acts, ch 197, §50  
NEW section

### 103.36 Procedure.

Proceedings for any action under section 103.35 shall be commenced by filing with the board written charges against the accused. Upon the filing of charges, the board shall conduct an investigation into the charges. The board shall designate a time and place for a hearing, and shall notify the accused of this action and furnish the accused a copy of all charges at least thirty days prior to the date of the hearing. The accused has the right to appear personally or by counsel, to cross-examine witnesses, or to produce witnesses in defense.

2007 Acts, ch 197, §46, 50  
Section takes effect January 1, 2008; 2007 Acts, ch 197, §50  
NEW section

### 103.37 Injunction.

Any person who is not legally authorized to practice in this state according to this chapter, who practices, or in connection with the person's name, uses any designation tending to imply or designate the person as authorized to practice in this state according to this chapter, may be restrained by permanent injunction.

2007 Acts, ch 197, §47, 50  
Section takes effect January 1, 2008; 2007 Acts, ch 197, §50  
NEW section

### 103.38 Criminal violations.

A person who violates a permanent injunction issued pursuant to section 103.37 or presents or attempts to file as the person's own the certificate of licensure of another, or who gives false or forged evidence of any kind to the board in obtaining a certificate of licensure, or who falsely impersonates another practitioner of like or different name,

or who uses or attempts to use a revoked certificate of licensure, is guilty of a fraudulent practice under chapter 714.

2007 Acts, ch 197, §48, 50  
Section takes effect January 1, 2008; 2007 Acts, ch 197, §50  
NEW section

### 103.39 Civil penalty.

1. In addition to any other penalties provided for in this chapter, the board may by order impose a civil penalty upon a person who is not licensed under this chapter and who does any of the following:

a. Is employed in a capacity in which the person engages in or offers to engage in the activities authorized pursuant to this chapter.

b. Uses or employs the words "electrical contractor", "class A master electrician", "class B master electrician", "class A journeyman electrician", or "class B journeyman electrician", or implies authorization to provide or offer those services, or otherwise uses or advertises any title, word, figure, sign, card, advertisement, or other symbol or description tending to convey the impression that the person is an "electrical contractor", "class A master electrician", "class B master electrician", "class A journeyman electrician", or "class B journeyman electrician".

c. Gives false or forged evidence of any kind to the board or any member of the board in obtaining or attempting to obtain a certificate of licensure.

d. Falsely impersonates any individual licensed pursuant to this chapter.

e. Uses or attempts to use an expired, suspended, revoked, or nonexistent certificate of licensure.

f. Knowingly aids or abets an unlicensed person who engages in any activity identified in this subsection.

2. A civil penalty imposed shall not exceed one thousand dollars for each offense. Each day of a continued violation constitutes a separate offense, except that offenses resulting from the same or common facts or circumstances shall be considered a single offense.

3. In determining the amount of a civil penalty to be imposed, the board may consider any of the following:

a. Whether the amount imposed will be a substantial economic deterrent to the violation.

b. The circumstances leading to the violation.

c. The severity of the violation and the risk of harm to the public.

d. The economic benefits gained by the violator as a result of noncompliance.

e. The interest of the public.

4. Before issuing an order under this section, the board shall provide the person written notice and the opportunity to request a hearing on the record. The hearing must be requested within thirty days of the issuance of the notice and shall be conducted in the same manner as provided in

section 103.36.

5. The board, in connection with a proceeding under this section, may issue subpoenas to compel the attendance and testimony of witnesses and the disclosure of evidence, and may request the attorney general to bring an action to enforce the subpoena.

6. A person aggrieved by the imposition of a civil penalty under this section may seek judicial review in accordance with section 17A.19.

7. If a person fails to pay a civil penalty within thirty days after entry of an order under subsec-

tion 1, or if the order is stayed pending an appeal within ten days after the court enters a final judgment in favor of the board, the board shall notify the attorney general. The attorney general may commence an action to recover the amount of the penalty, including reasonable attorney fees and costs.

8. An action to enforce an order under this section may be joined with an action for an injunction.

2007 Acts, ch 197, §49, 50  
Section takes effect January 1, 2008; 2007 Acts, ch 197, §50  
NEW section

## CHAPTER 103A

### STATE BUILDING CODE

#### 103A.10 Effect and application.

1. The state building code shall, for the buildings and structures to which it is applicable, constitute a lawful local building code.

2. The state building code shall be applicable:

a. To all buildings and structures owned by the state or an agency of the state.

b. In each governmental subdivision where the governing body has enacted an ordinance accepting the application of the code.

c. To all newly constructed buildings and structures the construction of which is paid for in whole or in part with moneys appropriated by the state but which are not wholly owned by the state.

d. In each city with a population of more than fifteen thousand that has not adopted a local building code that is substantially in accord with standards developed by a nationally recognized building code organization. The city shall enforce the state building code, including the provisions in section 103A.19, subsection 2.

3. Provisions of the state building code relating to the manufacture and installation of factory-built structures shall apply throughout the state. A factory-built structure approved by the commissioner shall be deemed to comply with all building regulations applicable to its manufacture and installation and shall be exempt from any other state or local building regulations.

4. Notwithstanding the provisions of section 103A.22, subsection 1:

a. Provisions of the state building code establishing thermal efficiency energy conservation standards shall be applicable to all new construction owned by the state, an agency of the state or a political subdivision of the state, to all new construction located in a governmental subdivision which has adopted either the state building code or a local building code or compilation of requirements for building construction and to all other new construction in the state which will contain more than one hundred thousand cubic feet of en-

closed space that is heated or cooled.

b. Provisions of the state building code establishing lighting efficiency standards shall be applicable to all new construction owned by the state, an agency of the state or a political subdivision of the state and to all new construction, in the state, of buildings which are open to the general public during normal business hours.

5. This chapter shall not be construed to prohibit a governmental subdivision from adopting or enacting a minimum energy standard which is substantially in accordance and consistent with model energy codes and standards developed by a nationally recognized organization in effect on or after July 1, 2002. A governmental subdivision that adopts or enacts a minimum energy standard which is substantially in accordance and consistent with model energy codes and standards developed by a nationally recognized organization shall adopt or enact any update or revision to the model energy codes and standards.

2007 Acts, ch 22, §32, 33; 2007 Acts, ch 97, §1, 3  
Subsection 2, paragraph d, applies to building permits issued on or after July 1, 2008; 2007 Acts, ch 97, §3  
Subsection 2, paragraph c amended  
Subsection 2, NEW paragraph d  
Subsection 3 amended

#### 103A.10A Plan reviews and inspections.

1. Beginning on January 1, 2007, all newly constructed buildings or structures, excluding any addition, renovation, or repair of a building or structure whether existing prior to January 1, 2007, or thereafter, that are owned by the state or an agency of the state, except as provided in subsection 2, shall be subject to a plan review and inspection by the commissioner or an independent building inspector appointed by the commissioner. A fee shall be assessed for the cost of plan review and the cost of inspection.

2. Beginning on July 1, 2007, all newly constructed buildings, excluding any addition, renovation, or repair of a building whether existing pri-

or to July 1, 2007, or thereafter, that are owned by the state board of regents shall be subject to a plan review and inspection by the commissioner or the commissioner's staff or assistant. The commissioner and the state board of regents shall develop a plan to implement the requirements of this subsection, including funding recommendations related to plan review and inspection, by March 1, 2007.

3. All newly constructed buildings and structures the construction of which is paid for in whole or in part with moneys appropriated by the state but which are not wholly owned by the state are subject to the plan review and inspection requirements as provided in this subsection. If a governmental subdivision has adopted a building code, electrical code, mechanical code, and plumbing code and performs inspections pursuant to such codes, such buildings or structures shall be built to comply with such codes. However, if a governmental subdivision has not adopted a building code, electrical code, mechanical code, and plumbing code, or does not perform inspections pursuant to such codes, such buildings or structures shall be built to comply with the state building code and shall be subject to a plan review and inspection by the commissioner or an independent building inspector appointed by the commissioner. A fee shall be assessed for the cost of plan review and the cost of inspection.

4. The commissioner shall administer this section notwithstanding section 103A.19. The commissioner shall establish by rule proper qualifications for an independent building inspector and for the commissioner's staff or assistant who performs inspections, and fees for plan reviews and inspections.

2007 Acts, ch 22, §34  
Subsection 3 amended

### **103A.19 Administration and enforcement.**

1. The examination and approval or disapproval of plans and specifications, the issuance and revocation of building permits, licenses, certificates, and similar documents, the inspection of buildings or structures, and the administration and enforcement of building regulations shall be the responsibility of the governmental subdivisions of the state and shall be administered and enforced in the manner prescribed by local law or ordinance. All provisions of law relating to the administration and enforcement of local building regulations in any governmental subdivision shall be applicable to the administration and enforcement of the state building code in the governmental subdivision. An application made to a local building department or to a state agency for permission to construct a building or structure pursuant to the provisions of the state building code shall, in addition to any other requirement, be

signed by the owner or the owner's authorized agent, and shall contain the address of the owner, and a statement that the application is made for permission to construct in accordance with the provisions of the code.

2. In aid of administration and enforcement of the state building code, and in addition to and not in limitation of powers vested in them by law, each governmental subdivision of the state may, and each city designated in section 103A.10, subsection 2, paragraph "d", shall:

a. Examine and approve or disapprove plans and specifications for the construction of any building or structure, the construction of which is pursuant or purports to be pursuant to the provisions of the state building code, and to direct the inspection of buildings or structures during the course of construction.

b. Require that the construction of any building or structure shall be in accordance with the applicable provisions of the state building code, subject, however, to the powers granted to the board of review in section 103A.16.

c. Order in writing any person to remedy any condition found to exist in, or about any building or structure in violation of the state building code. Orders may be served upon the owner or the owner's authorized agent personally or by certified mail at the address set forth in the application for permission to construct a building or structure. Any local building department may grant in writing such time as may be reasonably necessary for achieving compliance with an order.

d. Issue certificates of occupancy or use, permits, licenses, and other documents in connection with the construction of buildings or structures as may be required by ordinance.

A certificate of occupancy or use for a building or structure constructed in accordance with the provisions of the state building code shall certify that the building or structure conforms to the requirements of the code. The certificate shall be in the form the governing body of the governmental subdivision prescribes.

Every certificate of occupancy or use shall, until set aside or vacated by the board of review, director, or a court of competent jurisdiction, be binding and conclusive upon all state and local agencies, as to all matters set forth and no order, direction, or requirement at variance therewith shall be made or issued by any other state or local agency.

e. Make, amend, and repeal rules for the administration and enforcement of the provisions of this section, and for the collection of reasonable fees in connection therewith.

f. Prohibit the commencement of construction until a permit has been issued by the local building department after a showing of compliance with the requirements of the applicable provisions of the state building code.

3. The specifications for all buildings to be constructed after July 1, 1977, and which exceed a total volume of one hundred thousand cubic feet of enclosed space that is heated or cooled shall be reviewed by a registered architect or licensed engineer for compliance with applicable energy efficiency standards. A statement that a review has been accomplished and that the design is in compliance with the energy efficiency standards shall be signed and sealed by the responsible registered architect or licensed engineer. This statement shall be filed with the commissioner prior to construction. If the specifications relating to energy efficiency for a specific structure have been approved, additional buildings may be constructed from those same plans and specifications without need of further approval if construction begins within five years of the date of approval. Alterations of a structure which has been previously approved shall not require a review because of these changes, provided the basic structure remains unchanged.

2007 Acts, ch 97, §2, 3; 2007 Acts, ch 126, §21  
 Architect's seal required; §544A.28  
 2007 amendment to subsection 2, unnumbered paragraph 1, applies to building permits issued on or after July 1, 2008; 2007 Acts, ch 97, §3  
 See Code editor's note to §29A.28  
 Section amended

**103A.21 Penalty.**

1. Any person served with an order pursuant to the provisions of section 103A.19, subsection 2, paragraph "c", who fails to comply with the order within thirty days after service or within the time fixed by the local building department for compliance, whichever is longer, and any owner, builder, architect, tenant, contractor, subcontractor, construction superintendent or their agents, or any other person taking part or assisting in the construction or use of any building or structure who shall knowingly violate any of the applicable provisions of the state building code or any lawful order of a local building department made thereunder, shall be guilty of a simple misdemeanor.

2. Violation of this chapter shall not impose any disability upon or affect or impair the credibility as a witness, or otherwise, of any person.

Violations of this section shall be simple misdemeanors.

3. As an alternative to filing criminal charges as provided in this section, the commissioner may file a petition in the district court and obtain injunctive relief for any violation of this chapter or chapter 104A.

2007 Acts, ch 126, §22  
 Subsection 1 amended

**CHAPTER 105**

**PLUMBERS AND MECHANICAL PROFESSIONALS**

For future text of this chapter effective July 1, 2008,  
 see 2007 Acts, ch 198

**CHAPTERS 106 to 122C**

RESERVED

**CHAPTER 123**

**ALCOHOLIC BEVERAGE CONTROL**

**123.37 Exclusive power to license and levy taxes — disputed taxes.**

1. The power to establish licenses and permits and levy taxes as imposed in this chapter is vested exclusively with the state. Unless specifically provided, a local authority shall not require the obtaining of a special license or permit for the sale of alcoholic beverages, wine, or beer at any establishment, or require the obtaining of a license by any person as a condition precedent to the person's employment in the sale, serving, or handling of alcoholic beverages, wine, or beer, within an establishment operating under a license or permit.

2. The administrator may compromise and

settle doubtful and disputed claims for taxes imposed under this chapter or for taxes of doubtful collectibility, notwithstanding section 7D.9. The administrator may enter into informal settlements pursuant to section 17A.10 to compromise and settle doubtful and disputed claims for taxes imposed under this chapter. The administrator may make a claim under a licensee's or permittee's penal bond for taxes of doubtful collectibility. Whenever a compromise or settlement is made, the administrator shall make a complete record of the case showing the tax assessed, reports and audits, if any, the licensee's or permittee's grounds for dispute or contest, together with all evidence of

the dispute or contest, and the amounts, conditions, and settlement or compromise of the dispute or contest.

3. A licensee or permittee who disputes the amount of tax imposed must pay all tax and penalty pertaining to the disputed tax liability prior to appealing the disputed tax liability to the administrator.

4. The administrator shall adopt rules establishing procedures for payment of disputed taxes imposed under this chapter. If it is determined that the tax is not due in whole or in part, the division shall promptly refund the part of the tax payment which is determined not to be due.

2007 Acts, ch 22, §35  
Unnumbered paragraph 1 amended and editorially designated as subsection 1

Former unnumbered paragraphs 2 – 4 editorially designated as subsections 2 – 4

### 123.50 Criminal and civil penalties.

1. Any person who violates any of the provisions of section 123.49, except subsection 2, paragraph “h”, or who fails to affix upon sale, defaces, or fails to record a keg identification sticker or produce a record of keg identification stickers pursuant to section 123.138, shall be guilty of a simple misdemeanor. A person who violates section 123.49, subsection 2, paragraph “h”, commits a simple misdemeanor punishable as a scheduled violation under section 805.8C, subsection 2.

2. The conviction of any liquor control licensee, wine permittee, or beer permittee for a violation of any of the provisions of section 123.49, subject to subsection 3 of this section, is grounds for the suspension or revocation of the license or permit by the division or the local authority. However, if any liquor control licensee is convicted of any violation of subsection 2, paragraph “a”, “d”, or “e”, of that section, or any wine or beer permittee is convicted of a violation of paragraph “a” or “e” of that section, the liquor control license, wine permit, or beer permit shall be revoked and shall immediately be surrendered by the holder, and the bond, if any, of the license or permit holder shall be forfeited to the division.

3. If any licensee, wine permittee, beer permittee, or employee of a licensee or permittee is convicted or found in violation of section 123.49, subsection 2, paragraph “h”, the administrator or local authority shall, in addition to criminal penalties fixed for violations by this section, assess a civil penalty as follows:

a. A first violation shall subject the licensee or permittee to a civil penalty in the amount of five hundred dollars. Failure to pay the civil penalty as ordered under section 123.39 shall result in automatic suspension of the license or permit for a period of fourteen days.

b. A second violation within two years shall subject the licensee or permittee to a thirty-day suspension and a civil penalty in the amount of one thousand five hundred dollars.

c. A third violation within three years shall subject the licensee or permittee to a sixty-day suspension and a civil penalty in the amount of one thousand five hundred dollars.

d. A fourth violation within three years shall result in revocation of the license or permit.

e. For purposes of this subsection:

(1) The date of any violation shall be used in determining the period between violations.

(2) Suspension shall be limited to the specific license or permit for the premises found in violation.

(3) Notwithstanding section 123.40, revocation shall be limited to the specific license or permit found in violation and shall not disqualify a licensee or permittee from holding a license or permit at a separate location.

4. In addition to any other penalties imposed under this chapter, the division shall assess a civil penalty up to the amount of five thousand dollars upon a class “E” liquor control licensee when the class “E” liquor license is revoked for a violation of section 123.59. Failure to pay the civil penalty as required under this subsection shall result in forfeiture of the bond to the division.

2007 Acts, ch 46, §1  
License or permit suspension upon revocation of amusement device permit; §99B.10B  
Subsection 1 amended

### 123.53 Beer and liquor control fund — allocations to substance abuse — use of civil penalties.

1. There shall be established within the office of the treasurer of state a fund to be known as the beer and liquor control fund. The fund shall consist of any moneys appropriated by the general assembly for deposit in the fund and moneys received from the sale of alcoholic liquors by the division, from the issuance of permits and licenses, and of moneys and receipts received by the division from any other source.

2. The director of the department of administrative services shall periodically transfer from the beer and liquor control fund to the general fund of the state those revenues of the division which are not necessary for the purchase of liquor for resale by the division, or for remittances to local authorities or other sources as required by this chapter, or for other obligations and expenses of the division which are paid from such fund.

All moneys received by the division from the issuance of vintner’s certificates of compliance and wine permits shall be transferred by the director of the department of administrative services to the general fund of the state.

3. The treasurer of state shall transfer into a special revenue account in the general fund of the state, a sum of money at least equal to seven percent of the gross amount of sales made by the division from the beer and liquor control fund on a monthly basis but not less than nine million dollars annually. Of the amounts transferred, two

million dollars, plus an additional amount determined by the general assembly, shall be appropriated to the Iowa department of public health for use by the staff who administer the comprehensive substance abuse program under chapter 125 for substance abuse treatment and prevention programs. Any amounts received in excess of the amounts appropriated to the Iowa department of public health for use by the staff who administer the comprehensive substance abuse program under chapter 125 shall be considered part of the general fund balance.

4. The treasurer of state, after making the transfer provided for in subsection 3, shall transfer to the division from the beer and liquor control fund and before any other transfer to the general fund, an amount sufficient to pay the costs incurred by the division for collecting and properly disposing of the liquor containers.

5. Civil penalties imposed and collected by the division shall be credited to the general fund of the state. The moneys from the civil penalties shall be used by the division, subject to appropriation by the general assembly, for the purposes of providing educational programs, information and publications for alcoholic beverage licensees and permittees, local authorities, and law enforcement agencies regarding the laws and rules which govern the alcoholic beverages industry, and for promoting compliance with alcoholic beverage laws and rules.

2007 Acts, ch 126, §23  
Subsection 3 amended

**123.138 Books of account required — keg identification sticker.**

1. Each class “A” or special class “A” permittee shall keep proper books of account and records showing the amount of beer sold by the permittee, and these books of account shall be at all times open to inspection by the administrator and to other persons pursuant to section 123.30, subsection 1. Each class “B” and class “C” permittee shall keep proper books of account and records showing each purchase of beer made by the permittee, and the date and the amount of each purchase and the name of the person from whom each purchase was made, which books of account and records shall be open to inspection pursuant to section 123.30, subsection 1, during normal business hours of the permittee.

2. *a.* Each class “B”, “C”, or special class “C” liquor control licensee and class “B” or “C” beer permittee who sells beer for off-premises consumption shall affix to each keg of beer an identification sticker provided by the administrator. The sticker provided shall allow for its full removal when common external keg cleaning procedures are performed. For the purposes of this subsection, “*keg*” means all durable and disposable containers with a liquid capacity of five gallons or more. Each class

“B”, “C”, or special class “C” liquor control licensee and class “B” or “C” beer permittee shall also keep a record of the identification sticker number of each keg of beer sold by the licensee or permittee with the name and address of the purchaser and the number of the purchaser’s driver’s license, nonoperator’s identification card, or military identification card, if the military identification card contains a picture and signature. This information shall be retained by the licensee or permittee for a minimum of ninety days. The records kept pursuant to this subsection shall be available for inspection by any law enforcement officer during normal business hours.

*b.* The division shall provide the keg identification stickers described in paragraph “*a*” and shall, prior to utilizing a sticker, notify licensed brewers and licensed beer importers of the type of sticker to be utilized. Each sticker shall contain a number and the following statement: “It is unlawful to sell, give, or otherwise supply any alcoholic beverage, wine, or beer to any person under legal age. Any person who defaces this sticker shall be guilty of criminal mischief punishable pursuant to section 716.6 and shall cause the forfeiture of any deposit, if applicable.” The identification sticker shall be placed on the keg at the time of retail sale. The licensee or permittee shall purchase the stickers referred to in this subsection from the division and shall remit to the division deposits forfeited pursuant to this lettered paragraph due to defacement. The cost of the stickers to licensees and permittees shall not exceed the division’s cost of producing and distributing the stickers. The moneys collected by the division relating to the sale of stickers and forfeited deposits shall be credited to the beer and liquor control fund.

*c.* The provisions of this subsection shall be implemented uniformly throughout the state. The provisions of this subsection shall preempt any local county or municipal ordinance regarding keg registration or the sale of beer in kegs. In addition, a county or municipality shall not adopt or continue in effect an ordinance regarding keg registration or the sale of beer in kegs.

*d.* The division shall establish by rule procedures relating to the forfeiture and remittance of deposits pursuant to paragraph “*b*”.

2007 Acts, ch 46, §2  
Section amended

**123.183 Wine gallonage tax and related funds.**

1. In addition to the annual permit fee to be paid by each class “A” wine permittee, a wine gallonage tax shall be levied and collected from each class “A” wine permittee on all wine manufactured for sale and sold in this state at wholesale and on all wine imported into this state for sale at wholesale and sold in this state at wholesale. The rate

of the wine gallonage tax is one dollar and seventy-five cents for each wine gallon. The same rate shall apply for the fractional parts of a wine gallon. The wine gallonage tax shall not be levied or collected on wine sold by one class "A" wine permittee to another class "A" wine permittee.

2. *a.* Revenue collected from the wine gallonage tax on wine manufactured for sale and sold in this state shall be deposited in the wine gallonage tax fund as created in this section.

*b.* A wine gallonage tax fund is created in the office of the treasurer of state. Moneys deposited in the fund are appropriated to the department of economic development as provided in section 15E.117. Moneys in the fund are not subject to section 8.33.

3. The revenue collected from the wine gallonage tax on wine imported into this state for sale at wholesale and sold in this state at wholesale shall be deposited in the beer and liquor control fund created in section 123.53.

2007 Acts, ch 211, §41

For exception to wine gallonage tax effective May 29, 2007, for wine im-

ported into the state prior to June 1, 2007, and used for manufacturing native wine, see 2007 Acts, ch 215, §126, 129

Subsection 3 amended

### 123.186 Federal regulations adopted as rules.

1. The division shall adopt as rules the substance of the federal regulations 27 C.F.R. pt. 6, 27 C.F.R. pt. 8, 27 C.F.R. pt. 10, and 27 C.F.R. pt. 11 as they relate to transactions between wholesalers and retailers.

2. The division shall adopt as rules the substance of 27 C.F.R. § 6.88, to permit a manufacturer of alcoholic beverages, wine, or beer, or an agent of such manufacturer, to provide to a retailer without charge wine and beer coil cleaning services, including carbon dioxide filters and other necessary accessories to properly clean the coil and affix carbon dioxide filters. The rules shall provide that the manufacturer shall be responsible for paying the costs of any filters provided.

2007 Acts, ch 22, §36

Subsection 2 amended

## CHAPTER 123A

### BEER BREWERS AND WHOLESALERS

#### 123A.2 Definitions.

As used in this chapter, unless the context otherwise requires:

1. "*Affected party*" means a wholesaler, brewer, master distributor, successor brewer, or any person that is a party to an agreement.

2. "*Agreement*" means a contract or arrangement whether expressed or implied, oral or written, for a definite or indefinite period between a brewer and a wholesaler pursuant to which a wholesaler has been granted the right to purchase, resell, and distribute one or more brands of beer offered by a brewer, or a contract or arrangement in which a brewer grants to a wholesaler a license to use a trade name, trademark, service mark, or related characteristic and in which there is a community of interest in the marketing of the products of the brewer. An agreement exists when one or more of the following occur:

*a.* A brewer has shipped beer to a wholesaler or accepted an order for beer from a wholesaler.

*b.* A brewer purchases the right to manufacture a beer product, the right to use the trade name for the product, or the right to distribute a product from another brewer with whom the wholesaler has an agreement.

3. "*Beer*" means any liquid capable of being used for beverage purposes made by the fermentation of an infusion in potable water of barley, malt, and hops with or without unmalted grains or degerminated and degerminated grains, or made by the fermentation of, or by distillation of the fer-

mented products of fruit, fruit extracts, or other agricultural products, containing more than one-half of one percent of alcohol by volume but not more than five percent of alcohol by weight, but not including mixed drinks or cocktails mixed on the premises.

4. "*Brand*" means a word, name, group of letters, symbol, or a combination of words, names, letters, or symbols adopted and used by a brewer to identify a specific beer product, and to distinguish that beer product from other beer products brewed or marketed by that brewery or other breweries.

5. "*Brand extension*" means a brand which incorporates all or a substantial part of the unique features of a preexisting brand of the same brewery and which relies to a significant extent on the goodwill associated with the preexisting brand. However, a general corporate logo or symbol or an advertising message, whether appearing on the product packaging or elsewhere, is not a brand, brand extension, or part of a brand or brand extension.

6. "*Brewer*" means a person who is engaged in the manufacture of beer for the purpose of sale, barter, exchange, or transportation, a master distributor, or a fermenter, processor, bottler, packager, or importer of beer, or a successor brewer.

7. "*Designated member*" means a deceased wholesaler's spouse, child, grandchild, parent, brother, or sister, who is entitled to inherit the deceased wholesaler's ownership interest under the

terms of the deceased wholesaler's will, other testamentary device, or the laws of intestate succession. With respect to an incapacitated individual having an ownership interest in a wholesaler, "designated member" also means a person appointed by the court as the conservator of the individual's property. "Designated member" also includes the appointed and qualified personal representative and the testamentary trustee of a deceased wholesaler.

8. "Good cause" exists if the wholesaler or affected party has failed to comply with reasonable requirements which are imposed upon the wholesaler or affected party through an agreement, which do not discriminate either by their terms or in the methods of their enforcement as compared with requirements imposed on other similarly situated wholesalers by the brewer, and which are not in violation of any law or administrative rule.

9. "Good faith" means honesty in fact and the observance of reasonable commercial standards of fair dealing in the trade and defined and interpreted under section 554.2103.\*

10. "Manager" means an individual named or designated by agreement between the brewer and wholesaler, who is principally responsible for the daily management of the wholesaler.

11. "Master distributor" means a wholesaler who acts in the role of or in a similar capacity as a brewer or outside seller of one or more brands of beer to other wholesalers on a regular basis in the normal course of business.

12. "Reasonable standards and qualifica-

tions" means those criteria applied by the brewer to similarly situated wholesalers during a period of twenty-four months before a proposed change in a successor manager of the wholesaler's business.

13. "Similarly situated wholesalers" means wholesalers of a brewer that are of a generally comparable size, and operate in markets with similar demographic characteristics, including population size, density, distribution, and vital statistics, and reasonably similar economic and geographic conditions.

14. "Successor brewer" means a person who succeeds to the role of a brewer or master distributor to manufacture or distribute one or more brands of beer whether by merger, purchase of corporate shares, purchase of assets, or any other arrangement.

15. "Successor manager" means an individual named or designated by agreement between a brewer and wholesaler who succeeds to the role of manager who will be principally responsible for the daily management of the wholesaler.

16. "Territory" means the geographic area of primary sales responsibility designated by an agreement between a wholesaler and brewer for one or more brands of beer of the brewer.

17. "Wholesaler" means a person, other than a vintner, brewer, or bottler of beer, who sells, barter, exchanges, offers for sale, possesses with intent to sell, deals, or traffics in beer.

\*Section 554.1201 probably intended; corrective legislation is pending  
Section not amended; footnote added

## CHAPTER 124

### CONTROLLED SUBSTANCES

#### 124.101 Definitions.

As used in this chapter:

1. "Administer" means the direct application of a controlled substance, whether by injection, inhalation, ingestion, or any other means, to the body of a patient or research subject by:

a. A practitioner, or in the practitioner's presence, by the practitioner's authorized agent; or

b. The patient or research subject at the direction and in the presence of the practitioner.

Nothing contained in this chapter shall be construed to prevent a physician, dentist, podiatric physician, or veterinarian from delegating the administration of controlled substances under this chapter to a nurse, intern, or other qualified individual or, as to veterinarians, to an orderly or assistant, under the veterinarian's direction and supervision; all pursuant to rules adopted by the board.

2. "Agent" means an authorized person who acts on behalf of or at the direction of a manufac-

turer, distributor, or dispenser. It does not include a common or contract carrier, public warehouse, or employee of the carrier or warehouse.

3. "Board" means the board of pharmacy.

4. "Bureau" means the bureau of narcotics and dangerous drugs, United States department of justice, or its successor agency.

5. "Controlled substance" means a drug, substance, or immediate precursor in schedules I through V of division II of this chapter.

6. "Counterfeit substance" means a controlled substance which, or the container or labeling of which, without authorization, bears the trademark, trade name, or other identifying mark, imprint, number or device, or any likeness thereof, of a manufacturer, distributor, or dispenser other than the person who in fact manufactured, distributed, or dispensed the substance.

7. "Deliver" or "delivery" means the actual, constructive, or attempted transfer from one person to another of a controlled substance, whether



or not there is an agency relationship.

8. “*Department*” means the department of public safety of the state of Iowa.

9. “*Dispense*” means to deliver a controlled substance to an ultimate user or research subject by or pursuant to the lawful order of a practitioner, including the prescribing, administering, packaging, labeling, or compounding necessary to prepare the substance for that delivery.

10. “*Dispenser*” means a practitioner who dispenses.

11. “*Distribute*” means to deliver other than by administering or dispensing a controlled substance.

12. “*Distributor*” means a person who distributes.

13. “*Drug*” means:

a. Substances recognized as drugs in the official United States Pharmacopoeia, official Homeopathic Pharmacopoeia of the United States, or official National Formulary, or any supplement to any of them;

b. Substances intended for use in the diagnosis, cure, mitigation, treatment, or prevention of disease in humans or animals;

c. Substances, other than food, intended to affect the structure or any function of the human body or animals; and

d. Substances intended for use as a component of any article specified in paragraph “a”, “b”, or “c” of this subsection. It does not include devices or their components, parts, or accessories.

14. “*Electronic prescription*” means a prescription which is transmitted by a computer device in a secure manner, including computer-to-computer transmission and computer-to-facsimile transmission.

15. “*Facsimile prescription*” means a prescription which is transmitted by a device which sends an exact image to the receiver.

16. “*Immediate precursor*” means a substance which the board has found to be and by rule designates as being the principal compound commonly used or produced primarily for use, and which is an immediate chemical intermediary used or likely to be used in the manufacture of a controlled substance, the control of which is necessary to prevent, curtail, or limit manufacture.

17. “*Isomer*” means the optical isomer, except as used in section 124.204, subsection 4, and section 124.206, subsection 2, paragraph “d”. As used in section 124.204, subsection 4, “*isomer*” means the optical, positional, or geometric isomer. As used in section 124.206, subsection 2, paragraph “d”, “*isomer*” means the optical or geometric isomer.

18. “*Manufacture*” means the production, preparation, propagation, compounding, conversion, or processing of a controlled substance, either directly or by extraction from substances of natural origin, or independently by means of chemical synthesis, or by a combination of extrac-

tion and chemical synthesis, and includes any packaging or repackaging of the substance or labeling or relabeling of its container, except that this term does not include the preparation, compounding, packaging, or labeling of a controlled substance:

a. By a practitioner as an incident to administering or dispensing of a controlled substance in the course of the practitioner’s professional practice, or

b. By a practitioner, or by an authorized agent under the practitioner’s supervision, for the purpose of, or as an incident to, research, teaching, or chemical analysis and not for sale.

19. “*Marijuana*” means all parts of the plants of the genus *Cannabis*, whether growing or not; the seeds thereof; the resin extracted from any part of the plant; and every compound, manufacture, salt, derivative, mixture or preparation of the plant, its seeds or resin, including tetrahydrocannabinols. It does not include the mature stalks of the plant, fiber produced from the stalks, oil or cake made from the seeds of the plant, any other compound, manufacture, salt, derivative, mixture, or preparation of the mature stalks (except the resin extracted therefrom), fiber, oil or cake or the sterilized seed of the plant which is incapable of germination.

20. “*Narcotic drug*” means any of the following, whether produced directly or indirectly by extraction from substances of vegetable origin, or independently by means of chemical synthesis, or by a combination of extraction and chemical synthesis:

a. Opium, opiates, derivatives of opium and opiates, including their isomers, esters, ethers, salts, and salts of isomers, esters, and ethers whenever the existence of such isomers, esters, ethers, and salts is possible within the specific chemical designation. Such term does not include the isoquinoline alkaloids of opium.

b. Poppy straw and concentrate of poppy straw.

c. Opium poppy.

d. Any compound, mixture, or preparation which contains any quantity of any of the substances referred to in paragraphs “a” through “c”.

21. “*Opiate*” means any substance having an addiction-forming or addiction-sustaining liability similar to morphine or being capable of conversion into a drug having addiction-forming or addiction-sustaining liability. It does not include, unless specifically designated as controlled under section 124.201, the dextrorotatory isomer of 3-methoxy-n-methylmorphinan and its salts (dextromethorphan). It does include its racemic and levorotatory forms.

22. “*Opium poppy*” means the plant of the species *Papaver somniferum* L., except its seeds.

23. “*Person*” means individual, corporation, government or governmental subdivision or agency, business trust, estate, trust, partnership or as-

sociation, or any other legal entity.

24. “*Poppy straw*” means all parts, except the seeds, of the opium poppy, after mowing.

25. “*Practitioner*” means either:

a. A physician, dentist, podiatric physician, veterinarian, scientific investigator or other person licensed, registered or otherwise permitted to distribute, dispense, conduct research with respect to or to administer a controlled substance in the course of professional practice or research in this state.

b. A pharmacy, hospital or other institution licensed, registered, or otherwise permitted to distribute, dispense, conduct research with respect to or to administer a controlled substance in the course of professional practice or research in this state.

26. “*Production*” includes the manufacture, planting, cultivation, growing, or harvesting of a controlled substance.

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

28. “*State*”, when applied to a part of the United States, includes any state, district, commonwealth, territory, insular possession, and any area subject to the legal authority of the United States of America.

29. “*Ultimate user*” means a person who lawfully possesses a controlled substance for the person’s own use or for the use of a member of the person’s household or for administering to an animal owned by the person or by a member of the person’s household.

2007 Acts, ch 8, §1; 2007 Acts, ch 10, §§  
Subsections 3 and 17 amended

#### 124.204 Schedule I — substances included.

1. Schedule I shall consist of the drugs and other substances, by whatever official name, common or usual name, chemical name, or brand name designated, listed in this section.

2. *Opiates*. Unless specifically excepted or unless listed in another schedule, any of the following opiates, including their isomers, esters, ethers, salts, and salts of isomers, esters, and ethers, whenever the existence of such isomers, esters, ethers, and salts is possible within the specific chemical designation:

- a. Acetylmethadol.
- b. Allylprodine.
- c. Alphacetylmethadol (except levo-alpha-acetylmethadol also known as levo-alpha-acetylmethadol, levomethadyl acetate, or LAAM).
- d. Alphameprodine.

e. Alphamethadol.

f. Alpha-Methylfentanyl (N-(1-(alpha-methyl-beta-phenyl) ethyl-4-piperidyl) propionanilide; 1-(1-methyl-2-phenylethyl)-4-(N-propanilido)piperidine).

g. Benzethidine.

h. Betacetylmethadol.

i. Betameprodine.

j. Betamethadol.

k. Betaprodine.

l. Clonitazene.

m. Dextromoramide.

n. Difenoxin.

o. Diampromide.

p. Diethylthiambutene.

q. Dimenoxadol.

r. Dimepheptanol.

s. Dimethylthiambutene.

t. Dioxaphetyl butyrate.

u. Dipipanone.

v. Ethylmethylthiambutene.

w. Etonitazene.

x. Etoxeridine.

y. Furethidine.

z. Hydroxypethidine.

aa. Ketobemidone.

ab. Levomoramide.

ac. Levophenacylmorphane.

ad. Morpheridine.

ae. Noracymethadol.

af. Norlevorphanol.

ag. Normethadone.

ah. Norpipanone.

ai. Phenadoxone.

aj. Phenampromide.

ak. Phenomorphan.

al. Phenoperidine.

am. Piritramide.

an. Proheptazine.

ao. Properidine.

ap. Propiram.

aq. Racemoramide.

ar. Tilidine.

as. Trimeperidine.

at. Beta-hydroxy-3-methylfentanyl (other name: N-[1-(2-hydroxy-2-phenethyl)-3-methyl-4-piperidinyl]-N-phenylpropanamide).

au. Acetyl-alpha-methylfentanyl (N-[1-(1-methyl-2-phenethyl)-4-piperidinyl]-N-phenylacetamide).

av. Alpha-methylthiofentanyl (N-[1-methyl-2-(2-thienyl)ethyl-4-piperidinyl]-N-phenylpropanamide).

aw. Beta-hydroxyfentanyl (N-[1-(2-hydroxy-2-phenethyl)-4-piperidinyl]-N-phenylpropanamide).

ax. 3-Methylfentanyl (N-[3-methyl-1-(2-phenylethyl)-4-piperidyl]-N-phenylpropanamide). For purposes of this opiate, “*isomers*” includes optical and geometric isomers.

ay. 3-Methylthiofentanyl (N-[(3-methyl-1-

(2-thienyl)ethyl-4-piperidinyl]-N-phenylpropanamide).

*az.* MPPP (1-methyl-4-phenyl-4-propionoxy-piperidine).

*ba.* Para-fluorofentanyl (N-(4-fluorophenyl)-N-[1-(2-phenethyl)-4-piperidinyl]-propanamide).

*bb.* PEPAP (1-(2-phenethyl)-4-phenyl-4-acetoxypiperidine).

*bc.* Thiofentanyl (N-phenyl-N-[1-(2-thienyl)ethyl-4-piperidinyl]-propanamide).

3. *Opium derivatives.* Unless specifically excepted or unless listed in another schedule, any of the following opium derivatives, their salts, isomers and salts of isomers, whenever the existence of these salts, isomers and salts of isomers is possible within the specific chemical designation:

- a.* Acetorphine.
- b.* Acetyldihydrocodeine.
- c.* Benzylmorphine.
- d.* Codeine methylbromide.
- e.* Codeine-N-Oxide.
- f.* Cyprenorphine.
- g.* Desomorphine.
- h.* Dihydromorphine.
- i.* Etorphine (except hydrochloride salt).
- j.* Heroin.
- k.* Hydromorphinol.
- l.* Methyl-desorphine.
- m.* Methyl-dihydromorphine.
- n.* Morphine methylbromide.
- o.* Morphine methylsulfonate.
- p.* Morphine-N-Oxide.
- q.* Myrophine.
- r.* Nicocodeine.
- s.* Nicomorphine.
- t.* Normorphine.
- u.* Pholcodine.
- v.* Thebacon.
- w.* Drotebanol.

4. *Hallucinogenic substances.* Unless specifically excepted or unless listed in another schedule, any material, compound, mixture, or preparation, which contains any quantity of the following hallucinogenic substances, or which contains any of its salts, isomers, and salts of isomers whenever the existence of such salts, isomers, and salts of isomers is possible within the specific chemical designation (for purposes of this paragraph only, the term “*isomer*” includes the optical, position and geometric isomers):

- a.* 4-bromo-2,5-dimethoxy-amphetamine. Some trade or other names: 4-bromo-2,5-dimethoxy-a-methylphenethylamine; 4-bromo-2,5-DMA.
- b.* 2,5-dimethoxyamphetamine. Some trade or other names: 2,5-dimethoxy-a-methylphenethylamine; 2,5-DMA.
- c.* 4-methoxyamphetamine. Some trade or other names: 4-methoxy-a-methylphenethylamine; paramethoxyamphetamine, PMA.
- d.* 5-methoxy-3,4-methylenedioxy-

amphetamine.

*e.* 4-methyl-2,5-dimethoxy-amphetamine. Some trade or other names: 4-methyl-2,5-dimethoxy-a-methylphenethylamine; “DOM”; and “STP”.

*f.* 3,4-methylenedioxy amphetamine, also known as MDA.

*g.* 3,4,5-trimethoxy amphetamine.

*h.* Bufotenine. Some trade or other names: 3-(B-Dimethylaminoethyl)-5-hydroxyindole; 3-(2-dimethylaminoethyl)-5-indolol; N, N-dimethylserotonin; 5-hydroxy-N, N-dimethyltryptamine; mappine.

*i.* Diethyltryptamine. Some trade and other names: N, N-Diethyltryptamine; DET.

*j.* Dimethyltryptamine. Some trade or other names: DMT.

*k.* Ibogaine. Some trade or other names: 7-Ethyl-6,6B,7,8,9,10,12,13-octahydro-2-methoxy-6,9-methano-5H-pyrido (1',2':1,2)azepino (5,4-b) indole; Tabernanthe iboga.

*l.* Lysergic acid diethylamide.

*m.* Marijuana, except as otherwise provided by rules of the board for medicinal purposes.

*n.* Mescaline.

*o.* Parahexyl. Some trade or other names: 3-Hexyl-1-hydroxy-7,8,9,10-tetrahydro-6,6,9-trimethyl-6H-dibenzo (b,d) pyran; synhexyl.

*p.* Peyote, except as otherwise provided in subsection 8. Meaning all parts of the plant presently classified botanically as *Lophophora williamsii* Lemaire, whether growing or not, the seeds thereof, any extract from any part of such plant, and every compound, manufacture, salt, derivative, mixture, or preparation of such plant, its seeds or extracts.

*q.* N-ethyl-3-piperidyl benzilate.

*r.* N-methyl-3-piperidyl benzilate.

*s.* Psilocybin.

*t.* Psilocyn.

*u.* Tetrahydrocannabinols, except as otherwise provided by rules of the board for medicinal purposes, meaning tetrahydrocannabinols naturally contained in a plant of the genus *Cannabis* (*Cannabis* plant) as well as synthetic equivalents of the substances contained in the *Cannabis* plant, or in the resinous extractives of such plant, and synthetic substances, derivatives, and their isomers with similar chemical structure and pharmacological activity to those substances contained in the plant, such as the following:

(1) 1 cis or trans tetrahydrocannabinol, and their optical isomers.

(2) 6 cis or trans tetrahydrocannabinol, and their optical isomers.

(3) 3,4 cis or trans tetrahydrocannabinol, and their optical isomers. (Since nomenclature of these substances is not internationally standardized, compounds of these structures, regardless of numerical designation of atomic positions covered.)

*v.* Ethylamine analog of phencyclidine.

Some trade or other names: N-ethyl-1-phenylcyclohexylamine, (1-phenylcyclohexyl) ethylamine, N-(1-phenylcyclohexyl) ethylamine, cyclohexamine, PCE.

w. Pyrrolidine analog of phencyclidine.

Some trade or other names: 1-(1-phenylcyclohexyl)-pyrrolidine, PCPy, PHP.

x. Thiophene analog of phencyclidine.

Some trade or other names: 1-(1-(2-thienyl)-cyclohexyl)-piperidine, 2-thienylanalog of phencyclidine, TPCP, TCP.

y. 1-[1-(2-thienyl)cyclohexyl]pyrrolidine.

Some other names: TCPy.

z. 3,4-methylenedioxyamphetamine (MDMA).

aa. 3,4-methylenedioxy-N-ethylamphetamine (also known as N-ethyl-alpha-methyl-3,4(methylenedioxy)phenethylamine, N-ethyl MDA, MDE, MDEA).

ab. N-hydroxy-3,4-methylenedioxyamphetamine (also known as N-hydroxy-alpha-methyl-3,4(methylenedioxy)phenethylamine, and N-hydroxy MDA).

ac. 2,5-dimethoxy-4-ethylamphetamine.

Some trade or other names: DOET.

ad. Alpha-ethyltryptamine. Some trade or other names: etryptamine; Monase; a-ethyl-1H-indole-3-ethanamine; 3-(2-aminobutyl)indole; alpha-ET; and AET.

ae. 4-Bromo-2,5-dimethoxyphenethylamine.

Some trade or other names: 2-(4-bromo-2,5-dimethoxyphenyl)-1-aminoethane; alpha-desmethyl DOB; 2C-B, Nexus.

af. 2,5-dimethoxy-4-(n)-propylthiophenethylamine. Other name: 2C-T-7.

ag. Alpha-methyltryptamine. Other name: AMT.

ah. 5-methoxy-N,N-diisopropyltryptamine. Other name: 5-MeO-DIPT.

5. *Depressants.* Unless specifically excepted or unless listed in another schedule, any material, compound, mixture, or preparation which contains any quantity of the following substances having a depressant effect on the central nervous system, their salts, isomers, and salts of isomers, whenever the existence of these salts, isomers, and salts of isomers is possible within the specific chemical designation:

a. Mecloqualone.

b. Methaqualone.

c. Gamma-hydroxybutyric acid. Some trade or other names: GHB; gamma-hydroxybutyrate; 4-hydroxybutyrate; 4-hydroxybutanoic acid; sodium oxybate; sodium oxybutyrate.

6. *Stimulants.* Unless specifically excepted or unless listed in another schedule, any material, compound, mixture, or preparation which contains any quantity of the following substance having a stimulant effect on the central nervous sys-

tem, including its salts, isomers, and salts of isomers:

a. Fenethylamine.

b. N-ethylamphetamine.

c. (+)-cis-4-methylaminorex ((+)-cis-4,5-dihydro-4-methyl-5-phenyl-2-oxazolamine).

d. N,N-dimethylamphetamine (also known as N,N-alpha-trimethyl-benzeethanamine; N,N-alpha-trimethylphenethylamine).

e. Cathinone. Some trade or other names: 2-amino-1-phenyl-1-propanone, alpha-aminopropiophenone, 2-aminopropiophenone, and norephedrone.

f. Aminorex. Some other names: aminoxaphen; 2-amino-5-phenyl-2-oxazoline; 4,5-dihydro-5-phenyl-2-oxazolamine.

g. Methcathinone, its salts, optical isomers, and salts of optical isomers. Some other names: 2-(methylamino)-propiophenone; alpha-(methylamino)propiophenone; 2-(methylamino)-1-phenylpropan-1-one; alpha-N-methylaminopropiophenone; monomethylpropion; ephedrone; N-methylcathinone; methylcathinone; AL-464; AL-422; AL-463; and UR1432.

h. N-benzylpiperazine. Some other names: BZP, 1-benzylpiperazine.

7. *Exclusions.* This section does not apply to marijuana, tetrahydrocannabinols or chemical derivatives of tetrahydrocannabinol when utilized for medicinal purposes pursuant to rules of the board.

8. *Peyote.* Nothing in this chapter shall apply to peyote when used in bona fide religious ceremonies of the Native American Church; however, persons supplying the product to the church shall register, maintain appropriate records of receipts and disbursements of peyote, and otherwise comply with all applicable requirements of this chapter and rules adopted pursuant thereto.

9. *Other materials.* Any material, compound, mixture, or preparation which contains any quantity of the following substances:

a. N-[1-benzyl-4-piperidyl]-N-phenylpropanamide (benzylfentanyl), its optical isomers, salts and salts of isomers.

b. N-[1-(2-thienyl)methyl-4-piperidyl]-N-phenylpropanamide (thenylfentanyl), its optical isomers, salts and salts of isomers.

2007 Acts, ch 8, §2 - 7; 2007 Acts, ch 10, §9 - 11

See Code editor's note to §29A.28

Subsection 2, unnumbered paragraph 1 amended

Subsection 2, paragraph ax amended

Subsection 4, paragraphs m and u amended

Subsection 4, NEW paragraphs af, ag, and ah

Subsection 5, unnumbered paragraph 1 amended

Subsection 6, NEW paragraph h

Subsection 7 amended

## 124.206 Schedule II — substances included.

1. Schedule II consists of the drugs and other substances, by whatever official name, common or usual name, chemical name, or brand name desig-

nated, listed in this section.

2. *Substances, vegetable origin or chemical synthesis.* Unless specifically excepted or unless listed in another schedule, any of the following substances whether produced directly or indirectly by extraction from substances of vegetable origin, or independently by means of chemical synthesis, or by a combination of extraction and chemical synthesis:

a. Opium and opiate, and any salt, compound, derivative, or preparation of opium or opiate, excluding apomorphine, thebaine-derived butorphanol, dextrophan, nalbuphine, nalmeferone, naloxone, and naltrexone, and their respective salts, but including the following:

- (1) Raw opium.
- (2) Opium extracts.
- (3) Opium fluid.
- (4) Powdered opium.
- (5) Granulated opium.
- (6) Tincture of opium.
- (7) Codeine.
- (8) Ethylmorphine.
- (9) Etorphine hydrochloride.
- (10) Hydrocodone, also known as dihydrocodeinone.
- (11) Hydromorphone, also known as dihydromorphinone.
- (12) Metopon.
- (13) Morphine.
- (14) Oxycodone.
- (15) Oxymorphone.
- (16) Thebaine.
- (17) Dihydroetorphine.

b. Any salt, compound, derivative or preparation thereof which is chemically equivalent or identical with any of the substances referred to in paragraph "a", subparagraph (1), except that these substances shall not include the isoquinoline alkaloids of opium.

c. Opium poppy and poppy straw.

d. Coca leaves and any salt, compound, derivative, or preparation of coca leaves. Decocainized coca leaves or extractions of coca leaves, which extractions do not contain cocaine or ecgonine, are excluded from this paragraph. The following substances and their salts, optical and geometric isomers, derivatives, and salts of derivatives and optical and geometric isomers, and any salt, compound, derivative, or preparation thereof that is chemically equivalent or identical to any of such substances, are included in this paragraph:

- (1) Cocaine.
- (2) Ecgonine.

e. Concentrate of poppy straw (the crude extract of poppy straw in either liquid, solid or powder form which contains the phenanthrene alkaloids of the opium poppy).

3. *Opiates.* Unless specifically excepted or unless listed in another schedule any of the following opiates, including its isomers, esters, ethers, salts and salts of isomers, esters and ethers when-

ever the existence of such isomers, esters, ethers, and salts is possible within the specific chemical designation, dextrophan and levopropoxyphene excepted:

- a. Alphaprodine.
- b. Alfentanil.
- c. Anileridine.
- d. Bezitramide.
- e. Bulk dextropropoxyphene (nondosage forms).
- f. Carfentanil.
- g. Dihydrocodeine.
- h. Diphenoxylate.
- i. Fentanil.
- j. Isomethadone.
- k. Levomethorphan.
- l. Levorphanol.
- m. Metazocine.
- n. Methadone.
- o. Methadone – intermediate, 4-cyano-2-dimethylamino-4,4-diphenyl butane.
- p. Moramide – intermediate, 2-methyl-3-morpholino-1,1-diphenylpropane-carboxylic acid.
- q. Pethidine (meperidine).
- r. Pethidine – intermediate-A, 4-cyano-1-methyl-4-phenylpiperidine.
- s. Pethidine – intermediate-B, ethyl-4-phenylpiperidine-carboxylate.
- t. Pethidine – intermediate-C, 1-methyl-4-phenylpiperidine-4-carboxylic acid.
- u. Phenazocine.
- v. Piminodine.
- w. Racemethorphan.
- x. Racemorphan.
- y. Sufentanil.
- z. Levo-alpha-acetylmethadol. Some other names: levo-alpha-acetylmethadol, levomethadyl acetate, LAAM.

aa. Remifentanil.

4. *Stimulants.* Unless specifically excepted or unless listed in another schedule, any material, compound, mixture, or preparation which contains any quantity of the following substances having a stimulant effect on the central nervous system:

- a. Amphetamine, its salts, optical isomers, and salts of its optical isomers.
- b. Methamphetamine, its salts, isomers, and salts of its isomers.
- c. Phenmetrazine and its salts.
- d. Methylphenidate and its salts.

5. *Depressants.* Unless specifically excepted or unless listed in another schedule, any material, compound, mixture, or preparation which contains any quantity of the following substances having a depressant effect on the central nervous system, including its salts, isomers, and salts of isomers whenever the existence of such salts, isomers, and salts of isomers is possible within the specific chemical designation:

- a. Amobarbital.
- b. Glutethimide.

- c. Pentobarbital.
- d. Phencyclidine.
- e. Secobarbital.

6. *Immediate precursors.* Unless specifically excepted or unless listed in another schedule, any material, compound, mixture, or preparation which contains any quantity of the following substances:

a. Phenylacetone, an immediate precursor to amphetamine and methamphetamine. Some trade or other names: phenyl-2-propanone; P2P; benzyl methyl ketone; methyl benzyl ketone.

b. Immediate precursors to phencyclidine (PCP):

- (1) 1-phenylcyclohexylamine.
- (2) 1-piperidinocyclohexanecarbonitrile (PCC).

7. *Hallucinogenic substances.* Unless specifically excepted or unless listed in another schedule, any material, compound, mixture, or preparation which contains any quantity of the following substances:

a. Marijuana when used for medicinal purposes pursuant to rules of the board.

b. Nabilone [another name for nabilone: (+)-trans-3-(1,1-dimethylheptyl)-6, 6a, 7, 8, 10, 10a-hexahydro-1-hydroxy-6,6-dimethyl-9H-dibenzo [b,d] pyran-9-one].

8. The board, by rule, may except any compound, mixture, or preparation containing any stimulant listed in subsection 4 from the application of all or any part of this chapter if the compound, mixture, or preparation contains one or more active medicinal ingredients not having a stimulant effect on the central nervous system, and if the admixtures are included in such combinations, quantity, proportion, or concentration as to vitiate the potential for abuse of the substances which have a stimulant or depressant effect on the central nervous system.

2007 Acts, ch 8, §§, 9; 2007 Acts, ch 10, §12, 13  
 Subsection 2, paragraphs a and d amended  
 Subsection 6, paragraph a amended  
 Subsection 7, paragraph a amended  
 Subsection 8 amended

### 124.208 Schedule III — substances included.

1. Schedule III shall consist of the drugs and other substances, by whatever official name, common or usual name, chemical name, or brand name designated, listed in this section.

2. *Stimulants.* Unless specifically excepted or unless listed in another schedule, any material, compound, mixture, or preparation which contains any quantity of the following substances having a stimulant effect on the central nervous system, including its salts, isomers (whether optical, position, or geometric), and salts of such isomers whenever the existence of such salts, isomers, and salts of isomers is possible within the specific chemical designation:

- a. Benzphetamine.

- b. Chlorphentermine.

- c. Clortermine.

- d. Phendimetrazine.

3. *Depressants.* Unless specifically excepted or unless listed in another schedule, any material, compound, mixture, or preparation which contains any quantity of the following substances having a depressant effect on the central nervous system:

a. Any compound, mixture or preparation containing amobarbital, secobarbital, pentobarbital or any salt thereof and one or more other active medicinal ingredients which are not listed in any schedules.

b. Any suppository dosage form containing amobarbital, secobarbital, pentobarbital or any salt of any of these drugs and approved by the federal food and drug administration for marketing only as a suppository.

c. Any substance which contains any quantity of a derivative of barbituric acid or any salt thereof.

- d. Chlorhexadol.

- e. Lysergic acid.

- f. Lysergic acid amide.

- g. Methyprylon.

- h. Sulfondiethylmethane.

- i. Sulfonethylmethane.

- j. Sulfonmethane.

k. Tiletamine and zolazepam or any salt thereof, including the following:

(1) Some trade or other names for a tiletamine-zolazepam combination product: Telazol.

(2) Some trade or other names for tiletamine: 2-(ethylamino)-2-(2-thienyl)-cyclohexanone.

(3) Some trade or other names for zolazepam: 4-(2-fluorophenyl)-6,8-dihydro-1,3,8-trimethylpyrazolo-[3,4-e] [1,4]-diazepin-7(1H)-one flupyrazapon.

l. Ketamine, its salts, isomers, and salts of isomers. Some other names for ketamine: (+)-2-(2-chlorophenyl)-2-(methylamino)-cyclohexanone.

m. Any drug product containing gamma-hydroxybutyric acid, including its salts, isomers, and salts of isomers, for which an application is approved under section 505 of the federal Food, Drug, and Cosmetic Act.

- 4. *Nalorphine.*

5. *Narcotic drugs.* Unless specifically excepted or unless listed in another schedule:

a. Any material, compound, mixture, or preparation containing any of the following narcotic drugs, or their salts calculated as the free anhydrous base or alkaloid, in limited quantities as set forth below:

(1) Not more than one point eight grams of codeine per one hundred milliliters or not more than ninety milligrams per dosage unit, with an equal or greater quantity of an isoquinoline alkaloid of opium.

(2) Not more than one point eight grams of cocaine per one hundred milliliters or not more than ninety milligrams per dosage unit, with one or more active, nonnarcotic ingredients in recognized therapeutic amounts.

(3) Not more than three hundred milligrams of dihydrocodeinone (another name: hydrocodone) per one hundred milliliters or not more than fifteen milligrams per dosage unit, with a fourfold or greater quantity of an isoquinoline alkaloid of opium.

(4) Not more than three hundred milligrams of dihydrocodeinone (another name: hydrocodone) per one hundred milliliters or not more than fifteen milligrams per dosage unit, with one or more active, nonnarcotic ingredients in recognized therapeutic amounts.

(5) Not more than one point eight grams of dihydrocodeine per one hundred milliliters or not more than ninety milligrams per dosage unit, with one or more active, nonnarcotic ingredients in recognized therapeutic amounts.

(6) Not more than three hundred milligrams of ethylmorphine per one hundred milliliters or not more than fifteen milligrams per dosage unit, with one or more active, nonnarcotic ingredients in recognized therapeutic amounts.

(7) Not more than five hundred milligrams of opium per one hundred milliliters or per one hundred grams or not more than twenty-five milligrams per dosage unit, with one or more active, nonnarcotic ingredients in recognized therapeutic amounts.

(8) Not more than fifty milligrams of morphine per one hundred milliliters or per one hundred grams, with one or more active, nonnarcotic ingredients in recognized therapeutic amounts.

*b.* Any material, compound, mixture, or preparation containing the narcotic drug buprenorphine, or its salts.

6. *Anabolic steroids.* Unless specifically excepted in subsection 7 or unless listed in another schedule, any material, compound, mixture, or preparation containing any quantity of the following substances, including their salts, esters, and ethers:

*a.* 3[beta],17-dihydroxy-5[alpha]-androstane.

*b.* 3[alpha],17[beta]-dihydroxy-5[alpha]-androstane.

*c.* 5[alpha]-androstane-3,17-dione.

*d.* 1-androstenediol(3[beta],17[beta]-dihydroxy-5[alpha]-androst-1-ene).

*e.* 1-androstenediol (3[alpha],17[beta]-dihydroxy-5[alpha]-androst-1-ene).

*f.* 4-androstenediol (3[beta],17[beta]-dihydroxy-androst-4-ene).

*g.* 5-androstenediol (3[beta],17[beta]-dihydroxy-androst-5-ene).

*h.* 1-androstenedione ([5[alpha]]-androst-1-en-3,17-dione).

*i.* 4-androstenedione (androst-4-en-3,17-dione).

*j.* 5-androstenedione (androst-5-en-3,17-dione).

*k.* Bolasterone (7[alpha],17[alpha]-dimethyl-17[beta]-hydroxyandrost-4-en-3-one).

*l.* Boldenone (17[beta]-hydroxyandrost-1,4-diene-3-one).

*m.* Calusterone (7[beta],17[alpha]-dimethyl-17[beta]-hydroxyandrost-4-en-3-one).

*n.* Clostebol (4-chloro-17[beta]-hydroxyandrost-4-en-3-one).

*o.* Dehydrochloromethyltestosterone (4-chloro-17[beta]-hydroxy-17[alpha]-methylandrost-1,4-dien-3-one).

*p.* [Delta]1-dihydrotestosterone (also known as 1-testosterone)(17[beta]-hydroxy-5[alpha]-androst-1-en-3-one).

*q.* 4-dihydrotestosterone (17[beta]-hydroxyandrost-3-one).

*r.* Drostanolone (17[beta]-hydroxy-2[alpha]-methyl-5[alpha]-androst-3-one).

*s.* Ethylestrenol (17[alpha]-ethyl-17[beta]-hydroxyestr-4-ene).

*t.* Fluoxymesterone (9-fluoro-17[alpha]-methyl-11[beta],17[beta]-dihydroxyandrost-4-en-3-one).

*u.* Formebolone (2-formyl-17[alpha]-methyl-11[alpha],17[beta]-dihydroxyandrost-1,4-dien-3-one).

*v.* Furazabol (17[alpha]-methyl-17[beta]-hydroxyandrostano[2,3-c]-furan).

*w.* 13[beta]-ethyl-17[beta]-hydroxygon-4-en-3-one.

*x.* 4-hydroxytestosterone (4,17[beta]-dihydroxy-androst-4-en-3-one).

*y.* 4-hydroxy-19-nortestosterone (4,17[beta]-dihydroxy-estr-4-en-3-one).

*z.* Mestanolone (17[alpha]-methyl-17[beta]-hydroxy-5[alpha]-androst-3-one).

*aa.* Mesterolone (1[alpha]-methyl-17[beta]-hydroxy-[5[alpha]]-androst-3-one).

*ab.* Methandienone (17[alpha]-methyl-17[beta]-hydroxyandrost-1,4-dien-3-one).

*ac.* Methandriol (17[alpha]-methyl-3[beta],17[beta]-dihydroxyandrost-5-ene).

*ad.* Methenolone (1-methyl-17[beta]-hydroxy-5[alpha]-androst-1-en-3-one).

*ae.* 17[alpha]-methyl-3[beta],17[beta]-dihydroxy-5[alpha]-androstane.

*af.* 17[alpha]-methyl-3[alpha],17[beta]-dihydroxy-5[alpha]-androstane.

*ag.* 17[alpha]-methyl-3[beta],17[beta]-dihydroxyandrost-4-ene.

*ah.* 17[alpha]-methyl-4-hydroxynandrolone (17[alpha]-methyl-4-hydroxy-17[beta]-hydroxyestr-4-en-3-one).

*ai.* Methyldienolone (17[alpha]-methyl-17[beta]-hydroxyestra-4,9(10)-dien-3-one).

*aj.* Methyltrienolone (17[alpha]-methyl-17[beta]-hydroxyestra-4,9-11-trien-3-one).

*ak.* Methyltestosterone (17[alpha]-methyl-17[beta]-hydroxyandrost-4-en-3-one).

*al.* Mibolerone (7[alpha],17[alpha]-dimethyl-

17[beta]-hydroxyestr-4-en-3-one).

*am.* 17[alpha]-methyl-[Delta]1-dihydrotestosterone (17b[beta]-hydroxy-17[alpha]-methyl-5[alpha]-androst-1-en-3-one) (also known as 17-[alpha]-methyl-1-testosterone).

*an.* Nandrolone (17[beta]-hydroxyestr-4-en-3-one).

*ao.* 19-nor-4-androstenediol (3[beta],17[beta]-dihydroxyestr-4-ene).

*ap.* 19-nor-4-androstenediol (3[alpha],17[beta]-dihydroxyestr-4-ene).

*aq.* 19-nor-5-androstenediol (3[beta],17[beta]-dihydroxyestr-5-ene).

*ar.* 19-nor-5-androstenediol (3[alpha],17[beta]-dihydroxyestr-5-ene).

*as.* 19-nor-4-androstenedione (estr-4-en-3,17-dione).

*at.* 19-nor-5-androstenedione (estr-5-en-3,17-dione).

*au.* Norbolethone (13[beta],17[alpha]-diethyl-17[beta]-hydroxygon-4-en-3-one).

*av.* Norclostebol (4-chloro-17[beta]-hydroxyestr-4-en-3-one).

*aw.* Norethandrolone (17[alpha]-ethyl-17[beta]-hydroxyestr-4-en-3-one).

*ax.* Normethandrolone (17[alpha]-methyl-17[beta]-hydroxyestr-4-en-3-one).

*ay.* Oxandrolone (17[alpha]-methyl-17[beta]-hydroxy-2-oxa-[5[alpha]]-androstan-3-one).

*az.* Oxymesterone (17[alpha]-methyl-4,17[beta]-dihydroxyandrost-4-en-3-one).

*ba.* Oxymetholone (17[alpha]-methyl-2-hydroxymethylene-17[beta]-hydroxy-[5[alpha]]-androstan-3-one).

*bb.* Stanozolol (17[alpha]-methyl-17[beta]-hydroxy-[5[alpha]]-androst-2-eno[3,2-c]-pyrazole).

*bc.* Stenbolone (17[beta]-hydroxy-2-methyl-[5[alpha]]-androst-1-en-3-one).

*bd.* Testolactone (13-hydroxy-3-oxo-13,17-secoandrosta-1,4-dien-17-oic acid lactone).

*be.* Testosterone (17[beta]-hydroxyandrost-4-en-3-one).

*bf.* Tetrahydrogestrinone (13[beta],17[alpha]-diethyl-17[beta]-hydroxygon-4,9,11-trien-3-one).

*bg.* Trenbolone (17[beta]-hydroxyestr-4,9,11-trien-3-one).

7. *Exclusions — anabolic steroids.* This section shall not apply to an anabolic steroid that is expressly intended for administration through implants to cattle or other nonhuman species and that has been approved for such administration. A person who prescribes, dispenses, or distributes such steroid for human use shall be considered to have prescribed, dispensed, or distributed an anabolic steroid subject to this section. This section shall not apply to estrogens, progestins, corticosteroids, or dehydroepiandrosterone.

8. The board by rule may except any com-

pound, mixture, or preparation containing any stimulant or depressant substance listed in subsections 2 and 3 of this section from the application of all or any part of this chapter if the compound, mixture, or preparation contains one or more active medicinal ingredients not having a stimulant or depressant effect on the central nervous system, and if the admixtures are included therein in such combinations, quantity, proportion, or concentration as to vitiate the potential for abuse of the substances which have a stimulant or depressant effect on the central nervous system.

9. *Hallucinogenic substances.* Dronabinol (synthetic) in sesame oil and encapsulated in a soft gelatin capsule in a United States food and drug administration approved product. Some other names for dronabinol: (6aR-trans)-6a, 7, 8, 10a-tetrahydro-6, 6, 9-trimethyl-3-pentyl-6H-dibenzo [b,d] pyran-1-ol, or (-)-delta-9-(trans)-tetrahydrocannabinol.

2007 Acts, ch 8, §10 – 12

Subsection 5, paragraph a, subparagraph (5) amended

Subsection 6 stricken and rewritten

NEW subsection 7 and former subsections 7 and 8 renumbered as 8 and

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#### 124.210 Schedule IV — substances included.

1. Schedule IV shall consist of the drugs and other substances, by whatever official name, common or usual name, chemical name, or brand name designated, listed in this section.

2. *Narcotic drugs.* Unless specifically excepted or unless listed in another schedule, any material, compound, mixture, or preparation containing any of the following narcotic drugs, or their salts calculated as the free anhydrous base or alkaloid, in limited quantities as set forth below:

*a.* Not more than one milligram of difenoxin and not less than twenty-five micrograms of atropine sulfate per dosage unit.

*b.* Dextropropoxyphene (alpha-(+)-4-dimethylamino-1,2-diphenyl-3-methyl-2-propionoxybutane).

3. *Depressants.* Unless specifically excepted or unless listed in another schedule, any material, compound, mixture, or preparation which contains any quantity of the following substances, including its salts, isomers, and salts of isomers whenever the existence of such salts, isomers, and salts of isomers is possible within the specific chemical designation:

*a.* Alprazolam.

*b.* Barbitol.

*c.* Bromazepam.

*d.* Camazepam.

*e.* Chloral betaine.

*f.* Chloral hydrate.

*g.* Chlordiazepoxide.

*h.* Clobazam.

*i.* Clonazepam.

*j.* Clorazepate.



- k. Clotiazepam.
- l. Cloxazolam.
- m. Delorazepam.
- n. Diazepam.
- o. Dichloralphenazone.
- p. Estazolam.
- q. Ethchlorvynol.
- r. Ethinamate.
- s. Ethyl Loflazepate.
- t. Fludiazepam.
- u. Flunitrazepam.
- v. Flurazepam.
- w. Halazepam.
- x. Haloxazolam.
- y. Ketazolam.
- z. Loprazolam.
- aa. Lorazepam.
- ab. Lormetazepam.
- ac. Mebutamate.
- ad. Medazepam.
- ae. Meproamate.
- af. Methohexital.
- ag. Methylphenobarbital (mephobarbital).
- ah. Midazolam.
- ai. Nimetazepam.
- aj. Nitrazepam.
- ak. Nordiazepam.
- al. Oxazepam.
- am. Oxazolam.
- an. Paraldehyde.
- ao. Petrichloral.
- ap. Phenobarbital.
- aq. Pinazepam.
- ar. Prazepam.
- as. Quazepam.
- at. Temazepam.
- au. Tetrazepam.
- av. Triazolam.
- aw. Zaleplon.
- ax. Zolpidem.
- ay. Zopiclone.

4. *Fenfluramine*. Any material, compound, mixture, or preparation which contains any quantity of fenfluramine, including its salts, isomers (whether optical, position, or geometric), and salts of such isomers, whenever the existence of such salts, isomers, and salts of isomers is possible.

5. *Stimulants*. Unless specifically excepted or unless listed in another schedule, any material, compound, mixture, or preparation which contains any quantity of the following substances having a stimulant effect on the central nervous system, including its salts, isomers and salts of isomers:

- a. Cathine [(+)-norpseudoephedrine].
- b. Diethylpropion.
- c. Fencamfamin.
- d. Fenproporex.
- e. Mazindol.
- f. Mefenorex.
- g. Pemoline (including organometallic

complexes and chelates thereof).

- h. Phentermine.
- i. Pipradrol.
- j. SPA ((-)-1-dimethylamino-1,2-diphenylethane).
- k. Modafinil.
- l. Sibutramine.

6. *Other substances*. Unless specifically excepted or unless listed in another schedule, any material, compound, mixture or preparation which contains any quantity of the following substances, including its salts:

- a. Pentazocine.
- b. Butorphanol (including its optical isomers).

2007 Acts, ch 8, §13, 14  
Subsection 3, NEW paragraph ay  
Subsection 4 amended

#### 124.212 Schedule V — substances included.

1. Schedule V shall consist of the drugs and other substances, by whatever official name, common or usual name, chemical name, or brand name designated, listed in this section.

2. Narcotic drugs containing nonnarcotic active medicinal ingredients. Any compound, mixture, or preparation containing any of the following narcotic drugs, or their salts calculated as the free anhydrous base or alkaloid, in limited quantities as set forth below, which shall include one or more nonnarcotic active medicinal ingredients in sufficient proportion to confer upon the compound, mixture, or preparation valuable medicinal qualities other than those possessed by narcotic drugs alone:

a. Not more than two hundred milligrams of codeine per one hundred milliliters or per one hundred grams.

b. Not more than one hundred milligrams of dihydrocodeine per one hundred milliliters or per one hundred grams.

c. Not more than one hundred milligrams of ethylmorphine per one hundred milliliters or per one hundred grams.

d. Not more than two point five milligrams of diphenoxylate and not less than twenty-five micrograms of atropine sulfate per dosage unit.

e. Not more than one hundred milligrams of opium per one hundred milliliters or per one hundred grams.

f. Not more than point five milligram of difenoxin and not less than twenty-five micrograms of atropine sulfate per dosage unit.

3. *Stimulants*. Unless specifically exempted or excluded or unless listed in another schedule, any material, compound, mixture, or preparation which contains any quantity of pyrovalerone, including its salts, isomers, and salts of isomers.

4. *Precursors to amphetamine and methamphetamine*. Unless specifically excepted in paragraph "d" or "e" or listed in another schedule, any material, compound, mixture, or preparation

which contains any quantity of the following precursors to amphetamine or methamphetamine, including their salts, optical isomers, and salts of their optical isomers:

- a. Ephedrine.
- b. Phenylpropanolamine.
- c. Pseudoephedrine. A person shall present a government-issued photo identification card when purchasing a pseudoephedrine product from a pharmacy. A person shall not purchase more than seven thousand five hundred milligrams of pseudoephedrine, either separately or collectively, within a thirty-day period from a pharmacy, unless the person has a prescription for a pseudoephedrine product in excess of that quantity.

d. Any product that contains three hundred sixty milligrams or less of pseudoephedrine, its salts, optical isomers, and salts of its optical isomers, which is in liquid, liquid capsule, or liquid-filled gel capsule form, is excepted from this schedule and may be warehoused, distributed, and sold over the counter pursuant to section 126.23A.

e. A pseudoephedrine product warehoused by a distributor located in this state which is warehoused for export to a retailer outside this state is excepted from this schedule. A distributor warehousing and exporting a pseudoephedrine product shall register with the board and comply with any rules adopted by the board and relating to the diversion of pseudoephedrine products from legitimate commerce.

5. *Depressants.* Unless specifically exempted or excluded or unless listed in another schedule, any material, compound, mixture, or preparation that contains any quantity of the following substance having a depressant effect on the central nervous system, including its salts: pregabalin [(S)-3-(aminomethyl)-5-methylhexanoic acid].

2007 Acts, ch 8, §15, 16  
 Subsection 3 amended  
 NEW subsection 5

**124.308 Prescriptions.**

1. Except when dispensed directly by a practitioner, other than a pharmacy, to an ultimate user, no controlled substance in schedule II may be dispensed without the written prescription of a practitioner or without the electronic or facsimile prescription of a practitioner in accordance with subsection 2.

2. A practitioner, other than a pharmacy, or a practitioner's authorized agent may transmit an electronic prescription or facsimile prescription to a pharmacy for a schedule II controlled substance, provided that the prescription complies with section 155A.27 and provided that the original signed prescription is presented to the pharmacist prior to the dispensing of the schedule II controlled substance. If permitted by federal law, and in accordance with federal requirements, the electronic or facsimile prescription shall serve as the original

signed prescription and the practitioner shall not provide the patient or the patient's authorized representative with a signed, written prescription.

3. In emergency situations, as defined by rule of the board, schedule II drugs may be dispensed upon electronic, facsimile, or oral prescription of a practitioner, reduced promptly to writing and filed by the pharmacy. Prescriptions shall be retained in conformity with the requirements of section 124.306. No prescription for a schedule II substance may be refilled.

4. Except when dispensed directly by a practitioner, other than a pharmacy, to an ultimate user, a controlled substance included in schedule III or IV, which is a prescription drug as determined under chapter 155A, shall not be dispensed without a written or oral prescription of a practitioner or without an electronic or facsimile prescription in accordance with subsection 5. The prescription may not be filled or refilled more than six months after the date thereof or be refilled more than five times, unless renewed by the practitioner.

5. A practitioner, other than a pharmacy, or the practitioner's authorized agent may transmit an electronic prescription or a facsimile prescription to a pharmacy for a schedule III, IV, or V controlled substance, provided that the prescription complies with section 155A.27, and provided that the original signed prescription is presented to the pharmacist prior to the dispensing of the controlled substance, or if the prescription is electronic, an oral prescription or a facsimile prescription is provided. If permitted by federal law, and in accordance with federal requirements, the electronic or facsimile prescription shall serve as the original signed prescription and the practitioner shall not provide the patient or the patient's authorized representative with a signed, written prescription.

6. A controlled substance included in schedule V shall not be distributed or dispensed other than for a medical purpose.

2007 Acts, ch 8, §17  
 See §147.107, 205.3  
 Subsection 3 amended

**124.401 Prohibited acts — manufacturers — possessors — counterfeit substances — simulated controlled substances — penalties.**

1. Except as authorized by this chapter, it is unlawful for any person to manufacture, deliver, or possess with the intent to manufacture or deliver, a controlled substance, a counterfeit substance, or a simulated controlled substance, or to act with, enter into a common scheme or design with, or conspire with one or more other persons to manufacture, deliver, or possess with the intent to manufacture or deliver a controlled substance, a counterfeit substance, or a simulated controlled substance.

a. Violation of this subsection, with respect to

the following controlled substances, counterfeit substances, or simulated controlled substances is a class "B" felony, and notwithstanding section 902.9, subsection 2, shall be punished by confinement for no more than fifty years and a fine of not more than one million dollars:

(1) More than one kilogram of a mixture or substance containing a detectable amount of heroin.

(2) More than five hundred grams of a mixture or substance containing a detectable amount of any of the following:

(a) Coca leaves, except coca leaves and extracts of coca leaves from which cocaine, ecgonine, and derivatives of ecgonine and their salts have been removed.

(b) Cocaine, its salts, optical and geometric isomers, or salts of isomers.

(c) Ecgonine, its derivatives, their salts, isomers, or salts of isomers.

(d) Any compound, mixture, or preparation which contains any quantity of any of the substances referred to in subparagraph subdivisions (a) through (c).

(3) More than fifty grams of a mixture or substance described in subparagraph (2) which contains cocaine base.

(4) More than one hundred grams of phencyclidine (PCP) or one kilogram or more of a mixture or substance containing a detectable amount of phencyclidine (PCP).

(5) More than ten grams of a mixture or substance containing a detectable amount of lysergic acid diethylamide (LSD).

(6) More than one thousand kilograms of a mixture or substance containing a detectable amount of marijuana.

(7) More than five kilograms of a mixture or substance containing a detectable amount of any of the following:

(a) Methamphetamine, its salts, isomers, or salts of isomers.

(b) Amphetamine, its salts, isomers, and salts of isomers.

(c) Any compound, mixture, or preparation which contains any quantity of any of the substances referred to in subparagraph subdivisions (a) and (b).

b. Violation of this subsection with respect to the following controlled substances, counterfeit substances, or simulated controlled substances is a class "B" felony, and in addition to the provisions of section 902.9, subsection 2, shall be punished by a fine of not less than five thousand dollars nor more than one hundred thousand dollars:

(1) More than one hundred grams but not more than one kilogram of a mixture or substance containing a detectable amount of heroin.

(2) More than one hundred grams but not more than five hundred grams of any of the following:

(a) Coca leaves, except coca leaves and ex-

tracts of coca leaves from which cocaine, ecgonine, and derivatives of ecgonine and their salts have been removed.

(b) Cocaine, its salts, optical and geometric isomers, or salts of isomers.

(c) Ecgonine, its derivatives, their salts, isomers, or salts of isomers.

(d) Any compound, mixture, or preparation which contains any quantity of any of the substances referred to in subparagraph subdivisions (a) through (c).

(3) More than ten grams but not more than fifty grams of a mixture or substance described in subparagraph (2) which contains cocaine base.

(4) More than ten grams but not more than one hundred grams of phencyclidine (PCP) or more than one hundred grams but not more than one kilogram of a mixture or substance containing a detectable amount of phencyclidine (PCP).

(5) Not more than ten grams of a mixture or substance containing a detectable amount of lysergic acid diethylamide (LSD).

(6) More than one hundred kilograms but not more than one thousand kilograms of marijuana.

(7) More than five grams but not more than five kilograms of methamphetamine, its salts, isomers, or salts of isomers, or analogs of methamphetamine, or any compound, mixture, or preparation which contains any quantity or detectable amount of methamphetamine, its salts, isomers, or salts of isomers, or analogs of methamphetamine.

(8) More than five grams but not more than five kilograms of amphetamine, its salts, isomers, or salts of isomers, or any compound, mixture, or preparation which contains any quantity or detectable amount of amphetamine, its salts, isomers, or salts of isomers.

c. Violation of this subsection with respect to the following controlled substances, counterfeit substances, or simulated controlled substances is a class "C" felony, and in addition to the provisions of section 902.9, subsection 4, shall be punished by a fine of not less than one thousand dollars nor more than fifty thousand dollars:

(1) One hundred grams or less of a mixture or substance containing a detectable amount of heroin.

(2) One hundred grams or less of any of the following:

(a) Coca leaves, except coca leaves and extracts of coca leaves from which cocaine, ecgonine, and derivatives of ecgonine and their salts have been removed.

(b) Cocaine, its salts, optical and geometric isomers, or salts of isomers.

(c) Ecgonine, its derivatives, their salts, isomers, or salts of isomers.

(d) Any compound, mixture, or preparation which contains any quantity of any of the substances referred to in subparagraph subdivisions (a) through (c).

(3) Ten grams or less of a mixture or substance described in subparagraph (2) which contains cocaine base.

(4) Ten grams or less of phencyclidine (PCP) or one hundred grams or less of a mixture or substance containing a detectable amount of phencyclidine (PCP).

(5) More than fifty kilograms but not more than one hundred kilograms of marijuana.

(6) Five grams or less of methamphetamine, its salts, isomers, or salts of isomers, or analogs of methamphetamine, or any compound, mixture, or preparation which contains any quantity or detectable amount of methamphetamine, its salts, isomers, or salts of isomers, or analogs of methamphetamine.

(7) Five grams or less of amphetamine, its salts, isomers, or salts of isomers, or any compound, mixture, or preparation which contains any quantity or detectable amount of amphetamine, its salts, isomers, or salts of isomers.

(8) Any other controlled substance, counterfeit substance, or simulated controlled substance classified in schedule I, II, or III.

*d.* Violation of this subsection, with respect to any other controlled substances, counterfeit substances, or simulated controlled substances classified in schedule IV or V is an aggravated misdemeanor. However, violation of this subsection involving fifty kilograms or less of marijuana or involving flunitrazepam is a class "D" felony.

*e.* A person in the immediate possession or control of a firearm while participating in a violation of this subsection shall be sentenced to two times the term otherwise imposed by law, and no such judgment, sentence, or part thereof shall be deferred or suspended.

*f.* A person in the immediate possession or control of an offensive weapon, as defined in section 724.1, while participating in a violation of this subsection, shall be sentenced to three times the term otherwise imposed by law, and no such judgment, sentence, or part thereof shall be deferred or suspended.

2. If the same person commits two or more acts which are in violation of subsection 1 and the acts occur in approximately the same location or time period so that the acts can be attributed to a single scheme, plan, or conspiracy, the acts may be considered a single violation and the weight of the controlled substances, counterfeit substances, or simulated controlled substances involved may be combined for purposes of charging the offender.

3. It is unlawful for any person to sell, distribute, or make available any product containing ephedrine, its salts, optical isomers, salts of optical isomers, or analogs of ephedrine, or pseudoephedrine, its salts, optical isomers, salts of optical isomers, or analogs of pseudoephedrine, if the person knows, or should know, that the product may be used as a precursor to any illegal substance or an intermediary to any controlled substance. A

person who violates this subsection commits a serious misdemeanor.

4. A person who possesses any product containing any of the following commits a class "D" felony, if the person possesses with the intent that the product be used to manufacture any controlled substance:

*a.* Ephedrine, its salts, optical isomers, salts of optical isomers, or analogs of ephedrine.

*b.* Pseudoephedrine, its salts, optical isomers, salts of optical isomers, or analogs of pseudoephedrine.

*c.* Ethyl ether.

*d.* Anhydrous ammonia.

*e.* Red phosphorous.

*f.* Lithium.

*g.* Iodine.

*h.* Thionyl chloride.

*i.* Chloroform.

*j.* Palladium.

*k.* Perchloric acid.

*l.* Tetrahydrofuran.

*m.* Ammonium chloride.

*n.* Magnesium sulfate.

5. It is unlawful for any person knowingly or intentionally to possess a controlled substance unless such substance was obtained directly from, or pursuant to, a valid prescription or order of a practitioner while acting in the course of the practitioner's professional practice, or except as otherwise authorized by this chapter. Any person who violates this subsection is guilty of a serious misdemeanor for a first offense. A person who commits a violation of this subsection and who has previously been convicted of violating this chapter or chapter 124A, 124B, or 453B is guilty of an aggravated misdemeanor. A person who commits a violation of this subsection and has previously been convicted two or more times of violating this chapter or chapter 124A, 124B, or 453B is guilty of a class "D" felony.

If the controlled substance is marijuana, the punishment shall be by imprisonment in the county jail for not more than six months or by a fine of not more than one thousand dollars, or by both such fine and imprisonment for a first offense. If the controlled substance is marijuana and the person has been previously convicted of a violation of this subsection in which the controlled substance was marijuana, the punishment shall be as provided in section 903.1, subsection 1, paragraph "b". If the controlled substance is marijuana and the person has been previously convicted two or more times of a violation of this subsection in which the controlled substance was marijuana, the person is guilty of an aggravated misdemeanor.

All or any part of a sentence imposed pursuant to this subsection may be suspended and the person placed upon probation upon such terms and conditions as the court may impose including the active participation by such person in a drug treat-

ment, rehabilitation or education program approved by the court.

If a person commits a violation of this subsection, the court shall order the person to serve a term of imprisonment of not less than forty-eight hours. Any sentence imposed may be suspended, and the court shall place the person on probation upon such terms and conditions as the court may impose. If the person is not sentenced to confinement under the custody of the director of the department of corrections, the terms and conditions of probation shall require submission to random drug testing. If the person fails a drug test, the court may transfer the person's placement to any appropriate placement permissible under the court order.

If the controlled substance is amphetamine, its salts, isomers, or salts of its isomers, or methamphetamine, its salts, isomers, or salts of its isomers, the court shall order the person to serve a term of imprisonment of not less than forty-eight hours. Any sentence imposed may be suspended, and the court shall place the person on probation upon such terms and conditions as the court may impose. The court may place the person on intensive probation. However, the terms and conditions of probation shall require submission to random drug testing. If the person fails a drug test, the court may transfer the person's placement to any appropriate placement permissible under the court order.

2007 Acts, ch 8, §18; 2007 Acts, ch 126, §24

See Code editor's note to §29A.28

Subsection 1, paragraph b, subparagraph (2), subparagraph subdivisions (a) – (c) amended

**124.401E Certain penalties for manufacturing or delivery of amphetamine or methamphetamine.**

1. If a court sentences a person for the person's first conviction for delivery or possession with intent to deliver a controlled substance under section 124.401, subsection 1, paragraph "c", and if the controlled substance is amphetamine, its salts, isomers, or salts of its isomers, or methamphetamine, its salts, isomers, or salts of its isomers, the court may suspend the sentence, and the court may order the person to complete a drug court program if a drug court has been established in the county in which the person is sentenced or order the person to be assigned to a community-based correctional facility for a period of one year or until maximum benefits are achieved, whichever is earlier.

2. If a court sentences a person for a conviction of manufacturing of a controlled substance under section 124.401, subsection 1, paragraph "c", and if the controlled substance is amphetamine, its salts, isomers, or salts of its isomers, or methamphetamine, its salts, isomers, or salts of its isomers, the court may suspend the sentence, and the court may order the person to complete a drug

court program if a drug court has been established in the county in which the person is sentenced, or order the person to be assigned to a community-based correctional facility for a period of one year or until maximum benefits are achieved, whichever is earlier.

3. If a court sentences a person for the person's second or subsequent conviction for delivery or possession with intent to deliver a controlled substance under section 124.401, subsection 1, and the controlled substance is amphetamine, its salts, isomers, or salts of its isomers, or methamphetamine, its salts, isomers, or salts of its isomers, the court, in addition to any other authorized penalties, shall sentence the person to imprisonment in accordance with section 124.401, subsection 1, and the person shall serve the minimum period of confinement as required by section 124.413.

Continuation of drug court pilot programs; 2002 Acts, ch 1174, §1; 2002 Acts, 2nd Ex, ch 1003, §157, 171, 172; 2003 Acts, ch 183, §1; 2004 Acts, ch 1176, §1; 2005 Acts, ch 176, §1; 2006 Acts, ch 1181, §1; 2007 Acts, ch 208, §1; 2007 Acts, ch 218, §32

Juvenile drug court programs; 2007 Acts, ch 218, §18, 57, 67  
Section not amended; footnotes revised

**124.552 Information reporting.**

1. Each licensed pharmacy that dispenses controlled substances identified pursuant to section 124.554, subsection 1, paragraph "g", to patients in the state, and each licensed pharmacy located in the state that dispenses such controlled substances identified pursuant to section 124.554, subsection 1, paragraph "g", to patients inside or outside the state, unless specifically excepted in this section or by rule, shall submit the following prescription information to the program:

- a. Pharmacy identification.
- b. Patient identification.
- c. Prescribing practitioner identification.
- d. The date the prescription was issued by the prescribing practitioner.
- e. The date the prescription was dispensed.
- f. An indication of whether the prescription dispensed is new or a refill.
- g. Identification of the drug dispensed.
- h. Quantity of the drug dispensed.
- i. The number of days' supply of the drug dispensed.
- j. Serial or prescription number assigned by the pharmacy.
- k. Type of payment for the prescription.
- l. Other information identified by the board and advisory council by rule.

2. Information shall be submitted electronically in a secure format specified by the board unless the board has granted a waiver and approved an alternate secure format.

3. Information shall be timely transmitted as designated by the board and advisory council by rule, unless the board grants an extension. The board may grant an extension if either of the following occurs:

a. The pharmacy suffers a mechanical or electronic failure, or cannot meet the deadline established by the board for other reasons beyond the pharmacy's control.

b. The board is unable to receive electronic submissions.

4. This section shall not apply to a prescribing practitioner furnishing, dispensing, supplying, or administering drugs to the prescribing practitioner's patient, or to dispensing by a licensed pharmacy for the purposes of inpatient hospital care, inpatient hospice care, or long-term residential facility patient care.

2007 Acts, ch 126, §25, 26  
For future repeal of this section effective June 30, 2009, see 2006 Acts, ch 1147, §10  
Subsection 1, paragraphs c and d amended  
Subsection 4 amended

**124.553 Information access.**

1. The board may provide information from the program to the following:

a. (1) A pharmacist or prescribing practitioner who requests the information and certifies in a form specified by the board that it is for the purpose of providing medical or pharmaceutical care to a patient of the pharmacist or prescribing practitioner. Neither a pharmacist nor a prescribing practitioner may delegate program information access to another individual.

(2) Notwithstanding subparagraph (1), a prescribing practitioner may delegate program information access to another licensed health care professional only in emergency situations where the patient would be placed in greater jeopardy if the prescribing practitioner was required to access the information personally.

b. An individual who requests the individual's own program information in accordance with the procedure established in rules of the board and advisory council adopted under section 124.554.

c. Pursuant to an order, subpoena, or other means of legal compulsion for access to or release of program information that is issued based upon a determination of probable cause in the course of a specific investigation of a specific individual.

2. The board shall maintain a record of each person that requests information from the program. Pursuant to rules adopted by the board and advisory council under section 124.554, the board may use the records to document and report statistical information.

3. Information contained in the program and any information obtained from it, and information contained in the records of requests for information from the program, is privileged and strictly confidential information. Such information is a confidential public record pursuant to section 22.7, and is not subject to discovery, subpoena, or other means of legal compulsion for release except as provided in this division. Information from the program shall not be released, shared with an agency or institution, or made public except as

provided in this division.

4. Information collected for the program shall be retained in the program for four years from the date of dispensing. The information shall then be destroyed.

5. A pharmacist or other dispenser making a report to the program reasonably and in good faith pursuant to this division is immune from any liability, civil, criminal, or administrative, which might otherwise be incurred or imposed as a result of the report.

6. Nothing in this section shall require a pharmacist or prescribing practitioner to obtain information about a patient from the program. A pharmacist or prescribing practitioner does not have a duty and shall not be held liable in damages to any person in any civil or derivative criminal or administrative action for injury, death, or loss to person or property on the basis that the pharmacist or prescribing practitioner did or did not seek or obtain or use information from the program. A pharmacist or prescribing practitioner acting reasonably and in good faith is immune from any civil, criminal, or administrative liability that might otherwise be incurred or imposed for requesting or receiving or using information from the program.

7. The board shall not charge a fee to a pharmacy, pharmacist, or prescribing practitioner for the establishment, maintenance, or administration of the program, including costs for forms required to submit information to or access information from the program, except that the board may charge a fee to an individual who requests the individual's own program information. A fee charged pursuant to this subsection shall not exceed the actual cost of providing the requested information and shall be considered a repayment receipt as defined in section 8.2.

2007 Acts, ch 8, §19; 2007 Acts, ch 126, §27, 28  
For future repeal of this section effective June 30, 2009, see 2006 Acts, ch 1147, §10  
Subsection 1, paragraph a amended  
Subsections 3, 6, and 7 amended

**124.554 Rules and reporting.**

1. The board and advisory council shall jointly adopt rules in accordance with chapter 17A to carry out the purposes of, and to enforce the provisions of, this division. The rules shall include but not be limited to the development of procedures relating to:

a. Identifying each patient about whom information is entered into the program.

b. An electronic format for the submission of information from pharmacies.

c. A waiver to submit information in another format for a pharmacy unable to submit information electronically.

d. An application by a pharmacy for an extension of time for transmitting information to the program.

e. The submission by an authorized requestor of a request for information and a procedure for

the verification of the identity of the requestor.

f. Use by the board or advisory council of the program request records required by section 124.553, subsection 2, to document and report statistical information.

g. Including all schedule II controlled substances and those substances in schedules III and IV that the advisory council and board determine can be addictive or fatal if not taken under the proper care and direction of a prescribing practitioner.

h. Access by a pharmacist or prescribing practitioner to information in the program pursuant to a written agreement with the board and advisory council.

i. The correction or deletion of erroneous information in the program.

2. Beginning January 1, 2007, and annually by January 1 thereafter, the board and advisory council shall present to the general assembly and the governor a report prepared consistent with section 124.555, subsection 3, paragraph “d”, which shall include but not be limited to the following:

a. The cost to the state of implementing and maintaining the program.

b. Information from pharmacies, prescribing practitioners, the board, the advisory council, and others regarding the benefits or detriments of the program.

c. Information from pharmacies, prescribing practitioners, the board, the advisory council, and others regarding the board’s effectiveness in providing information from the program.

2007 Acts, ch 126, §29, 30

For future repeal of this section effective June 30, 2009, see 2006 Acts, ch 1147, §10

Subsection 1, paragraphs g and h amended

Subsection 2, paragraphs b and c amended

#### **124.555 Advisory council established.**

An advisory council shall be established to provide oversight to the board and the program and to manage program activities. The board and advisory council shall jointly adopt rules specifying the duties and activities of the advisory council and related matters.

1. The council shall consist of eight members appointed by the governor. The members shall include three licensed pharmacists, four physicians licensed under chapter 148, 150, or 150A, and one licensed prescribing practitioner who is not a physician. The governor shall solicit recommendations for council members from Iowa health professional licensing boards, associations, and societies. The license of each member appointed to and serving on the advisory council shall be current and in good standing with the professional’s licensing board.

2. The council shall advance the goals of the program, which include identification of misuse and diversion of controlled substances identified pursuant to section 124.554, subsection 1, para-

graph “g”, and enhancement of the quality of health care delivery in this state.

3. Duties of the council shall include but not be limited to the following:

a. Ensuring the confidentiality of the patient, prescribing practitioner, and dispensing pharmacist and pharmacy.

b. Respecting and preserving the integrity of the patient’s treatment relationship with the patient’s health care providers.

c. Encouraging and facilitating cooperative efforts among health care practitioners and other interested and knowledgeable persons in developing best practices for prescribing and dispensing controlled substances and in educating health care practitioners and patients regarding controlled substance use and abuse.

d. Making recommendations regarding the continued benefits of maintaining the program in relationship to cost and other burdens to the patient, prescribing practitioner, pharmacist, and the board. The council’s recommendations shall be included in reports required by section 124.554, subsection 2.

e. One physician and one pharmacist member of the council shall include in their duties the responsibility for monitoring and ensuring that patient confidentiality, best interests, and civil liberties are at all times protected and preserved during the existence of the program.

4. Members of the advisory council shall be eligible to request and receive actual expenses for their duties as members of the advisory council, subject to reimbursement limits imposed by the department of administrative services, and shall also be eligible to receive a per diem compensation as provided in section 7E.6, subsection 1.

2007 Acts, ch 126, §31, 32

For future repeal of this section effective June 30, 2009, see 2006 Acts, ch 1147, §10

Subsection 1 amended

Subsection 3, paragraphs a and d amended

#### **124.556 Education and treatment.**

The program for drug prescribing and dispensing shall include education initiatives and outreach to consumers, prescribing practitioners, and pharmacists, and shall also include assistance for identifying substance abuse treatment programs and providers. The board and advisory council shall adopt rules, as provided under section 124.554, to implement this section.

2007 Acts, ch 126, §33

For future repeal of this section effective June 30, 2009, see 2006 Acts, ch 1147, §10

Section amended

#### **124.558 Prohibited acts — penalties.**

1. *Failure to comply with requirements.* A pharmacist, pharmacy, or prescribing practitioner who knowingly fails to comply with the confidentiality requirements of this division or who delegates program information access to another individual is subject to disciplinary action by the ap-

appropriate professional licensing board. A pharmacist or pharmacy that knowingly fails to comply with other requirements of this division is subject to disciplinary action by the board. Each licensing board may adopt rules in accordance with chapter 17A to implement the provisions of this section.

2. *Unlawful access, disclosure, or use of information.* A person who intentionally or knowingly accesses, uses, or discloses program information in violation of this division, unless otherwise

authorized by law, is guilty of a class “D” felony. This section shall not preclude a pharmacist or prescribing practitioner who requests and receives information from the program consistent with the requirements of this chapter from otherwise lawfully providing that information to any other person for medical or pharmaceutical care purposes.

2007 Acts, ch 126, §34  
For future repeal of this section effective June 30, 2009, see 2006 Acts, ch 1147, §10  
Section amended

## CHAPTER 124A

### IMITATION CONTROLLED SUBSTANCES

#### 124A.2 Definitions.

As used in this chapter, unless the context otherwise requires:

1. *“Controlled substance”* means a controlled substance as defined in section 124.101, subsection 5.

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

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

4. *“Imitation controlled substance”* means a substance which is not a controlled substance but which by color, shape, size, markings, and other aspects of dosage unit appearance, and packaging or other factors, appears to be or resembles a controlled substance. The board of pharmacy may designate a substance as an imitation controlled substance pursuant to the board’s rulemaking authority and in accordance with chapter 17A.

2007 Acts, ch 10, §14  
Subsection 4 amended and unnumbered paragraphs 1 and 2 of subsection 4 combined editorially

#### 124A.3 Factors indicating an imitation controlled substance.

When a substance has not been designated as an imitation controlled substance by the board of pharmacy and when dosage unit appearance alone does not establish that a substance is an imitation controlled substance, the following factors may be considered in determining whether the substance is an imitation controlled substance:

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

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

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

2007 Acts, ch 10, §15  
Unnumbered paragraph 1 amended

## CHAPTER 124B

### PRECURSOR SUBSTANCES

#### 124B.1 Definitions.

As used in this chapter, unless the context otherwise requires:

1. *“Board”* means the board of pharmacy.

2. *“Controlled substance”* means a controlled substance as defined in section 124.101.

3. *“Practitioner”* means a practitioner as defined in section 155A.3.

4. *“Precursor substance”* means a substance which may be used as a precursor in the illegal production of a controlled substance and is speci-

fied under section 124B.2.

5. *“Recipient”* means a person in this state who purchases, transfers, or otherwise receives a precursor substance.

6. *“Vendor”* means a person who manufactures, wholesales, retails, or otherwise sells, transfers, or furnishes in this state a precursor substance.

2007 Acts, ch 10, §16  
Subsection 1 amended



## CHAPTER 126

## DRUGS, DEVICES, AND COSMETICS

**126.2 Definitions.**

As used in this chapter, unless the context otherwise requires:

1. *“Advertising”* means any representation disseminated in any manner or by any means, other than by labeling, for the purpose of inducing, or which is likely to induce, directly or indirectly, the purchase of drugs, devices, or cosmetics.

2. *“Anabolic steroid”* means any drug or hormonal substance, chemically and pharmacologically related to testosterone, other than estrogens, progestins, corticosteroids, or dehydroepiandrosterone, which substance is identified as an anabolic steroid in section 124.208, subsection 6, and includes any other substance designated by the board as an anabolic steroid through the adoption of rules pursuant to chapter 17A.

3. *“Board”* means the board of pharmacy.

4. *“Contaminated with filth”* means not securely protected from dust, dirt, and as far as is necessary by all reasonable means, from all foreign or injurious contaminations.

5. *“Cosmetic”* means any of the following, but does not include soap:

*a.* An article intended to be rubbed, poured, sprinkled, or sprayed on, introduced into, or otherwise applied to the human body or any part of a human body for cleaning, beautifying, promoting attractiveness, or altering the appearance.

*b.* An article intended for use as a component of an article defined in paragraph “*a*”.

6. *“Counterfeit drug”* means a drug which, or the container or labeling of which, without authorization, bears the trademark, trade name, or other identifying mark, imprint, or device, or any such likeness, of a drug manufacturer, processor, packer, or distributor other than the person or persons who in fact manufactured, processed, packed, or distributed the drug and which falsely purports or is represented to be the product of, or to have been packed or distributed by, such other drug manufacturer, processor, packer, or distributor.

7. *“Device”* means an instrument, apparatus, implement, machine, contrivance, implant, in vitro reagent, or other similar or related article, including any component, part, or accessory of any of these, which is any of the following:

*a.* Recognized as a device in the official United States Pharmacopoeia National Formulary or any supplement to it.

*b.* Intended for use in the diagnosis of diseases or other conditions, or in the cure, mitigation, treatment, or prevention of diseases or other conditions in a human.

*c.* Intended to affect the structure or any function of the body of a human, and which does not achieve any of its principal intended purposes

through chemical action within or on the body of a human and which is not dependent upon being metabolized for the achievement of any of its principal intended purposes.

8. *“Drug”* means any of the following, but does not include a device:

*a.* An article recognized as a drug in the official United States Pharmacopoeia National Formulary, official Homeopathic Pharmacopoeia of the United States, or any supplement to either document.

*b.* An article intended for use in the diagnosis, cure, mitigation, treatment, or prevention of diseases in a human.

*c.* An article, other than food, intended to affect the structure or any function of the body of a human.

*d.* An article intended for use as a component of any articles specified in paragraphs “*a*”, “*b*”, or “*c*”.

9. *“Electronic prescription”* means a prescription which is transmitted by a computer device in a secure manner, including computer-to-computer transmission and computer-to-facsimile transmission.

10. *“Facsimile prescription”* means a prescription which is transmitted by a device which sends an exact image to the receiver.

11. *“Federal Act”* means the federal Food, Drug, and Cosmetic Act, which is codified in 21 U.S.C. § 301 et seq.

12. *“Immediate container”* does not include a package liner.

13. *“Label”* means a display of written, printed, or graphic matter upon the immediate container of an article; and a requirement made by or under authority of this chapter that any word, statement, or other information appear on the label is not complied with unless the word, statement, or other information also appears on the outside container or wrapper of the retail package of the article, or is easily legible through the outside container or wrapper.

14. *“Labeling”* means all labels and other written, printed, or graphic matter upon an article or any of its containers or wrappers, or accompanying an article.

15. *“New drug”* means either of the following:

*a.* Any drug, the composition of which is such that the drug is not generally recognized among experts qualified by scientific training and experience to evaluate the safety and effectiveness of drugs, as safe and effective for use under the conditions prescribed, recommended, or suggested in its labeling, except that a drug not so recognized is not a new drug if at any time prior to the enactment of this chapter it was subject to the federal

Act, and if at that time its labeling contained the same representations concerning the conditions of its use.

b. Any drug, the composition of which is such that the drug, as a result of investigations to determine its safety and effectiveness for use under the conditions prescribed, recommended, or suggested in its labeling, has become recognized as safe and effective, but which has not, other than in such investigations, been used to a material extent or for a material time under the conditions prescribed, recommended, or suggested in its labeling.

16. “*Official compendium*” means the official United States Pharmacopoeia National Formulary, official Homeopathic Pharmacopoeia of the United States, or any supplement to either document.

17. “*Person*” means an individual, partnership, corporation, or association.

18. “*Principal display panel*” means that part of a label that is most likely to be displayed, pre-

sented, shown, or examined under normal and customary conditions of display for retail sale.

19. “*Safe*” as used in this chapter has reference to the health of a human.

20. “*Secretary*” means the secretary of the United States department of health and human services.

2007 Acts, ch 8, §20; 2007 Acts, ch 10, §17  
Former unnumbered paragraph 2 transferred to §126.2A  
Subsections 2 and 3 amended

### 126.2A Applicability.

The provisions of this chapter regarding the selling of drugs, devices, or cosmetics are applicable to the manufacture, production, processing, packaging, exposure, offer, possession, and holding of any such article for sale; and the sale, dispensing, and giving of any such article, and the supplying or applying of any such article, in the conduct of any drug, device, or cosmetic establishment.

Section transferred from §126.2, unnumbered paragraph 2, in Code Supplement 2007  
Section editorially established

## CHAPTER 135

### DEPARTMENT OF PUBLIC HEALTH

#### 135.11 Duties of department.

The director of public health shall be the head of the “Iowa Department of Public Health”, which shall:

1. Exercise general supervision over the public health, promote public hygiene and sanitation, prevent substance abuse and unless otherwise provided, enforce the laws relating to the same.

2. Conduct campaigns for the education of the people in hygiene and sanitation.

3. Issue monthly health bulletins containing fundamental health principles and other health data deemed of public interest.

4. Make investigations and surveys in respect to the causes of disease and epidemics, and the effect of locality, employment, and living conditions upon the public health. For this purpose the department may use the services of the experts connected with the state hygienic laboratory at the state university of Iowa.

5. Establish, publish, and enforce a code of rules governing the installation of plumbing in cities and amend the same when deemed necessary.

6. Exercise general supervision over the administration of the housing law and give aid to the local authorities in the enforcement of the same, and it shall institute in the name of the state such legal proceedings as may be necessary in the enforcement of said law.

7. Establish stations throughout the state for the distribution of antitoxins and vaccines to physicians, druggists, and other persons, at cost. All

antitoxin and vaccine thus distributed shall be labeled “Iowa Department of Public Health”.

8. Exercise general supervision over the administration and enforcement of the sexually transmitted diseases and infections law, chapter 139A, subchapter II.

9. Exercise sole jurisdiction over the disposal and transportation of the dead bodies of human beings and prescribe the methods to be used in preparing such bodies for disposal and transportation. However, the department may approve a request for an exception to the application of specific embalming and disposition rules adopted pursuant to this subsection if such rules would otherwise conflict with tenets and practices of a recognized religious denomination to which the deceased individual adhered or of which denomination the deceased individual was a member. The department shall inform the board of mortuary science of any such approved exception which may affect services provided by a funeral director licensed pursuant to chapter 156.

10. Establish, publish, and enforce rules which require companies, corporations, and other entities to obtain a permit from the department prior to scattering cremated human remains.

11. Exercise general supervision over the administration and enforcement of the vital statistics law, chapter 144.

12. Enforce the law relative to chapter 146 and “Health-related Professions”, Title IV, subtitle 3, excluding chapter 155.

13. Establish and maintain such divisions in the department as are necessary for the proper enforcement of the laws administered by it, including a division of contagious and infectious diseases, a division of venereal diseases, a division of housing, a division of sanitary engineering, and a division of vital statistics, but the various services of the department shall be so consolidated as to eliminate unnecessary personnel and make possible the carrying on of the functions of the department under the most economical methods.

14. Establish, publish, and enforce rules not inconsistent with law for the enforcement of the provisions of chapters 125 and 155, and Title IV, subtitle 2, excluding chapters 142B, 145B, and 146 and for the enforcement of the various laws, the administration and supervision of which are imposed upon the department.

15. Establish standards for, issue permits for, and exercise control over the distribution of venereal disease prophylactics distributed by methods not under the direct supervision of a physician licensed under chapter 148, 150, or 150A, or a pharmacist licensed under chapter 147. Any person selling, offering for sale, or giving away any venereal disease prophylactics in violation of the standards established by the department shall be fined not exceeding five hundred dollars, and the department shall revoke their permit.

16. Administer the statewide public health nursing, homemaker-home health aide, and senior health programs by approving grants of state funds to the local boards of health and the county boards of supervisors and by providing guidelines for the approval of the grants and allocation of the state funds. Program direction, evaluation requirements, and formula allocation procedures for each of the programs shall be established by the department by rule.

17. Administer chapters 125, 136A, 136C, 139A, 142, 142A, 144, and 147A.

18. Issue an annual report to the governor as provided in section 7E.3, subsection 4.

19. Consult with the office of statewide clinical education programs at the university of Iowa college of medicine and annually submit a report to the general assembly by January 15 verifying the number of physicians in active practice in Iowa by county who are engaged in providing obstetrical care. To the extent data are readily available, the report shall include information concerning the number of deliveries per year by specialty and county, the age of physicians performing deliveries, and the number of current year graduates of the university of Iowa college of medicine and the Des Moines university — osteopathic medical center entering into residency programs in obstetrics, gynecology, and family practice. The report may include additional data relating to access to obstetrical services that may be available.

20. Administer the statewide maternal and child health program and the program for children

with disabilities by conducting mobile and regional child health specialty clinics and conducting other activities to improve the health of low-income women and children and to promote the welfare of children with actual or potential conditions which may cause disabilities and children with chronic illnesses in accordance with the requirements of Title V of the federal Social Security Act. The department shall provide technical assistance to encourage the coordination and collaboration of state agencies in developing outreach centers which provide publicly supported services for pregnant women, infants, and children. The department shall also, through cooperation and collaborative agreements with the department of human services and the mobile and regional child health specialty clinics, establish common intake proceedings for maternal and child health services. The department shall work in cooperation with the legislative services agency in monitoring the effectiveness of the maternal and child health centers, including the provision of transportation for patient appointments and the keeping of scheduled appointments.

21. Establish, publish, and enforce rules requiring prompt reporting of methemoglobinemia, pesticide poisoning, and the reportable poisonings and illnesses established pursuant to section 139A.21.

22. Collect and maintain reports of pesticide poisonings and other poisonings, illnesses, or injuries caused by selected chemical or physical agents, including methemoglobinemia and pesticide and fertilizer hypersensitivity; and compile and publish, annually, a statewide and county-by-county profile based on the reports.

23. Adopt rules which require personnel of a licensed hospice, of a homemaker-home health aide provider agency which receives state homemaker-home health aide funds, or of an agency which provides respite care services and receives funds to complete a minimum of two hours of training concerning acquired immune deficiency syndrome-related conditions through a program approved by the department. The rules shall require that new employees complete the training within six months of initial employment and existing employees complete the training on or before January 1, 1989.

24. Adopt rules which require all emergency medical services personnel, firefighters, and law enforcement personnel to complete a minimum of two hours of training concerning acquired immune deficiency syndrome-related conditions and the prevention of human immunodeficiency virus infection.

25. Adopt rules which provide for the testing of a convicted or alleged offender for the human immunodeficiency virus pursuant to sections 915.40 through 915.43. The rules shall provide for the provision of counseling, health care, and support services to the victim.

26. Establish ad hoc and advisory committees to the director in areas where technical expertise is not otherwise readily available. Members may be compensated for their actual and necessary expenses incurred in the performance of their duties. To encourage health consumer participation, public members may also receive a per diem as specified in section 7E.6 if funds are available and the per diem is determined to be appropriate by the director. Expense moneys paid to the members shall be paid from funds appropriated to the department. A majority of the members of such a committee constitutes a quorum.

27. Establish an abuse education review panel for review and approval of mandatory reporter training curricula for those persons who work in a position classification that under law makes the persons mandatory reporters of child or dependent adult abuse and the position classification does not have a mandatory reporter training curriculum approved by a licensing or examining board.

28. Establish and administer a substance abuse treatment facility pursuant to section 135.130.

29. Administer annual grants to county boards of health for the purpose of conducting programs for the testing of private water supply wells, the closing of abandoned private water supply wells, and the renovation or rehabilitation of private water supply wells. Grants shall be funded through moneys transferred to the department from the agriculture management account of the groundwater protection fund pursuant to section 455E.11, subsection 2, paragraph "b", subparagraph (3), subparagraph subdivision (b). The department shall adopt rules relating to the awarding of the grants.

30. Establish and administer, if sufficient funds are available to the department, a program to assess and forecast health workforce supply and demand in the state for the purpose of identifying current and projected workforce needs. The program may collect, analyze, and report data that furthers the purpose of the program. The program shall not release information that permits identification of individual respondents of program surveys.

31. In consultation with the advisory committee for perinatal guidelines, develop and maintain the statewide perinatal program based on the recommendations of the American academy of pediatrics and the American college of obstetricians and gynecologists contained in the most recent edition of the guidelines for perinatal care, and shall adopt rules in accordance with chapter 17A to implement those recommendations. Hospitals within the state shall determine whether to participate in the statewide perinatal program, and select the hospital's level of participation in the program. A hospital having determined to participate in the program shall comply with the guide-

lines appropriate to the level of participation selected by the hospital.

2007 Acts, ch 10, §18; 2007 Acts, ch 159, §17  
 Laboratory tests, §263.7, 263.8  
 Establishment and funding of state poison control center; 2000 Acts, ch 1221, §1; 2001 Acts, ch 184, §1; 2002 Acts, ch 1174, §1; 2003 Acts, ch 183, §1; 2004 Acts, ch 1176, §1; 2005 Acts, ch 176, §1; 2006 Acts, ch 1181, §1; 2007 Acts, ch 208, §1  
 Subsection 9 amended  
 NEW subsection 31

**135.11A Professional licensure division — other licensing boards — expenses — fees.**

There shall be a professional licensure division within the department of public health. Each board under chapter 147 or under the administrative authority of the department, except the board of nursing, board of medicine, dental board, and board of pharmacy, shall receive administrative and clerical support from the division and may not employ its own support staff for administrative and clerical duties.

The professional licensure division and the licensing boards may expend funds in addition to amounts budgeted, if those additional expenditures are directly the result of actual examination and exceed funds budgeted for examinations. Before the division or a licensing board expends or encumbers an amount in excess of the funds budgeted for examinations, the director of the department of management shall approve the expenditure or encumbrance. Before approval is given, the department of management shall determine that the examination expenses exceed the funds budgeted by the general assembly to the division or board and the division or board does not have other funds from which examination expenses can be paid. Upon approval of the department of management, the division or licensing board may expend and encumber funds for excess examination expenses. The amounts necessary to fund the excess examination expenses shall be collected as fees from additional examination applicants and shall be treated as repayment receipts as defined in section 8.2.

2007 Acts, ch 10, §19; 2007 Acts, ch 218, §192  
 Unnumbered paragraph 1 amended

**135.14 State public health dental director — duties.**

1. The position of state public health dental director is established within the department.

2. The dental director shall perform all of the following duties:

a. Plan and direct all work activities of the statewide public health dental program.

b. Develop comprehensive dental initiatives for prevention activities.

c. Evaluate the effectiveness of the statewide public health dental program and of program personnel.

d. Manage the oral health bureau including direction, supervision, and fiscal management of bureau staff.

e. Other related work as required.

2007 Acts, ch 159, §13  
NEW section

**135.15 Oral health bureau established — responsibilities.**

An oral health bureau is established within the division of health promotion and chronic disease prevention of the department. The bureau shall be responsible for all of the following:

1. Providing population-based oral health services, including public health training, improvement of dental support systems for families, technical assistance, awareness-building activities, and educational services, at the state and local level to assist Iowans in maintaining optimal oral health throughout all stages of life.

2. Performing infrastructure building and enabling services through the administration of state and federal grant programs targeting access improvement, prevention, and local oral health programs utilizing maternal and child health programs, Medicaid, and other new or existing programs.

3. Leveraging federal, state, and local resources for programs under the purview of the bureau.

4. Facilitating ongoing strategic planning and application of evidence-based research in oral health care policy development that improves oral health care access and the overall oral health of all Iowans.

5. Developing and implementing an ongoing oral health surveillance system for the evaluation and monitoring of the oral health status of children and other underserved populations.

2007 Acts, ch 159, §14  
NEW section

**135.17 Reserved.**

For future text of this section effective July 1, 2008, see 2007 Acts, ch 146, §1, 2

**135.20 Hepatitis C awareness program — veterans — vaccinations.**

1. The department shall establish and administer a hepatitis C awareness program. The goal of the program shall be to distribute information to veterans regarding the higher incidence of hepatitis C exposure and infection among veterans, the dangers presented by the disease, and contacts for additional information and referrals. For purposes of this section, “*veteran*” means an individual meeting the definition contained in section 35.1.

2. The information to be distributed shall be determined by the department by rule, in consultation with the department of veterans affairs. The information shall, at a minimum, contain statements indicating that:

a. The federal department of veterans affairs estimates a hepatitis C infection rate in veterans more than three times higher than for the general population.

b. The infection rate for Vietnam veterans is estimated to be even higher than for other veterans groups.

c. The disease is caused by a bloodborne virus readily transmitted during combat and combat-related emergency medical treatment.

d. Many veterans currently carrying the virus were infected prior to the development of medical screening tests.

e. The hepatitis C virus often resolves into a chronic infection without symptoms for ten to thirty years before signs of resultant liver disease appear.

f. This unusually long latency period makes it difficult to connect current symptoms with an infection that may have actually been contracted during military service decades ago.

The information shall also present treatment options and shall specify a procedure to be followed for veterans desiring a medical consultation for screening and treatment purposes. The department shall cooperate with the department of veterans affairs regarding distribution of the information to the veterans home, the county commissions of veteran affairs, veterans hospitals, and other appropriate points of distribution.

2007 Acts, ch 202, §11, 12  
Subsection 2, unnumbered paragraphs 1 and 2 amended

**135.22B Brain injury services program.**

1. *Definitions.* For the purposes of this section:

a. “*Brain injury services waiver*” means the state’s medical assistance home and community-based services waiver for persons with brain injury implemented under chapter 249A.

b. “*Program administrator*” means the division of the department designated to administer the brain injury services program in accordance with subsection 2.

2. *Program created.*

a. A brain injury services program is created and shall be administered by a division of the Iowa department of public health in cooperation with counties and the department of human services.

b. The division of the department assigned to administer the advisory council on brain injuries under section 135.22A shall be the program administrator. The division duties shall include but are not limited to serving as the fiscal agent and contract administrator for the program and providing program oversight.

c. The division shall consult with the advisory council on brain injuries, established pursuant to section 135.22A, regarding the program and shall report to the council concerning the program at least quarterly. The council shall make recommendations to the department concerning the program’s operation.

3. *Purpose.* The purpose of the brain injury services program is to provide services, service funding, or other support for persons with a brain

injury under one of the program components established pursuant to this section.

4. *General requirements — waiver-eligible component.*

a. The component of the brain injury services program for persons eligible for the brain injury services waiver is subject to the requirements provided in this subsection.

b. If a person is eligible for the brain injury services waiver and is on the waiting list for the waiver but the appropriation for the medical assistance program does not have sufficient funding designated to pay the nonfederal share of the costs to remove the person from the waiting list, the brain injury services program may provide the funding for the nonfederal share of the costs in order for the person to be removed from the waiting list and receive services under the waiver.

c. A person who receives support under the waiver-eligible component is not eligible to receive support under the cost-share component of the program.

d. Provision of funding under the waiver-eligible component is not an entitlement. Subject to the department of human services requirements for the brain injury services waiver waiting list, the program administrator shall make the final determination whether funding will be authorized under this component.

5. *General requirements — cost-share component.* The cost-share component of the brain injury services program shall be directed to persons who have been determined to be ineligible for the brain injury services waiver or persons who are eligible for the waiver but funding was not authorized or available to provide waiver eligibility for the persons under the waiver-eligible component. The cost-share component is subject to general requirements which shall include but are not limited to all of the following:

a. Services offered are consistent with the services offered through the brain injury services waiver.

b. Each service consumer has a service plan developed prior to service implementation and the service plan is reviewed and updated at least quarterly.

c. All other funding sources for which the service consumer is eligible are utilized to the greatest extent possible. The funding sources potentially available include but are not limited to community resources and public and private benefit programs.

d. The maximum monthly cost of the services provided shall be based on the maximum monthly amount authorized for the brain injury services waiver.

e. Assistance under the cost-share component shall be made available to a designated number of service consumers who are eligible, as determined from the funding available for the cost-share com-

ponent, on a first-come, first-served basis.

f. Nothing in this section shall be construed or is intended as, or shall imply, a grant of entitlement to services to persons who are eligible for participation in the cost-share component based upon the eligibility provisions adopted consistent with the requirements of this section. Any obligation to provide services pursuant to this section is limited to the extent of the funds appropriated or provided for the cost-share component.

6. *Cost-share component eligibility.* An individual must meet all of the following requirements in order to be eligible for the cost-share component of the brain injury services program:

a. The individual is age one month through sixty-four years.

b. The individual has a diagnosed brain injury as defined in section 135.22.

c. The individual is a resident of this state and either a United States citizen or a qualified alien as defined in 8 U.S.C. § 1641.

d. The individual meets the cost-share component's financial eligibility requirements and is willing to pay a cost-share for the cost-share component.

e. The individual does not receive services or funding under any type of medical assistance home and community-based services waiver.

7. *Cost-share requirements.*

a. The cost-share component's financial eligibility requirements shall be established in administrative rule. In establishing the requirements, the department shall consider the eligibility and cost-share requirements used for the hawk-i program under chapter 514I.

b. An individual's cost-share responsibility for services under the cost-share component shall be determined on a sliding scale based upon the individual's family income. An individual's cost-share shall be assessed as a copayment, which shall not exceed thirty percent of the cost payable for the service.

c. The service provider shall bill the department for the portion of the cost payable for the service that is not covered by the individual's copayment responsibility.

8. *Application process.*

a. The application materials for services under both the waiver-eligible and cost-share components of the brain injury services program shall use the application form and other materials of the brain injury services waiver. In order to apply for the brain injury services program, the applicant must authorize the department of human services to provide the applicant's waiver application materials to the brain injury services program. The application materials provided shall include but are not limited to the waiver application and any denial letter, financial assessment, and functional assessment regarding the person.

b. If a functional assessment for the waiver

has not been completed due to a person's financial ineligibility for the waiver, the brain injury services program may provide for a functional assessment to determine the person's needs by reimbursing the department of human services for the assessment.

c. The program administrator shall file copies of the individual's application and needs assessment with the program resource facilitator assigned to the individual's geographic area.

d. The department's program administrator shall make a final determination as to whether program funding will be authorized under the cost-share component.

9. *Service providers and reimbursement.* All of the following requirements apply to service providers and reimbursement rates payable for services under the cost-share component:

a. A service provider must either be certified to provide services under the brain injury services waiver or have a contract with a county to provide services and will become certified to provide services under such waiver within a reasonable period of time specified in rule.

b. The reimbursement rate payable for the cost of a service provided under the cost-share component is the rate payable under the medical assistance program. However, if the service provided does not have a medical assistance program reimbursement rate, the rate shall be the amount payable under the county contract.

10. *Resource facilitation.* The program shall utilize resource facilitators to facilitate program services. The resource facilitator shall be available to provide ongoing support for individuals with brain injury in coping with the issues of living with a brain injury and in assisting such individuals in transitioning back to employment and living in the community. The resource facilitator is intended to provide a linkage to existing services and increase the capacity of the state's providers of services to persons with brain injury by doing all of the following:

a. Providing brain injury-specific information, support, and resources.

b. Enhancing the usage of support commonly available to an individual with brain injury from the community, family, and personal contacts and linking such individuals to appropriate services and community resources.

c. Training service providers to provide appropriate brain injury services.

d. Accessing, securing, and maximizing the private and public funding available to support an individual with a brain injury.

2007 Acts, ch 126, §35  
Subsections 6 and 7 amended

### **135.24 Volunteer health care provider program established — immunity from civil liability.**

1. The director shall establish within the de-

partment a program to provide to eligible hospitals, clinics, free clinics, field dental clinics, or other health care facilities, health care referral programs, or charitable organizations, free medical, dental, chiropractic, pharmaceutical, nursing, optometric, psychological, social work, behavioral science, podiatric, physical therapy, occupational therapy, respiratory therapy, and emergency medical care services given on a voluntary basis by health care providers. A participating health care provider shall register with the department and obtain from the department a list of eligible, participating hospitals, clinics, free clinics, field dental clinics, or other health care facilities, health care referral programs, or charitable organizations.

2. The department, in consultation with the department of human services, shall adopt rules to implement the volunteer health care provider program which shall include the following:

a. Procedures for registration of health care providers deemed qualified by the board of medicine, the board of physician assistants, the dental board, the board of nursing, the board of chiropractic, the board of psychology, the board of social work, the board of behavioral science, the board of pharmacy, the board of optometry, the board of podiatry, the board of physical and occupational therapy, the board of respiratory care, and the Iowa department of public health, as applicable.

b. Procedures for registration of free clinics and field dental clinics.

c. Criteria for and identification of hospitals, clinics, free clinics, field dental clinics, or other health care facilities, health care referral programs, or charitable organizations, eligible to participate in the provision of free medical, dental, chiropractic, pharmaceutical, nursing, optometric, psychological, social work, behavioral science, podiatric, physical therapy, occupational therapy, respiratory therapy, or emergency medical care services through the volunteer health care provider program. A free clinic, a field dental clinic, a health care facility, a health care referral program, a charitable organization, or a health care provider participating in the program shall not bill or charge a patient for any health care provider service provided under the volunteer health care provider program.

d. Identification of the services to be provided under the program. The services provided may include, but shall not be limited to, obstetrical and gynecological medical services, psychiatric services provided by a physician licensed under chapter 148, 150, or 150A, dental services provided under chapter 153, or other services provided under chapter 147A, 148A, 148B, 148C, 149, 151, 152, 152B, 152E, 154, 154B, 154C, 154D, or 155A.

3. A health care provider providing free care under this section shall be considered an employee of the state under chapter 669, shall be afforded protection as an employee of the state under sec-

tion 669.21, and shall not be subject to payment of claims arising out of the free care provided under this section through the health care provider's own professional liability insurance coverage, provided that the health care provider has done all of the following:

a. Registered with the department pursuant to subsection 1.

b. Provided medical, dental, chiropractic, pharmaceutical, nursing, optometric, psychological, social work, behavioral science, podiatric, physical therapy, occupational therapy, respiratory therapy, or emergency medical care services through a hospital, clinic, free clinic, field dental clinic, or other health care facility, health care referral program, or charitable organization listed as eligible and participating by the department pursuant to subsection 1.

4. A free clinic providing free care under this section shall be considered a state agency solely for the purposes of this section and chapter 669 and shall be afforded protection under chapter 669 as a state agency for all claims arising from the provision of free care by a health care provider registered under subsection 3 who is providing services at the free clinic in accordance with this section or from the provision of free care by a health care provider who is covered by adequate medical malpractice insurance as determined by the department, if the free clinic has registered with the department pursuant to subsection 1.

5. A field dental clinic providing free care under this section shall be considered a state agency solely for the purposes of this section and chapter 669 and shall be afforded protection under chapter 669 as a state agency for all claims arising from the provision of free care by a health care provider registered under subsection 3 who is providing services at the field dental clinic in accordance with this section or from the provision of free care by a health care provider who is covered by adequate medical malpractice insurance as determined by the department, if the field dental clinic has registered with the department pursuant to subsection 1.

6. For the purposes of this section:

a. "*Charitable organization*" means a charitable organization within the meaning of section 501(c)(3) of the Internal Revenue Code.

b. "*Field dental clinic*" means a dental clinic temporarily or periodically erected at a location utilizing mobile dental equipment, instruments, or supplies, as necessary, to provide dental services.

c. "*Free clinic*" means a facility, other than a hospital or health care provider's office which is exempt from taxation under section 501(c)(3) of the Internal Revenue Code and which has as its sole purpose the provision of health care services without charge to individuals who are otherwise unable to pay for the services.

d. "*Health care provider*" means a physician licensed under chapter 148, 150, or 150A, a chiropractor licensed under chapter 151, a physical therapist licensed pursuant to chapter 148A, an occupational therapist licensed pursuant to chapter 148B, a podiatrist licensed pursuant to chapter 149, a physician assistant licensed and practicing under a supervising physician pursuant to chapter 148C, a licensed practical nurse, a registered nurse, or an advanced registered nurse practitioner licensed pursuant to chapter 152 or 152E, a respiratory therapist licensed pursuant to chapter 152B, a dentist, dental hygienist, or dental assistant registered or licensed to practice under chapter 153, an optometrist licensed pursuant to chapter 154, a psychologist licensed pursuant to chapter 154B, a social worker licensed pursuant to chapter 154C, a mental health counselor or a marital and family therapist licensed pursuant to chapter 154D, a pharmacist licensed pursuant to chapter 155A, or an emergency medical care provider certified pursuant to chapter 147A.

2007 Acts, ch 10, §20; 2007 Acts, ch 95, §1; 2007 Acts, ch 159, §18; 2007 Acts, ch 218, §101, 193

See Code editor's note to §29A.28

Section amended

### **135.26 Automated external defibrillator grant program.**

The department shall establish and implement an automated external defibrillator grant program which provides matching funds to local boards of health, community organizations, or cities for the program after standards and requirements for the utilization of automated external defibrillator equipment, and training on the use of such equipment, are developed at the local level. The objective of the program shall be to enhance the emergency response system in rural areas of the state where access to health care providers is often limited by providing increased access to automated external defibrillator equipment by rural emergency and community personnel. A local board of health, community organization, or city may submit an application to the department for review. The department shall establish criteria for the review and approval of grant applications by rule, and may accept gifts, grants, bequests, and other private contributions, as well as state or federal funds, for purposes of the program. The amount of a grant shall not exceed fifty percent of the cost of the automated external defibrillator equipment to be distributed to the applicant and the training program to be administered by the applicant at the local level. Each application shall include information demonstrating that the applicant will provide matching funds of fifty percent of the cost of the program. Grant recipients shall submit an annual report to the department indicating automated external defibrillator equipment usage levels, patient outcomes, and number of individuals trained. For the purposes of this



section, “*rural*” means a geographic area outside an urban or suburban setting with a population of less than fifty thousand persons.

Funding, 2004 Acts, ch 1176, §1; 2005 Acts, ch 176, §1; 2006 Acts, ch 1181, §1; 2007 Acts, ch 208, §1, 7, 8  
Section not amended; footnote revised

### 135.31 Location of boards — rulemaking.

The offices for the board of medicine, the board of pharmacy, the board of nursing, and the dental board shall be located within the department of public health. The individual boards shall have policymaking and rulemaking authority.

2007 Acts, ch 10, §21; 2007 Acts, ch 218, §194  
Section amended

### 135.43 Iowa child death review team established — duties.

1. An Iowa child death review team is established as an independent agency of state government. The Iowa department of public health shall provide staffing and administrative support to the team.

2. The membership of the review team is subject to the provisions of sections 69.16 and 69.16A, relating to political affiliation and gender balance. Review team members who are not designated by another appointing authority shall be appointed by the director of public health. Membership terms shall be for three years. A membership vacancy shall be filled in the same manner as the original appointment. The review team shall elect a chairperson and other officers as deemed necessary by the review team. The review team shall meet upon the call of the chairperson, upon the request of a state agency, or as determined by the review team. The members of the team are eligible for reimbursement of actual and necessary expenses incurred in the performance of their official duties. The review team shall include the following:

- a. The state medical examiner or the state medical examiner’s designee.
- b. A certified or licensed professional who is knowledgeable concerning sudden infant death syndrome.
- c. A pediatrician who is knowledgeable concerning deaths of children.
- d. A family practice physician who is knowledgeable concerning deaths of children.
- e. One mental health professional who is knowledgeable concerning deaths of children.
- f. One social worker who is knowledgeable concerning deaths of children.
- g. A certified or licensed professional who is knowledgeable concerning domestic violence.
- h. A professional who is knowledgeable concerning substance abuse.
- i. A local law enforcement official.
- j. A county attorney.
- k. An emergency room nurse who is knowledgeable concerning the deaths of children.

l. A perinatal expert.

m. A representative of the health insurance industry.

n. One other appointed at large.

3. The review team shall perform the following duties:

a. Collect, review, and analyze child death certificates and child death data, including patient records or other pertinent confidential information concerning the deaths of children under age eighteen, and other information as the review team deems appropriate for use in preparing an annual report to the governor and the general assembly concerning the causes and manner of child deaths. The report shall include analysis of factual information obtained through review and recommendations regarding prevention of child deaths.

b. Recommend to the governor and the general assembly interventions to prevent deaths of children based on an analysis of the cause and manner of such deaths.

c. Recommend to the agencies represented on the review team changes which may prevent child deaths.

d. Except as authorized by this section, maintain the confidentiality of any patient records or other confidential information reviewed.

e. Recommend to the department of human services, appropriate law enforcement agencies, and any other person involved with child protection, interventions that may prevent harm to a child who is related to or is living in the same home as a child whose case is reviewed by the team.

f. If the sharing of information is necessary to assist in or initiate a child death investigation or criminal prosecution and the office or agency receiving the information does not otherwise have access to the information, share information possessed by the review team with the office of the attorney general, a county attorney’s office, or an appropriate law enforcement agency. The office or agency receiving the information shall maintain the confidentiality of the information in accordance with this section. Unauthorized release or disclosure of the information received is subject to penalty as provided in this section.

g. In order to assist a division of the department in performing the division’s duties, if the division does not otherwise have access to the information, share information possessed by the review team. The division receiving the information shall maintain the confidentiality of the information in accordance with this section. Unauthorized release or disclosure of the information received is subject to penalty as provided in this section.

4. The review team shall develop protocols for a child fatality review committee, to be appointed by the director on an ad hoc basis, to immediately review the child abuse assessments which involve

the fatality of a child under age eighteen. The director shall appoint a medical examiner, a pediatrician, and a person involved with law enforcement to the committee.

*a.* The purpose of the review shall be to determine whether the department of human services and others involved with the case of child abuse responded appropriately. The protocols shall provide for the committee to consult with any multidisciplinary team, as defined in section 235A.13, that is operating in the area in which the fatality occurred.

*b.* The committee shall have access to patient records and other pertinent confidential information and, subject to the restrictions in this subsection, may disseminate the confidential information in the committee's report.

*c.* Upon completion of the review, the committee shall issue a report which shall include findings concerning the case and recommendations for changes to prevent child fatalities when similar circumstances exist. The report shall include but is not limited to the following information, subject to the restrictions listed in paragraph "d":

(1) The dates, outcomes, and results of any actions taken by the department of human services and others in regard to each report and allegation of child abuse involving the child who died.

(2) The results of any review of the case performed by a multidisciplinary team, or by any other public entity that reviewed the case.

(3) Confirmation of the department of human services receipt of any report of child abuse involving the child, including confirmation as to whether or not any assessment involving the child was performed in accordance with section 232.71B, the results of any assessment, a description of the most recent assessment and the services offered to the family, the services rendered to the family, and the basis for the department's decisions concerning the case.

*d.* Prior to issuing the report, the committee shall consult with the county attorney responsible for prosecution of the alleged perpetrator of the child fatality. The committee's report shall include child abuse information associated with the case and the child, but is subject to the restrictions applicable to the department of human services for release of information concerning a child fatality or near fatality in accordance with section 235A.15, subsection 9.

*e.* Following the completion of the trial of any alleged perpetrator of the child fatality and the appeal period for the granting of a new trial, the committee shall issue a supplemental report containing the information that was withheld, in accordance with paragraph "d", so as not to jeopardize the prosecution or the rights of the alleged perpetrator to a fair trial as described in section 235A.15, subsection 9, paragraphs "e" and "f".

*f.* The report and any supplemental report shall be submitted to the governor and general assembly.

*g.* If deemed appropriate by the committee, at any point in the review the committee may recommend to the department of human services, appropriate law enforcement agencies, and any other person involved with child protection, interventions that may prevent harm to a child who is related to or is living in the same home as a child whose case is reviewed by the committee.

*5. a.* The following individuals shall designate a liaison to assist the review team in fulfilling its responsibilities:

- (1) The director of public health.
- (2) The director of human services.
- (3) The commissioner of public safety.
- (4) The attorney general.
- (5) The director of transportation.
- (6) The director of the department of education.

*b.* In addition, the chairperson of the review team shall designate a liaison from the public at large to assist the review team in fulfilling its responsibilities.

6. The review team may establish subcommittees to which the team may delegate some or all of the team's responsibilities under subsection 3.

*7. a.* The Iowa department of public health and the department of human services shall adopt rules providing for disclosure of information which is confidential under chapter 22 or any other provision of state law, to the review team for purposes of performing its child death and child abuse review responsibilities.

*b.* A person in possession or control of medical, investigative, assessment, or other information pertaining to a child death and child abuse review shall allow the inspection and reproduction of the information by the department upon the request of the department, to be used only in the administration and for the duties of the Iowa child death review team. Except as provided for a report on a child fatality by an ad hoc child fatality review committee under subsection 4, information and records produced under this section which are confidential under section 22.7 and chapter 235A, and information or records received from the confidential records, remain confidential under this section. A person does not incur legal liability by reason of releasing information to the department as required under and in compliance with this section.

8. Review team members and their agents are immune from any liability, civil or criminal, which might otherwise be incurred or imposed as a result of any act, omission, proceeding, decision, or determination undertaken or performed, or recommendation made as a review team member or agent provided that the review team members or agents

acted in good faith and without malice in carrying out their official duties in their official capacity. The department shall adopt rules pursuant to chapter 17A to administer this subsection. A complainant bears the burden of proof in establishing malice or lack of good faith in an action brought against review team members involving the performance of their duties and powers under this section.

9. A person who releases or discloses confidential data, records, or any other type of information in violation of this section is guilty of a serious misdemeanor.

2007 Acts, ch 159, §19, 20  
Subsection 2, unnumbered paragraph 1 amended and editorially combined with unnumbered paragraph 2  
Subsection 5 amended

### 135.80 Mental health professional shortage area program.

1. For the purposes of this section, “*mental health professional shortage areas*” means geographic areas in this state that have been designated by the United States department of health and human services, health resources and services administration, bureau of health professionals, as having a shortage of mental health professionals.

2. The department shall establish and administer a mental health professional shortage area program in accordance with this section. Implementation of the program shall be limited to the extent of the funding appropriated or otherwise made available for the program.

3. The program shall provide stipends to support psychiatrist positions with an emphasis on securing and retaining medical directors at community mental health centers, providers of mental health services to county residents pursuant to a waiver approved under section 225C.7, subsection 3, and hospital psychiatric units that are located in mental health professional shortage areas.

4. The department shall apply the rules in determining the number and amounts of stipends within the amount of funding available for the program for a fiscal year.

5. For each fiscal year in which funding is allocated by the program, the department shall report to the governor and general assembly summarizing the program’s activities and the impact made to address the shortage of mental health professionals.

2007 Acts, ch 218, §102  
Allocation of funds for 2007-2008 fiscal year; 2007 Acts, ch 218, §97  
NEW section

### 135.102 Rules.

The department shall adopt rules, pursuant to chapter 17A, regarding the:

1. Implementation of the grant program pursuant to section 135.103.
2. Maintenance of laboratory facilities for the

childhood lead poisoning prevention program.

3. Maximum blood lead levels in children living in targeted rental dwelling units.

4. Standards and program requirements of the grant program pursuant to section 135.103.

5. Prioritization of proposed childhood lead poisoning prevention programs, based on the geographic areas known with children identified with elevated blood lead level resulting from surveys completed by the department.

6. Model regulations for lead hazard remediation to be used in instances in which a child is confirmed as lead poisoned. The department shall make the model regulations available to local boards of health and shall promote the adoption of the regulations at the local level, in cities and counties implementing lead hazard remediation programs. Nothing in this subsection shall be construed as requiring the adoption of the model regulations.

7. Implementation of a requirement that children receive a blood lead test prior to the age of six and before enrolling in any elementary school in Iowa in accordance with section 135.105D.

2007 Acts, ch 79, §1  
NEW subsection 7

### 135.105D Blood lead testing — provider education — payor of last resort.

1. For purposes of this section:

a. “*Blood lead testing*” means taking a capillary or venous sample of blood and sending it to a laboratory to determine the level of lead in the blood.

b. “*Capillary*” means a blood sample taken from the finger or heel for lead analysis.

c. “*Health care provider*” means a physician who is licensed under chapter 148, 150, or 150A, or a person who is licensed as a physician assistant under chapter 148C or as an advanced registered nurse practitioner.

d. “*Venous*” means a blood sample taken from a vein in the arm for lead analysis.

2. a. A parent or guardian of a child under the age of two is strongly encouraged to have the child tested for elevated blood lead levels by the age of two. Except as provided in paragraph “b” and subsection 4, a parent or guardian shall provide evidence to the school district elementary attendance center or the accredited nonpublic elementary school in which the parent’s or guardian’s child is enrolled that the child was tested for elevated blood lead levels by the age of six according to recommendations provided by the department.

b. A child of compulsory attendance age may be provisionally enrolled in an elementary school if the child’s parent or guardian consents to have the child receive a blood lead test as rapidly as is feasible but not later than sixty days after the school calendar commences. The department shall adopt rules relating to the provisional enroll-

ment of children to an elementary school in accordance with this paragraph.

c. The board of directors of each school district and the authorities in charge of each nonpublic school shall give notice of the blood lead test requirement to parents of students enrolled or to be enrolled in the school at least ninety days before the start of the school year in the manner prescribed by the department.

d. Notwithstanding any other provision to the contrary, nothing in this section shall subject a parent, guardian, or legal custodian of a child of compulsory attendance age to any penalties under chapter 299.

3. The board of directors of each school district and the authorities in charge of each nonpublic school shall furnish the department, within sixty days after the first official day of school, evidence that each child enrolled in any elementary school has either been tested as required in subsection 2 or received a waiver under subsection 4.

4. The department may waive the requirements of subsection 2 if the department determines that a child is of very low risk for elevated blood lead levels, or if the child's parent or legal guardian submits an affidavit, signed by the parent or legal guardian, stating that the blood lead testing conflicts with a genuine and sincere religious belief.

5. The department shall provide rules adopted pursuant to section 135.102, subsection 7, to local school boards and the authorities in charge of nonpublic schools.

6. The department shall work with health care provider associations to educate health care providers regarding requirements for testing children who are enrolled in certain federally funded programs and regarding department recommendations for testing other children for lead poisoning.

7. The department shall implement blood lead testing for children under six years of age who are not eligible for the testing services to be paid by a third-party source. The department shall contract with one or more public health laboratories to provide blood lead analysis for such children. The department shall establish by rule the procedures for health care providers to submit samples to the contracted public health laboratories for analysis. The department shall also establish by rule a method to reimburse health care providers for drawing blood samples from such children and the dollar amount that the department will reimburse health care providers for the service. The department shall also establish by rule a method to reimburse health care providers for analyzing blood lead samples using a portable blood lead testing instrument and the dollar amount that the department will reimburse health care providers for the service. Payment for blood lead analysis and drawing blood samples shall be limited to the

amount appropriated for the program in a fiscal year.

2007 Acts, ch 79, §2, 3; 2007 Acts, ch 215, §88  
Nurse licensure, see chapter 152  
NEW subsections 2 – 5 and former subsections 2 and 3 renumbered as 6 and 7  
Subsection 7 amended

#### **135.147 Immunity for emergency aid — exceptions.**

1. A person, corporation, or other legal entity, or an employee or agent of such person, corporation, or entity, who, during a public health disaster, in good faith and at the request of or under the direction of the department or the department of public defense renders emergency care or assistance to a victim of the public health disaster shall not be liable for civil damages for causing the death of or injury to a person, or for damage to property, unless such acts or omissions constitute recklessness.

2. The immunities provided in this section shall not apply to any person, corporation, or other legal entity, or an employee or agent of such person, corporation, or entity, whose act or omission caused in whole or in part the public health disaster and who would otherwise be liable therefor.

2007 Acts, ch 159, §21  
NEW section

**135.148 and 135.149** Reserved.

#### **135.150 Gambling treatment fund — program — standards and licensing.**

1. A gambling treatment fund is created in the state treasury under the control of the department. The fund consists of all moneys appropriated to the fund. However, if moneys appropriated to the fund in a fiscal year exceed six million dollars, the amount exceeding six million dollars shall be transferred to the rebuild Iowa infrastructure fund created in section 8.57. Moneys in the fund are appropriated to the department for the purposes described in this section.

2. a. Moneys appropriated to the department under this section shall be for the purpose of operating a gambling treatment program and shall be used for funding of administrative costs and to provide programs which may include, but are not limited to, outpatient and follow-up treatment for persons affected by problem gambling, rehabilitation and residential treatment programs, information and referral services, crisis call access, education and preventive services, and financial management and credit counseling services.

b. A person shall not maintain or conduct a gambling treatment program funded under this section unless the person has obtained a license for the program from the department. The department shall adopt rules to establish standards for the licensing and operation of gambling treatment programs under this section. The rules shall spec-

ify, but are not limited to specifying, the qualifications for persons providing gambling treatment services, standards for the organization and administration of gambling treatment programs, and a mechanism to monitor compliance with this section and the rules adopted under this section.

3. Notwithstanding section 12C.7, subsection 2, interest or earnings on moneys deposited in the gambling treatment fund shall be credited to the gambling treatment fund. Notwithstanding section 8.33, moneys credited to the gambling treatment fund shall not revert to the fund from which appropriated at the close of a fiscal year.

4. The department shall report semiannually to the legislative government oversight committees regarding the operation of the gambling treatment fund and program. The report shall include, but is not limited to, information on revenues and expenses related to the fund for the previous period, fund balances for the period, and moneys expended and grants awarded for operation of the gambling treatment program.

Use of moneys in fund for benefit of persons with addictions; 2007 Acts, ch 218, §3

Section not amended; footnote added

DIVISION XX  
COLLABORATIVE SAFETY NET  
PROVIDER NETWORK

**135.153 Iowa collaborative safety net provider network established.**

1. The department shall establish an Iowa collaborative safety net provider network that includes community health centers, rural health clinics, free clinics, maternal and child health centers, the expansion population provider network as described in chapter 249J, local boards of health that provide direct services, Iowa family planning network agencies, child health specialty clinics, and other safety net providers. The network shall be a continuation of the network established pursuant to 2005 Iowa Acts, ch. 175, section 2, subsection 12. The network shall include all of the following:

*a.* An Iowa safety net provider advisory group consisting of representatives of community health centers, rural health clinics, free clinics, maternal and child health centers, the expansion popula-

tion provider network as described in chapter 249J, local boards of health that provide direct services, Iowa family planning network agencies, child health specialty clinics, other safety net providers, patients, and other interested parties.

*b.* A planning process to logically and systematically implement the Iowa collaborative safety net provider network.

*c.* A database of all community health centers, rural health clinics, free clinics, maternal and child health centers, the expansion population provider network as described in chapter 249J, local boards of health that provide direct services, Iowa family planning network agencies, child health specialty clinics, and other safety net providers. The data collected shall include the demographics and needs of the vulnerable populations served, current provider capacity, and the resources and needs of the participating safety net providers.

*d.* Network initiatives to, at a minimum, improve quality, improve efficiency, reduce errors, and provide clinical communication between providers. The network initiatives shall include but are not limited to activities that address all of the following:

- (1) Training.
- (2) Information technology.
- (3) Financial resource development.
- (4) A referral system for ambulatory care.
- (5) A referral system for specialty care.
- (6) Pharmaceuticals.
- (7) Recruitment of health professionals.

2. The network shall form a governing group which includes two individuals each representing community health centers, rural health clinics, free clinics, maternal and child health centers, the expansion population provider network as described in chapter 249J, local boards of health that provide direct services, the state board of health, Iowa family planning network agencies, child health specialty clinics, and other safety net providers.

3. The department shall provide for evaluation of the network and its impact on the medically underserved.

2007 Acts, ch 218, §103

Development by network of pharmaceutical infrastructure for safety net providers and implementation of specialty care initiative in two communities; 2007 Acts, ch 218, §108, 109

NEW section

## CHAPTER 135B

### LICENSURE AND REGULATION OF HOSPITALS

**135B.7A Procedures — orders.**

The department shall adopt rules that require hospitals to establish procedures for authentication of all verbal orders by a practitioner within a period not to exceed thirty days following a pa-

tient's discharge.

2007 Acts, ch 93, §1

June 30, 2007, section repeal stricken; 2007 Acts, ch 93, §3, 4

Section amended

## CHAPTER 135C

### HEALTH CARE FACILITIES

#### 135C.38 Inspections upon complaints.

1. *a.* Upon receipt of a complaint made in accordance with section 135C.37, the department or resident advocate committee shall make a preliminary review of the complaint. Unless the department or committee concludes that the complaint is intended to harass a facility or a licensee or is without reasonable basis, the department or committee shall make or cause to be made an on-site inspection of the health care facility which is the subject of the complaint within the time period determined pursuant to the following guidelines, which period shall commence on the date of receipt of the complaint:

(1) For nursing facilities, an on-site inspection shall be initiated as follows:

(a) Within two working days for a complaint determined by the department or committee to be an alleged immediate jeopardy situation.

(b) Within ten working days for a complaint determined by the department or committee to be an alleged high-level, nonimmediate jeopardy situation.

(c) Within forty-five calendar days for a complaint determined by the department or committee to be an alleged nonimmediate jeopardy situation, other than a high-level situation.

(2) For all other types of health care facilities, an on-site inspection shall be initiated as follows:

(a) Within two working days for a complaint determined by the department or committee to be an alleged immediate jeopardy situation.

(b) Within twenty working days for a complaint determined by the department or committee to be an alleged high-level, nonimmediate jeopardy situation.

(c) Within forty-five calendar days for a complaint determined by the department or committee to be an alleged nonimmediate jeopardy situation, other than a high-level situation.

*b.* The complaint investigation shall include, at a minimum, an interview with the complainant, the alleged perpetrator, and the victim of the alleged violation, if the victim is able to communicate, if the complainant, alleged perpetrator, or victim is identifiable, and if the complainant, alleged perpetrator, or victim is available. Additionally, witnesses who have knowledge of facts related to the complaint shall be interviewed, if identifiable and available. The names of witnesses may be obtained from the complainant or the victim. The files of the facility may be reviewed to ascertain the names of staff persons on duty at the time relevant to the complaint. The department shall apply a preponderance of the evidence standard in determining whether or not a complaint is substantiated. For the purposes of this subsection, “a

*preponderance of the evidence standard*” means that the evidence, considered and compared with the evidence opposed to it, produces the belief in a reasonable mind that the allegations are more likely true than not true. “A *preponderance of the evidence standard*” does not require that the investigator personally witnessed the alleged violation.

*c.* The department may refer to the resident advocate committee of a facility any complaint received by the department regarding that facility, for initial evaluation and appropriate action by the committee.

2. *a.* The complainant shall be promptly informed of the result of any action taken by the department or committee in the matter. The complainant shall also be notified of the name, address, and telephone number of the designated protection and advocacy agency if the alleged violation involves a facility with one or more residents with developmental disabilities or mental illness.

*b.* Upon conclusion of the investigation, the department shall notify the complainant of the results. The notification shall include a statement of the factual findings as determined by the investigator, the statutory or regulatory provisions alleged to have been violated, and a summary of the reasons for which the complaint was or was not substantiated.

*c.* The department shall mail the notification to the complainant without charge. Upon the request of the complainant, the department shall mail to the complainant, without charge, a copy of the most recent final findings regarding compliance with licensing requirements by the facility against which the complaint was filed.

*d.* A person who is dissatisfied with any aspect of the department’s handling of the complaint may contact the long-term care resident’s advocate, established pursuant to section 231.42, or may contact the protection and advocacy agency designated pursuant to section 135C.2 if the complaint relates to a resident with a developmental disability or a mental illness.

3. An inspection made pursuant to a complaint filed under section 135C.37 need not be limited to the matter or matters included in the complaint. However, the inspection shall not be a general inspection unless the complaint inspection coincides with a scheduled general inspection or unless in the course of the complaint investigation a violation is evident to the inspector. Upon arrival at the facility to be inspected, the inspector shall show identification to the person in charge of the facility and state that an inspection is to be made, before beginning the inspection. Upon request of either

the complainant or the department or committee, the complainant or the complainant's representative or both may be allowed the privilege of accompanying the inspector during any on-site inspection made pursuant to this section. The inspector may cancel the privilege at any time if the inspector determines that the privacy of any resident of the facility to be inspected would otherwise be violated. The protection and dignity of the resident shall be given first priority by the inspector and others.

4. If upon an inspection of a facility by its resident advocate committee pursuant to this section, the committee advises the department of any circumstance believed to constitute a violation of this chapter or of any rule adopted pursuant to it, the

committee shall similarly advise the facility at the same time. If the facility's licensee or administrator disagrees with the conclusion of the committee regarding the supposed violation, an informal conference may be requested and if requested shall be arranged by the department as provided in section 135C.42 before a citation is issued. If the department thereafter issues a citation pursuant to the committee's finding, the facility shall not be entitled to a second informal conference on the same violation and the citation shall be considered affirmed. The facility cited may proceed under section 135C.43 if it so desires.

2007 Acts, ch 93, §2  
Subsection 1, paragraph a amended

## CHAPTER 135I

### SWIMMING POOLS AND SPAS

#### 135I.4 Powers and duties.

The department is responsible for registering and regulating the operation of swimming pools, spas, and, notwithstanding chapter 89, swimming pool or spa water heaters. The department shall conduct seminars and training sessions, and disseminate information regarding health practices, safety measures, and operating procedures required under this chapter. The department may:

1. Inspect, at the time of installation and periodically thereafter, all swimming pools and spas for the purpose of detecting and eliminating health or safety hazards.

2. Establish minimum safety and sanitation criteria for the operation and use of swimming pools and spas.

3. Establish minimum qualifications for swimming pool, spa, and waterslide operators and lifeguards. Swimming pools operated by apartments, condominiums, country clubs, neighborhoods, or manufactured home communities or mobile home parks are exempt from requirements regarding lifeguards.

4. Establish and collect fees to defray the cost of administering this chapter. It is the intent of the general assembly that fees collected under this chapter be used to defray the cost of administering this chapter. However, the portion of fees needed to defray the costs of a local board of health in implementing this chapter shall be established by the local board of health. A fee imposed for the inspection of a swimming pool or spa shall not be collected until the inspection has actually been performed.

5. Adopt rules in accordance with chapter 17A for the implementation and enforcement of this chapter and the establishment of fees.

6. Enter into agreements with a local board of health to implement the inspection and enforcement provisions of this chapter. The agreements shall provide that the fees established by the local board of health for inspection and enforcement shall be retained by the local board. However, inspection fees shall not be charged by the department for facilities which are inspected by third-party authorities. Third-party authorities shall be approved by the department. The department shall monitor and certify the inspection and enforcement programs of local boards of health and approved third-party authorities.

2007 Acts, ch 159, §22  
Subsection 5 amended

#### 135I.6 Enforcement.

If the department or a local board of health acting pursuant to agreement with the department determines that a provision of this chapter or a rule adopted pursuant to this chapter has been or is being violated, the department may withhold or revoke the registration of a swimming pool or spa, or the department or the local board of health may order that a facility or item of equipment not be used, until the necessary corrective action has been taken. The department or the local board of health may request the county attorney to bring appropriate legal proceedings to enforce this chapter, including an action to enjoin violations. The attorney general may also institute appropriate legal proceedings at the request of the department. This remedy is in addition to any other legal remedy available to the department or a local board of health.

2007 Acts, ch 159, §23  
Section amended

## CHAPTER 135M

## PRESCRIPTION DRUG DONATION REPOSITORY

**135M.3 Prescription drug donation repository program authorized.**

1. The department, in cooperation with the board of pharmacy, may establish and maintain a prescription drug donation repository program under which any person may donate prescription drugs and supplies for use by an individual who meets eligibility criteria specified by the department by rule. The department may contract with a third party to implement and administer the program.

2. Donations of prescription drugs and supplies under the program may be made on the premises of a medical facility or pharmacy that elects to participate in the program and meets the requirements established by the department.

3. The medical facility or pharmacy may charge an individual who receives a prescription drug or supplies a handling fee that shall not exceed an amount established by rule by the department.

4. A medical facility or pharmacy that receives prescription drugs or supplies may distribute the prescription drugs or supplies to another eligible medical facility or pharmacy for use pursuant to the program.

5. Participation in the program shall be voluntary.

2007 Acts, ch 10, §22  
Subsection 1 amended

**135M.4 Prescription drug donation repository program requirements.**

1. A prescription drug or supplies may be accepted and dispensed under the prescription drug donation repository program if all of the following conditions are met:

*a.* The prescription drug is in its original sealed and tamper-evident packaging. However, a prescription drug in a single-unit dose or blister pack with the outside packaging opened may be accepted if the single-unit dose packaging remains intact.

*b.* The prescription drug bears an expiration date that is more than six months after the date the prescription drug was donated.

*c.* The prescription drug or supplies are inspected before the prescription drug or supplies are dispensed by a licensed pharmacist employed by or under contract with the medical facility or pharmacy, and the licensed pharmacist determines that the prescription drug or supplies are not adulterated or misbranded.

*d.* The prescription drug or supplies are prescribed by a health care practitioner for use by an eligible individual and are dispensed by a pharma-

cist or are dispensed to an eligible individual by the prescribing health care practitioner or the practitioner's authorized agent.

2. A prescription drug or supplies donated under this chapter shall not be resold.

3. *a.* If a person who donates prescription drugs under this chapter to a medical facility or pharmacy receives a notice from a pharmacy that a prescription drug has been recalled, the person shall inform the medical facility or pharmacy of the recall.

*b.* If a medical facility or pharmacy receives a recall notification from a person who donated prescription drugs under this chapter, the medical facility or pharmacy shall perform a uniform destruction of all of the recalled prescription drugs in the medical facility or pharmacy.

4. A prescription drug dispensed through the prescription drug donation repository program shall not be eligible for reimbursement under the medical assistance program.

5. The department shall adopt rules establishing all of the following:

*a.* Requirements for medical facilities and pharmacies to accept and dispense donated prescription drugs and supplies, including all of the following:

(1) Eligibility criteria for participation by medical facilities and pharmacies.

(2) Standards and procedures for accepting, safely storing, and dispensing donated prescription drugs and supplies.

(3) Standards and procedures for inspecting donated prescription drugs to determine if the prescription drugs are in their original sealed and tamper-evident packaging, or if the prescription drugs are in single-unit doses or blister packs and the outside packaging is opened, if the single-unit dose packaging remains intact.

(4) Standards and procedures for inspecting donated prescription drugs and supplies to determine that the prescription drugs and supplies are not adulterated or misbranded.

*b.* Eligibility criteria for individuals to receive donated prescription drugs and supplies dispensed under the program. The standards shall prioritize dispensing to individuals who are indigent or uninsured, but may permit dispensing to other individuals if an uninsured or indigent individual is unavailable.

*c.* Necessary forms for administration of the prescription drug donation repository program, including forms for use by individuals who donate, accept, distribute, or dispense the prescription drugs or supplies under the program.

*d.* A means by which an individual who is eligi-



ble to receive donated prescription drugs and supplies may indicate such eligibility.

e. The maximum handling fee that a medical facility or pharmacy may charge for accepting, distributing, or dispensing donated prescription

drugs and supplies under the program.

f. A list of prescription drugs that the prescription drug donation repository program will accept.

2007 Acts, ch 159, §24  
Subsection 1, paragraph d amended

## CHAPTER 135N

### HEMOPHILIA ADVISORY COMMITTEE

Chapter effective March 30, 2007, pursuant to  
2007 Acts, ch 31, §7, if funds appropriated;  
FY 2007-2008 appropriation made for  
hemophilia advisory council and this chapter  
in 2007 Acts, ch 218, §97

#### 135N.1 Short title.

This chapter shall be known and may be cited as the "*Hemophilia Advisory Committee Act*".

2007 Acts, ch 31, §1, 7  
NEW section

#### 135N.2 Legislative intent and findings.

1. It is the intent of the general assembly to establish an advisory committee to provide recommendations on cost-effective treatment programs that enhance the quality of life of those afflicted with hemophilia and contain the high cost of that treatment.

2. The general assembly finds inherited hemophilia and other bleeding and clotting disorders are devastating health conditions that can cause serious financial, social, and emotional hardships for patients and their families. Hemophilia and other bleeding and clotting disorders are incurable, so appropriate lifetime care and treatment are necessities for maintaining optimum health. Advancements in drug therapies are allowing individuals greater latitude in managing their conditions, fostering independence, and minimizing chronic complications. However, the rarity of these disorders coupled with the delicate processes for producing factors and administering anticoagulants makes treating these disorders extremely costly.

2007 Acts, ch 31, §2, 7  
NEW section

#### 135N.3 Establishment and duties of hemophilia advisory committee.

1. The director of the department of public health shall establish an advisory committee known as the hemophilia advisory committee.

2. The committee shall review and make recommendations to the director concerning but not limited to the following:

a. Proposed legislative or administrative changes to policies and programs that are integral to the health and wellness of individuals with hemophilia and other bleeding and clotting disorders.

b. Standards of care and treatment for persons

living with hemophilia and other bleeding and clotting disorders.

c. The development of community-based initiatives to increase awareness of care and treatment for persons living with hemophilia and other bleeding and clotting disorders.

d. Facilitating communication and cooperation between persons with hemophilia and other bleeding and clotting disorders.

2007 Acts, ch 31, §3, 7  
NEW section

#### 135N.4 Membership.

1. The following persons shall serve as nonvoting members of the committee:

a. The director of public health or a designee.

b. The director of the department of human services or a designee.

c. The commissioner of insurance or a designee.

2. The following voting members shall be appointed by the director, serving three-year terms:

a. One member who is a board-certified physician licensed, practicing, and currently treating individuals with hemophilia or other bleeding and clotting disorders.

b. One member who is a nurse licensed, practicing, and currently treating individuals with hemophilia or other bleeding and clotting disorders.

c. One member who is a social worker licensed, practicing, and currently treating individuals with hemophilia or other bleeding and clotting disorders.

d. One member who is a representative of a federally-funded hemophilia treatment center.

e. One member who is a representative of an organization established under the Iowa insurance code for the purpose of providing health insurance.

f. One member who is a representative of a voluntary health organization who currently services the hemophilia and other bleeding and clotting disorders community.

g. One member who is a patient, or caregiver of a patient, with hemophilia.

h. One member who is a patient, or caregiver

of a patient, with a bleeding disorder other than hemophilia.

*i.* One member who is a patient, or caregiver of a patient, with a clotting disorder.

3. At least one of the appointments made pursuant to subsection 2, paragraphs “*g*”, “*h*”, and “*i*” shall be a patient with hemophilia, a bleeding disorder that is not hemophilia, or a clotting disorder. The committee appointments may be made notwithstanding sections 69.16 and 69.16A.

4. If there is a vacancy on the committee, such position shall be filled in the same manner as the original appointment.

2007 Acts, ch 31, §4, 7  
NEW section

#### **135N.5 Meetings.**

1. The committee shall meet no less than four times per year and is subject to chapters 20 and 21 relating to open meetings and public records.

2. Members of the committee shall receive no compensation, but may be reimbursed for actual expenses incurred in the carrying out of their duties.

2007 Acts, ch 31, §5, 7  
NEW section

#### **135N.6 Report required.**

The committee shall, by January 15, 2008, and annually thereafter, submit to the governor and the general assembly a report with recommendations for maintaining and improving access to care for individuals with hemophilia and other bleeding and clotting disorders. Subsequent annual reports shall report on the status of implementing the recommendations as proposed by the committee and on any state and national activities with regard to hemophilia and other bleeding and clotting disorders.

2007 Acts, ch 31, §6, 7  
NEW section

## CHAPTER 136C

### RADIATION MACHINES AND RADIOACTIVE MATERIALS

#### **136C.3 Duties of department.**

The department is designated the state radiation control agency and is responsible for regulating the installation and use of radiation machines and the use of radioactive materials in this state as provided in this chapter. The department shall:

1. Establish minimum criteria and safety standards for the installation, operation, and use of radiation machines and radioactive materials.

2. *a.* Establish minimum training standards including continuing education requirements, and administer examinations and disciplinary procedures for operators of radiation machines and users of radioactive materials. A state of Iowa license to practice medicine, osteopathy, chiropractic, podiatry, dentistry, dental hygiene, or veterinary medicine, or licensure as a physician assistant pursuant to chapter 148C, or certification by the dental board in dental radiography, or by the board of podiatry in podiatric radiography, or enrollment in a program or course of study approved by the Iowa department of public health which includes the application of radiation to humans satisfies the minimum training standards for operation of radiation machines only.

*b.* The department shall establish a technical advisory committee made up of four technologists, one of whom shall be a limited radiography instructor, one of whom shall represent nuclear medicine technologists, one of whom shall represent radiation therapists, and one of whom shall represent diagnostic radiographers; five physicians, including one radiologist, one chiropractor,

one physician representing either radiation therapy or nuclear medicine, one podiatrist, and one private practitioner; and a representative of the department. The advisory committee shall assist the department in developing and establishing criteria for the administration of this subsection.

3. Develop programs for evaluation and control of hazards associated with the use of sources of radiation with due regard for compatibility of a proposed program with federal programs regulating byproduct, source, and special nuclear materials and considering consistency of a proposed program with federal programs for regulation of radiation machines.

4. Adopt, publish, and amend rules in accordance with chapter 17A as necessary for the implementation and enforcement of this chapter. The rules may provide for the licensing and control of radioactive materials with due regard for compatibility with federal regulatory programs.

5. Issue orders as necessary in connection with licensing and registration of radiation machines and radioactive materials.

6. Advise, consult, and cooperate with other agencies of the state, the federal government, other states and interstate agencies, political subdivisions, and other organizations concerned with control of sources of radiation.

7. Encourage, participate in, or conduct studies, investigations, training, research, and demonstrations relating to control of sources of radiation.

8. Collect and disseminate information relat-

ing to control of sources of radiation. The department shall maintain the following information on file:

*a.* License applications, issuances, denials, amendments, transfers, renewals, modifications, suspensions, and revocations.

*b.* A list of persons possessing sources of radiation requiring registration under this chapter and any administrative or judicial action involving each person.

*c.* Departmental rules relating to regulation of sources of radiation, existing or pending, and related actions.

9. Adopt rules requiring the keeping of such records with respect to activities under licenses and registration certificates issued pursuant to this chapter as the department determines necessary to effect the purposes of this chapter.

10. Adopt rules specifying the minimum training and performance standards for an individual using a radiation machine for mammography, and other rules necessary to implement section 136C.15. The rules shall complement federal requirements applicable to similar radiation machinery and shall not be less stringent than those federal requirements.

2007 Acts, ch 10, §23; 2007 Acts, ch 218, §195  
Subsection 2, former unnumbered paragraph 1 amended and editorially redesignated as paragraph a  
Subsection 2, former unnumbered paragraph 2 redesignated as paragraph b

#### **136C.10 Fees.**

1. *a.* The department shall establish and collect fees for the licensing and amendment of licenses for radioactive materials, the registration of radiation machines, the periodic inspection of radiation machines and radioactive materials, and the implementation of section 136C.3, subsection 2. Fees shall be in amounts sufficient to defray the cost of administering this chapter. The license fee may include the cost of environmental

surveillance activities to assess the radiological impact of activities conducted by licensees.

*b.* When a registrant or licensee fails to pay the applicable fee the department may suspend or revoke the registration or license or may issue an appropriate order. Fees for the license, amendment of a license, and inspection of radioactive material shall not exceed the fees prescribed by the United States nuclear regulatory commission.

2. The department may establish and collect a fee related to transporting radioactive material if the fee is used for a purpose related to transporting radioactive material, including enforcement and planning, developing, and maintaining a capability for emergency response. The fees shall be established by rules adopted pursuant to chapter 17A.

3. The department may establish and collect fees from persons providing mammography services to assure compliance with applicable rules and the federal Mammography Quality Standards Act of 1992, Pub. L. No. 102-539, as amended. Fees shall be in an amount determined by the department by rule and all fees collected shall be used to support the department's mammography program.

4. Fees collected pursuant to this section shall be retained by the department, shall be considered repayment receipts as defined in section 8.2, and shall be used for the purposes described in this section, including but not limited to the addition of full-time equivalent positions for program services and investigations. Notwithstanding section 8.33, moneys retained by the department pursuant to this subsection are not subject to reversion to the general fund of the state.

2006 Acts, ch 1155, §1, 15  
Nonreversion of unencumbered or unobligated funds appropriated or received as fees or repayment receipts for the fiscal period beginning July 1, 2006, and ending July 1, 2007, until the close of the next succeeding fiscal year; 2006 Acts, ch 1155, §14, 15  
2006 amendments to this section take effect July 1, 2007; 2006 Acts, ch 1155, §15  
Section amended

## CHAPTER 137C

### HOTEL SANITATION CODE

#### **137C.6 Authority to enforce.**

1. The director shall regulate, license, and inspect hotels and enforce the Iowa hotel sanitation code in Iowa. Municipal corporations shall not regulate, license, inspect, or collect license fees from hotels except as provided for in the Iowa hotel sanitation code.

2. If a municipal corporation wants its local board of health to license, inspect, and otherwise enforce the Iowa hotel sanitation code within its jurisdiction, the municipal corporation may enter into an agreement to do so with the director. The director may enter into the agreement if the direc-

tor finds that the local board of health has adequate resources to perform the required functions. A municipal corporation may only enter into an agreement to enforce the Iowa hotel sanitation code if it also agrees to enforce the rules setting minimum standards to protect consumers from foodborne illness adopted pursuant to section 137F.2.

3. A local board of health that is responsible for enforcing the Iowa hotel sanitation code within its jurisdiction pursuant to an agreement shall make an annual report to the director providing the following information:

a. The total number of hotel licenses granted or renewed during the year.

b. The number of hotel licenses granted or renewed during the year broken down into the following categories:

(1) Hotels containing fifteen guest rooms or less.

(2) Hotels containing more than fifteen but less than thirty-one guest rooms.

(3) Hotels containing more than thirty but less than seventy-six guest rooms.

(4) Hotels containing more than seventy-five but less than one hundred fifty guest rooms.

(5) Hotels containing one hundred fifty or more guest rooms.

c. The amount of money collected in license fees during the year.

d. Other information the director requests.

4. The director shall monitor local boards of health to determine if they are enforcing the Iowa hotel sanitation code within their respective jurisdictions. If the director determines that the Iowa hotel sanitation code is enforced by a local board of health, such enforcement shall be accepted in lieu of enforcement by the department in that jurisdiction. If the director determines that the Iowa hotel sanitation code is not enforced by a local board of health, the director may rescind the agreement after reasonable notice and an oppor-

tunity for a hearing. If the agreement is rescinded, the director shall assume responsibility for enforcement in the jurisdiction involved.

2007 Acts, ch 215, §207  
Section amended

**137C.9 License fees.**

1. Either the department or the municipal corporation shall collect the following annual license fees:

a. For a hotel containing fifteen guest rooms or less, twenty-seven dollars.

b. For a hotel containing more than fifteen but less than thirty-one guest rooms, forty dollars and fifty cents.

c. For a hotel containing more than thirty but less than seventy-six guest rooms, fifty-four dollars.

d. For a hotel containing more than seventy-five but less than one hundred fifty guest rooms, fifty-seven dollars and fifty cents.

e. For a hotel containing one hundred fifty or more guest rooms, one hundred one dollars and twenty-five cents.

2. Fees collected by the department shall be deposited in the general fund of the state. Fees collected by a municipal corporation shall be retained by it and for its use.

2007 Acts, ch 215, §208  
Section amended

**CHAPTER 137D**

**HOME FOOD ESTABLISHMENTS**

**137D.2 Licenses and inspections.**

1. A person shall not open or operate a home food establishment until a license has been obtained from the department of inspections and appeals. The department shall collect a fee of thirty-three dollars and seventy-five cents for a license. After collection, the fees shall be deposited in the general fund of the state. A license shall expire one year from date of issue. A license is renewable.

2. A person shall not sell or distribute from a home food establishment if the home food establishment is unlicensed, the license of the home food establishment is suspended, or the food fails to meet standards adopted for such food by the department.

3. An application for a license under this chapter shall be made upon a form furnished by the department and shall contain the items required by

it according to rules adopted by the department.

4. The department shall regulate, license, and inspect home food establishments according to standards adopted by rule.

5. The department shall provide for the periodic inspection of a home food establishment. The inspector may enter the home food establishment at any reasonable hour to make the inspection. The department shall inspect only those areas related to preparing food for sale.

6. The department shall regulate and inspect food prepared at a home food establishment according to standards adopted by rule. The inspection may occur at any place where the prepared food is created, transported, or stored for sale or resale.

2007 Acts, ch 215, §209  
Subsection 1 amended

## CHAPTER 137F

## FOOD ESTABLISHMENTS AND FOOD PROCESSING PLANTS

**137F.1 Definitions.**

For the purpose of this chapter:

1. *“Bed and breakfast home”* means a private residence which provides lodging and meals for guests, in which the host or hostess resides and in which no more than four guest families are lodged at the same time and which, while it may advertise and accept reservations, does not hold itself out to the public to be a restaurant, hotel, or motel, does not require reservations, and serves food only to overnight guests.
2. *“Commissary”* means a food establishment used for preparing, fabricating, packaging, and storage of food or food products for distribution and sale through the food establishment’s own food establishment outlets.
3. *“Department”* means the department of inspections and appeals.
4. *“Director”* means the director of the department of inspections and appeals.
5. *“Farmers market”* means a marketplace which seasonally operates principally as a common market for fresh fruits and vegetables on a retail basis for off-the-premises consumption.
6. *“Food”* means a raw, cooked, or processed edible substance, ice, a beverage, an ingredient used or intended for use or sale in whole or in part for human consumption, or chewing gum.
7. *“Food establishment”* means an operation that stores, prepares, packages, serves, vends, or otherwise provides food for human consumption and includes a food service operation in a salvage or distressed food operation, school, summer camp, residential service substance abuse treatment facility, halfway house substance abuse treatment facility, correctional facility operated by the department of corrections, the state training school, or the Iowa juvenile home. *“Food establishment”* does not include the following:
  - a. A food processing plant.
  - b. An establishment that offers only prepackaged foods that are nonpotentially hazardous.
  - c. A produce stand or facility which sells only whole, uncut fresh fruits and vegetables.
  - d. Premises which are a home food establishment pursuant to chapter 137D.
  - e. Premises where a person operates a farmers market, if potentially hazardous food is not sold or distributed from the premises.
  - f. Premises of a residence in which food that is nonpotentially hazardous is sold for consumption off the premises to a consumer customer, if the food is labeled to identify the name and address of the person preparing the food and the common name of the food.
  - g. A kitchen in a private home where food is prepared or stored for family consumption or in a bed and breakfast home.
  - h. A private home that receives catered or home-delivered food.
  - i. Child care facilities and other food establishment facilities located in hospitals or health care facilities which are subject to inspection by other state agencies or divisions of the department.
  - j. Supply vehicles, vending machine locations, or boardinghouses for permanent guests.
  - k. Establishments exclusively engaged in the processing of meat and poultry which are licensed pursuant to section 189A.3.
  - l. Premises covered by a current class “A” beer permit as provided in chapter 123.
  - m. The premises of a residence in which honey is stored; prepared; packaged, including by placement in a container; labeled; or from which honey is distributed.
8. *“Food processing plant”* means a commercial operation that manufactures, packages, labels, or stores food for human consumption and does not provide food directly to a consumer. *“Food processing plant”* does not include any of the following:
  - a. A premises covered by a class “A” beer permit as provided in chapter 123.
  - b. A premises of a residence in which honey is stored; prepared; packaged, including by placement in a container; labeled; or from which honey is distributed.
  - c. A premises covered by a class “A” wine permit or a class “B” wine permit as provided in chapter 123.
9. *“Mobile food unit”* means a food establishment that is readily movable, which either operates up to three consecutive days at one location or returns to a home base of operation at the end of each day.
10. *“Municipal corporation”* means a political subdivision of this state.
11. *“Perishable food”* means potentially hazardous food.
12. *“Potentially hazardous food”* means a food that is natural or synthetic and is in a form capable of supporting the rapid and progressive growth of infectious or toxigenic microorganisms, or the growth and toxin production of clostridium botulinum. *“Potentially hazardous food”* includes an animal food that is raw or heat-treated, a food of plant origin that is heat-treated or consists of raw seed sprouts, cut melons, and garlic and oil mixtures. *“Potentially hazardous food”* does not include the following:
  - a. An air-cooled hard-boiled egg with shell intact.
  - b. A food with a water activity value of 0.85 or less.

c. A food with a hydrogen ion concentration (pH) level of 4.6 or below when measured at twenty-four degrees Centigrade or seventy-five degrees Fahrenheit.

d. A food, in an unopened hermetically sealed container, that is commercially processed to achieve and maintain commercial sterility under conditions of nonrefrigerated storage and distribution.

13. “*Pushcart*” means a non-self-propelled vehicle food establishment limited to serving nonpotentially hazardous foods or commissary-wrapped foods maintained at proper temperatures, or limited to the preparation and serving of frankfurters.

14. “*Regulatory authority*” means the department or a municipal corporation that has entered into an agreement with the director pursuant to section 137F.3 for authority to enforce this chapter in its jurisdiction.

15. “*Temporary food establishment*” means a food establishment that operates for a period of no more than fourteen consecutive days in conjunction with a single event or celebration.

16. “*Vending machine*” means a food establishment which is a self-service device that, upon insertion of a coin, paper currency, token, card, or key, dispenses unit servings of food in bulk or in packages without the necessity of replenishing the device between each vending operation.

17. “*Vending machine location*” means the physical site where a vending machine is installed and operated, including the storage and servicing areas on the premises that are used in conjunction with the vending machine.

2007 Acts, ch 215, §210, 211

Subsection 7 stricken and former subsections 8 – 18 renumbered as 7 – 17

Subsection 7, unnumbered paragraph 1 amended

### 137F.2 Adoption by rule.

The department shall, in accordance with chapter 17A, adopt rules setting minimum standards for entities covered under this chapter to protect consumers from foodborne illness. In so doing, the department may adopt by reference, with or without amendment, the United States food and drug administration food code, which shall be specified by title and edition, date of publication, or similar information. The rules and standards shall be formulated in consultation with municipal corporations under agreement with the department, affected state agencies, and industry, professional, and consumer groups.

2007 Acts, ch 215, §212

Continuing effectiveness of 1997 edition of United States food and drug administration food code pending adoption of rules under this section; 2007 Acts, ch 215, §220

Section stricken and rewritten

### 137F.3 Authority to enforce.

1. The director shall regulate, license, and inspect food establishments and food processing plants and enforce this chapter pursuant to rules

adopted by the department in accordance with chapter 17A. Municipal corporations shall not regulate, license, inspect, or collect license fees from food establishments and food processing plants, except as provided in this section.

2. A municipal corporation may enter into an agreement with the director to provide that the municipal corporation shall license, inspect, and otherwise enforce this chapter within its jurisdiction. The director may enter into the agreement if the director finds that the municipal corporation has adequate resources to perform the required functions. A municipal corporation may only enter into an agreement to enforce the rules setting minimum standards to protect consumers from foodborne illness adopted pursuant to section 137F.2 if it also agrees to enforce the Iowa hotel sanitation code pursuant to section 137C.6. However, the department shall license and inspect all food processing plants which manufacture, package, or label food products. A municipal corporation may license and inspect, as authorized by this section, food processing plants whose operations are limited to the storage of food products.

3. If the director enters into an agreement with a municipal corporation as provided by this section, the director shall provide that the inspection practices of a municipal corporation are spot-checked on a regular basis.

4. A municipal corporation that is responsible for enforcing this chapter within its jurisdiction pursuant to an agreement shall make an annual report to the director providing the following information:

a. The total number of licenses granted or renewed by the municipal corporation under this chapter during the year.

b. The number of licenses granted or renewed by the municipal corporation under this chapter during the year in each of the following categories:

- (1) Food establishments.
- (2) Food processing plants.
- (3) Mobile food units and pushcarts.
- (4) Temporary food establishments.
- (5) Vending machines.

c. The amount of money collected in license fees during the year.

d. The amount expended to perform the functions required under the agreement, submitted on a form prescribed by the department.

e. Other information the director requests.

5. The director shall monitor municipal corporations which have entered into an agreement pursuant to this section to determine if they are enforcing this chapter within their respective jurisdictions. If the director determines that this chapter is not enforced by a municipal corporation, the director may rescind the agreement after reasonable notice and an opportunity for a hearing. If the agreement is rescinded, the director shall assume responsibility for enforcement in the jurisdiction involved.

6. The inspection staff of a municipal corporation that has entered into an agreement with the director to enforce this chapter shall be required by the department to apply the current rules setting minimum standards to protect consumers from foodborne illness adopted pursuant to section 137F.2 to ensure consistency in application of the rules. A municipal corporation's failure to comply may result in the department rescinding the agreement with the municipal corporation, after reasonable notice and an opportunity for a hearing.

2007 Acts, ch 215, §213  
Section amended

### **137F.3A Municipal corporation inspections — contingent appropriation.**

1. If a municipal corporation operating pursuant to a chapter 28E agreement with the department of inspections and appeals to enforce this chapter and chapters 137C and 137D either fails to renew the agreement effective after April 1, 2007, or discontinues, after April 1, 2007, enforcement activities in one or more jurisdictions during the agreement time frame, or the department of inspections and appeals cancels an agreement after April 1, 2007, due to noncompliance with the terms of the agreement, the department of inspections and appeals may employ additional full-time equivalent positions to enforce the provisions of the chapters, with the approval of the department of management. Before approval is given, the director of the department of management shall determine that the expenses exceed the funds budgeted by the general assembly for food inspections to the department of inspections and appeals. The department of inspections and appeals may hire no more than one full-time equivalent position for each six hundred inspections required pursuant to this chapter and chapters 137C and 137D.

2. Notwithstanding chapter 137D, and sections 137C.9 and 137F.6, if the conditions described in this section are met, fees imposed pursuant to that chapter and those sections shall be retained by and are appropriated to the department of inspections and appeals each fiscal year to provide for salaries, support, maintenance, and miscellaneous purposes associated with the additional inspections. The appropriation made in this subsection is not applicable in a fiscal year for which the general assembly enacts an appropriation made for the purposes described in this subsection.

2007 Acts, ch 215, §214, 221  
Section amended

### **137F.6 License fees.**

1. The regulatory authority shall collect the following annual license fees:

*a.* For a mobile food unit or pushcart, twenty-seven dollars.

*b.* For a temporary food establishment per fixed location, thirty-three dollars and fifty cents.

*c.* For a vending machine, twenty dollars for the first machine and five dollars for each additional machine.

*d.* For a food establishment which prepares or serves food for individual portion service intended for consumption on-the-premises, the annual license fee shall correspond to the annual gross food and beverage sales of the food establishment, as follows:

(1) Annual gross sales of under fifty thousand dollars, sixty-seven dollars and fifty cents.

(2) Annual gross sales of at least fifty thousand dollars but less than one hundred thousand dollars, one hundred fourteen dollars and fifty cents.

(3) Annual gross sales of at least one hundred thousand dollars but less than two hundred fifty thousand dollars, two hundred thirty-six dollars and twenty-five cents.

(4) Annual gross sales of two hundred fifty thousand dollars but less than five hundred thousand dollars, two hundred seventy-five dollars.

(5) Annual gross sales of five hundred thousand dollars or more, three hundred three dollars and seventy-five cents.

*e.* For a food establishment which sells food or food products to consumer customers intended for preparation or consumption off-the-premises, the annual license fee shall correspond to the annual gross food and beverage sales of the food establishment, as follows:

(1) Annual gross sales of under ten thousand dollars, forty dollars and fifty cents.

(2) Annual gross sales of at least ten thousand dollars but less than two hundred fifty thousand dollars, one hundred one dollars and twenty-five cents.

(3) Annual gross sales of at least two hundred fifty thousand dollars but less than five hundred thousand dollars, one hundred fifty-five dollars and twenty-five cents.

(4) Annual gross sales of at least five hundred thousand dollars but less than seven hundred fifty thousand dollars, two hundred two dollars and fifty cents.

(5) Annual gross sales of seven hundred fifty thousand dollars or more, three hundred three dollars and seventy-five cents.

*f.* For a food processing plant, the annual license fee shall correspond to the annual gross food and beverage sales of the food processing plant, as follows:

(1) Annual gross sales of under fifty thousand dollars, sixty-seven dollars and fifty cents.

(2) Annual gross sales of at least fifty thousand dollars but less than two hundred fifty thousand dollars, one hundred thirty-five dollars.

(3) Annual gross sales of at least two hundred fifty thousand dollars but less than five hundred

thousand dollars, two hundred two dollars and fifty cents.

(4) Annual gross sales of five hundred thousand dollars or more, three hundred thirty-seven dollars and fifty cents.

*g.* For a farmers market where potentially hazardous food is sold or distributed, one seasonal license fee of one hundred dollars for each vendor on a countywide basis.

*h.* A food establishment covered by paragraphs “*d*” and “*e*” shall be assessed license fees not to exceed seventy-five percent of the total fees applicable under both paragraphs.

2. If an establishment licensed under subsection 1, paragraph “*d*” or “*e*”, has had a person in charge for the entire previous twelve-month period who holds an active certified food protection manager certificate from a program approved by the conference on food protection and the establishment has not been issued a critical violation during the previous twelve-month period, the establishment’s license fee for the current renewal period shall be reduced by fifty dollars.

3. Fees collected by the department shall be deposited in the general fund of the state. Fees collected by a municipal corporation shall be retained by the municipal corporation for regulation of food establishments and food processing plants licensed under this chapter.

4. Each vending machine licensed under this chapter shall bear a readily visible identification tag or decal provided by the licensee, containing the licensee’s business address and phone num-

ber, and a company license number assigned by the regulatory authority.

2007 Acts, ch 215, §215  
Section amended

#### **137F.10 Regular inspections.**

The appropriate regulatory authority shall provide for the inspection of each food establishment and food processing plant in this state in accordance with this chapter and with rules adopted pursuant to this chapter in accordance with chapter 17A. A regulatory authority may enter a food establishment or food processing plant at any reasonable hour to conduct an inspection. The manager or person in charge of the food establishment or food processing plant shall afford free access to every part of the premises and render all aid and assistance necessary to enable the regulatory authority to make a thorough and complete inspection. As part of the inspection process, the regulatory authority shall provide an explanation of the violation or violations cited and provide guidance as to actions for correction and elimination of the violation or violations.

2007 Acts, ch 215, §216  
Section amended

#### **137F.11A Posting of inspection reports.**

An establishment inspected under this chapter shall post the most recent routine inspection report, along with any current complaint or re-inspection reports, in a location at the establishment that is readily visible to the public.

2007 Acts, ch 215, §217  
NEW section

## CHAPTER 139A

### COMMUNICABLE AND INFECTIOUS DISEASES AND POISONINGS

#### **139A.8 Immunization of children.**

1. A parent or legal guardian shall assure that the person’s minor children residing in the state are adequately immunized against diphtheria, pertussis, tetanus, poliomyelitis, rubeola, rubella, and varicella, according to recommendations provided by the department subject to the provisions of subsections 3 and 4.

2. *a.* A person shall not be enrolled in any licensed child care center or elementary or secondary school in Iowa without evidence of adequate immunizations against diphtheria, pertussis, tetanus, poliomyelitis, rubeola, rubella, and varicella.

*b.* Evidence of adequate immunization against haemophilus influenza B and invasive pneumococcal disease shall be required prior to enrollment in any licensed child care center.

*c.* Evidence of hepatitis type B immunization shall be required of a child born on or after July 1, 1994, prior to enrollment in school in kindergarten or in a grade.

*d.* Immunizations shall be provided according to recommendations provided by the department subject to the provisions of subsections 3 and 4.

3. Subject to the provision of subsection 4, the state board of health may modify or delete any of the immunizations in subsection 2.

4. Immunization is not required for a person’s enrollment in any elementary or secondary school or licensed child care center if either of the following applies:

*a.* The applicant, or if the applicant is a minor, the applicant’s parent or legal guardian, submits to the admitting official a statement signed by a physician, advanced registered nurse practition-



er, or physician assistant who is licensed by the board of medicine, board of nursing, or board of physician assistants that the immunizations required would be injurious to the health and well-being of the applicant or any member of the applicant's family.

b. The applicant, or if the applicant is a minor, the applicant's parent or legal guardian, submits an affidavit signed by the applicant, or if the applicant is a minor, the applicant's parent or legal guardian, stating that the immunization conflicts with the tenets and practices of a recognized religious denomination of which the applicant is an adherent or member.

The exemptions under this subsection do not apply in times of emergency or epidemic as determined by the state board of health and as declared by the director of public health.

5. A person may be provisionally enrolled in an elementary or secondary school or licensed child care center if the person has begun the required immunizations and if the person continues to receive the necessary immunizations as rapidly as is medically feasible. The department shall adopt rules relating to the provisional admission of persons to an elementary or secondary school or licensed child care center.

6. The local board shall furnish the department, within sixty days after the first official day of school, evidence that each person enrolled in any elementary or secondary school has been immunized as required in this section subject to subsection 4. The department shall adopt rules pursuant to chapter 17A relating to the reporting of evidence of immunization.

7. Local boards shall provide the required immunizations to children in areas where no local provision of these services exists.

8. The department, in consultation with the director of the department of education, shall adopt rules for the implementation of this section and shall provide those rules to local school boards and local boards.

2007 Acts, ch 10, §24; 2007 Acts, ch 11, §1  
Subsection 2, paragraph b amended  
Subsection 4, paragraph a amended

### **139A.13A Employment protection.**

1. An employer shall not discharge an employee, or take or fail to take action regarding an employee's promotion or proposed promotion, or take action to reduce an employee's wages or benefits for actual time worked, due to the compliance of an employee with a quarantine or isolation order or voluntary confinement request issued by the department, a local board, or the centers for disease control and prevention of the United States department of health and human services.

2. An employee whose employer violates this section may petition the court for imposition of a cease and desist order against the person's employer and for reinstatement to the person's previ-

ous position of employment. This section does not create a private cause of action for relief of money damages.

2007 Acts, ch 159, §25  
Subsection 1 amended

### **139A.22 Prevention of transmission of HIV or HBV to patients.**

1. A hospital shall adopt procedures requiring the establishment of protocols applicable on a case-by-case basis to a health care provider determined to be infected with HIV or HBV who ordinarily performs exposure-prone procedures as determined by an expert review panel, within the hospital setting. The protocols established shall be in accordance with the recommendations issued by the centers for disease control and prevention of the United States department of health and human services. The expert review panel may be an established committee of the hospital. The procedures may provide for referral of the health care provider to the expert review panel established by the department pursuant to subsection 3 for establishment of the protocols. The procedures shall require reporting noncompliance with the protocols by a health care provider to the licensing board with jurisdiction over the relevant health care providers.

2. A health care facility shall adopt procedures in accordance with recommendations issued by the centers for disease control and prevention of the United States department of health and human services, applicable to a health care provider determined to be infected with HIV or HBV who ordinarily performs or assists with exposure-prone procedures within the health care facility. The procedures shall require referral of the health care provider to the expert review panel established by the department pursuant to subsection 3.

3. The department shall establish an expert review panel to determine on a case-by-case basis under what circumstances, if any, a health care provider determined to be infected with HIV or HBV practicing outside the hospital setting or referred to the panel by a hospital or health care facility may perform exposure-prone procedures. If a health care provider determined to be infected with HIV or HBV does not comply with the determination of the expert review panel, the panel shall report the noncompliance to the licensing board with jurisdiction over the health care provider. A determination of an expert review panel pursuant to this section is a final agency action appealable pursuant to section 17A.19.

4. The health care provider determined to be infected with HIV or HBV, who works in a hospital setting, may elect either the expert review panel established by the hospital or the expert review panel established by the department for the purpose of making a determination of the circumstances under which the health care provider may

perform exposure-prone procedures.

5. A health care provider determined to be infected with HIV or HBV shall not perform an exposure-prone procedure except as approved by the expert review panel established by the department pursuant to subsection 3, or in compliance with the protocol established by the hospital pursuant to subsection 1 or the procedures established by the health care facility pursuant to subsection 2.

6. The board of medicine, the board of physician assistants, the board of podiatry, the board of nursing, the dental board, and the board of optometry shall require that licensees comply with the recommendations issued by the centers for disease control and prevention of the United States department of health and human services for preventing transmission of human immunodeficiency virus and hepatitis B virus to patients during exposure-prone invasive procedures, with the recommendations of the expert review panel established pursuant to subsection 3, with hospital protocols established pursuant to subsection 1, and with health care facility procedures established pursuant to subsection 2, as applicable.

7. Information relating to the HIV status of a health care provider is confidential and subject to the provisions of section 141A.9. A person who intentionally or recklessly makes an unauthorized disclosure of such information is subject to a civil penalty of one thousand dollars. The attorney general or the attorney general's designee may maintain a civil action to enforce this section. Proceedings maintained under this section shall provide for the anonymity of the health care provider and all documentation shall be maintained in a confidential manner. Information relating to the HBV

status of a health care provider is confidential and shall not be accessible to the public. Information regulated by this section, however, may be disclosed to members of the expert review panel established by the department or a panel established by hospital protocol under this section. The information may also be disclosed to the appropriate licensing board by filing a report as required by this section. The licensing board shall consider the report a complaint subject to the confidentiality provisions of section 272C.6. A licensee, upon the filing of a formal charge or notice of hearing by the licensing board based on such a complaint, may seek a protective order from the board.

8. The expert review panel established by the department and individual members of the panel shall be immune from any liability, civil or criminal, for reasonable actions taken in the good faith performance of functions authorized or required by this section. A hospital, an expert review panel established by the hospital, and individual members of the panel shall be immune from any liability, civil or criminal, for reasonable actions taken in the good faith performance of functions authorized or required by this section. Complaints, investigations, reports, deliberations, and findings of the hospital and its panel with respect to a named health care provider suspected, alleged, or found to be in violation of the protocol required by this section constitute peer review records under section 147.135, and are subject to the specific confidentiality requirements and limitations of that section.

2007 Acts, ch 10, §25; 2007 Acts, ch 218, §196  
See §139A.23  
Subsections 1, 3, 6, and 7 amended

## CHAPTER 141A

### ACQUIRED IMMUNE DEFICIENCY SYNDROME (AIDS)

#### 141A.1 Definitions.

As used in this chapter, unless the context otherwise requires:

1. "*AIDS*" means acquired immune deficiency syndrome as defined by the centers for disease control and prevention of the United States department of health and human services.

2. "*AIDS-related conditions*" means any condition resulting from the human immunodeficiency virus infection that meets the definition of AIDS as established by the centers for disease control and prevention of the United States department of health and human services.

3. "*Blinded epidemiological studies*" means studies in which specimens which were collected for other purposes are selected according to estab-

lished criteria, are permanently stripped of personal identifiers, and are then tested.

4. "*Blood bank*" means a facility for the collection, processing, or storage of human blood or blood derivatives, including blood plasma, or from which or by means of which human blood or blood derivatives are distributed or otherwise made available.

5. "*Care provider*" means an individual who is trained and authorized by federal or state law to provide health care services or services of any kind in the course of the individual's official duties, for compensation or in a voluntary capacity, who is a health care provider, emergency medical care provider as defined in section 147A.1, fire fighter, or peace officer. "*Care provider*" also means an indi-

vidual who renders emergency care or assistance in an emergency or due to an accident as described in section 613.17.

6. “*Department*” means the Iowa department of public health.

7. “*Good faith*” means objectively reasonable and not in violation of clearly established statutory rights or other rights of a person which a reasonable person would know or should have known.

8. “*Health care provider*” means a person licensed to practice medicine and surgery, osteopathic medicine and surgery, osteopathy, chiropractic, podiatry, nursing, dentistry, or optometry, or as a physician assistant, dental hygienist, or acupuncturist.

9. “*Health facility*” means a hospital, health care facility, clinic, blood bank, blood center, sperm bank, laboratory organ transplant center and procurement agency, or other health care institution.

10. “*HIV*” means the human immunodeficiency virus identified as the causative agent of AIDS.

11. “*HIV-related condition*” means any condition resulting from the human immunodeficiency virus infection.

12. “*HIV-related test*” means a diagnostic test conducted by a laboratory approved pursuant to the federal Clinical Laboratory Improvement Amendments for determining the presence of HIV or antibodies to HIV.

13. “*Infectious bodily fluids*” means bodily fluids capable of transmitting HIV infection as determined by the centers for disease control and prevention of the United States department of health and human services and adopted by rule of the department.

14. “*Legal guardian*” means a person appointed by a court pursuant to chapter 633 or an attorney in fact as defined in section 144B.1. In the case of a minor, “*legal guardian*” also means a parent or other person responsible for the care of the minor.

15. “*Nonblinded epidemiological studies*” means studies in which specimens are collected for the express purpose of testing for the HIV infection and persons included in the nonblinded study are selected according to established criteria.

16. “*Release of test results*” means a written authorization for disclosure of HIV-related test results which is signed and dated, and which specifies to whom disclosure is authorized and the time period during which the release is to be effective.

17. “*Sample*” means a human specimen obtained for the purpose of conducting an HIV-related test.

18. “*Significant exposure*” means the risk of contracting HIV infection by means of exposure to a person’s infectious bodily fluids in a manner capable of transmitting HIV infection as determined by the centers for disease control and prevention of the United States department of health and hu-

man services and adopted by rule of the department.

2007 Acts, ch 70, §1, 2  
Subsections 2 and 8 amended  
New subsection 11 and former subsection 11 amended and renumbered as 12  
Former subsections 12 – 17 renumbered as 13 – 18

#### 141A.2 Lead agency.

1. The department is designated as the lead agency in the coordination and implementation of the Iowa comprehensive HIV plan.

2. The department shall adopt rules pursuant to chapter 17A to implement and enforce this chapter. The rules may include procedures for taking appropriate action with regard to health facilities or health care providers which violate this chapter or the rules adopted pursuant to this chapter.

3. The department shall adopt rules pursuant to chapter 17A which require that if a health care provider attending a person prior to the person’s death determines that the person suffered from or was suspected of suffering from a contagious or infectious disease, the health care provider shall place with the remains written notification of the condition for the information of any person handling the body of the deceased person subsequent to the person’s death. For purposes of this subsection, “*contagious or infectious disease*” means hepatitis in any form, meningococcal disease, tuberculosis, and any other disease including AIDS or HIV infection, determined to be life-threatening to a person exposed to the disease as established by rules adopted by the department based upon a determination by the state epidemiologist and in accordance with guidelines of the centers for disease control and prevention of the United States department of health and human services.

4. The department shall provide consultation services to all care providers, including paramedics, ambulance personnel, physicians, nurses, hospital personnel, first responders, peace officers, and fire fighters, who provide care services to a person, and to all persons who attend dead bodies regarding standard precautions to prevent the transmission of contagious and infectious diseases.

5. The department shall coordinate efforts with local health officers to investigate sources of HIV infection and use every appropriate means to prevent the spread of the infection.

6. The department, with the approval of the state board of health, may conduct epidemiological blinded and nonblinded studies to determine the incidence and prevalence of HIV infection. Initiation of any new epidemiological studies shall be contingent upon the receipt of funding sufficient to cover all the costs associated with the studies. The informed consent, reporting, and counseling requirements of this chapter shall not apply to

blinded studies.

2007 Acts, ch 70, §3  
Subsections 1, 4, and 6 amended

#### 141A.3 Duties of the department.

1. All federal and state moneys appropriated to the department for HIV-related activities shall be utilized and distributed in a manner consistent with the guidelines established by the United States department of health and human services.

2. The department shall do all of the following:

*a.* Provide consultation services to agencies and organizations regarding appropriate policies for testing, education, confidentiality, and infection control.

*b.* Provide health information to the public regarding HIV infection, including information about how the infection is transmitted and how transmittal can be prevented. The department shall prepare and distribute information regarding HIV infection and prevention.

*c.* Provide consultation services concerning HIV infection in the workplace.

*d.* Implement HIV education risk-reduction programs for specific populations at high risk for infection.

*e.* Provide an informational brochure for patients who provide samples for purposes of performing an HIV test which, at a minimum, shall include a summary of the patient's rights and responsibilities under the law.

*f.* In cooperation with the department of education, recommend evidence-based, medically accurate HIV prevention curricula for use at the discretion of secondary and middle schools.

2007 Acts, ch 70, §4  
Section amended

#### 141A.4 Testing and education.

1. HIV testing and education shall be offered to persons who are at risk for HIV infection including all of the following:

*a.* All persons testing positive for a sexually transmitted disease.

*b.* All persons having a history of injecting drug abuse.

*c.* Male and female sex workers and those who trade sex for drugs, money, or favors.

*d.* Sexual partners of HIV-infected persons.

*e.* Persons whose sexual partners are identified in paragraphs "a" through "d".

2. *a.* All pregnant women shall be tested for HIV infection as part of the routine panel of prenatal tests.

*b.* A pregnant woman shall be notified that HIV screening is recommended for all prenatal patients and that the pregnant woman will receive an HIV test as part of the routine panel of prenatal tests unless the pregnant woman objects to the test.

*c.* If a pregnant woman objects to and declines the test, the decision shall be documented in the

pregnant woman's medical record.

*d.* Information about HIV prevention, risk reduction, and treatment opportunities to reduce the possible transmission of HIV to a fetus shall be made available to all pregnant women.

2007 Acts, ch 70, §5  
Section amended

#### 141A.5 Partner notification program — HIV.

1. The department shall maintain a partner notification program for persons known to have tested positive for HIV infection.

2. In administering the program, the department shall provide for the following:

*a.* A person who tests positive for HIV infection shall receive post-test counseling, during which time the person shall be encouraged to refer for counseling and HIV testing any person with whom the person has had sexual relations or has shared drug injecting equipment.

*b.* The physician or other health care provider attending the person may provide to the department any relevant information provided by the person regarding any person with whom the tested person has had sexual relations or has shared drug injecting equipment.

*c.* (1) Devise a procedure, as a part of the partner notification program, to provide for the notification of an identifiable third party who is a sexual partner of or who shares drug injecting equipment with a person who has tested positive for HIV, by the department or a physician, when all of the following situations exist:

(a) A physician for the infected person is of the good faith opinion that the nature of the continuing contact poses an imminent danger of HIV infection transmission to the third party.

(b) When the physician believes in good faith that the infected person, despite strong encouragement, has not and will not warn the third party and will not participate in the voluntary partner notification program.

(2) Notwithstanding subsection 3, the department or a physician may reveal the identity of a person who has tested positive for HIV infection pursuant to this subsection only to the extent necessary to protect a third party from the direct threat of transmission. This subsection shall not be interpreted to create a duty to warn third parties of the danger of exposure to HIV through contact with a person who tests positive for HIV infection.

(3) The department shall adopt rules pursuant to chapter 17A to implement this paragraph "c". The rules shall provide a detailed procedure by which the department or a physician may directly notify an endangered third party.

3. In making contact the department shall not disclose the identity of the person who provided the names of the persons to be contacted and shall protect the confidentiality of persons contacted.

4. The department may delegate its partner notification duties under this section to local health authorities unless the local authority refuses or neglects to conduct the partner notification program in a manner deemed to be effective by the department.

5. In addition to the provisions for partner notification provided under this section and notwithstanding any provision to the contrary, a county medical examiner or deputy medical examiner performing official duties pursuant to sections 331.801 through 331.805 or the state medical examiner or deputy medical examiner performing official duties pursuant to chapter 691, who determines through an investigation that a deceased person was infected with HIV, may notify directly, or request that the department notify, the immediate family of the deceased or any person known to have had a significant exposure from the deceased of the finding.

2007 Acts, ch 70, §6  
Section amended

**141A.6 HIV-related conditions — consent, testing, and reporting — penalty.**

1. Prior to undergoing an HIV-related test, information shall be available to the subject of the test concerning testing and any means of obtaining additional information regarding HIV infection and risk reduction. If an individual signs a general consent form for the performance of medical tests or procedures, the signing of an additional consent form for the specific purpose of consenting to an HIV-related test is not required during the time in which the general consent form is in effect. If an individual has not signed a general consent form for the performance of medical tests and procedures or the consent form is no longer in effect, a health care provider shall obtain oral or written consent prior to performing an HIV-related test. If an individual is unable to provide consent, the individual's legal guardian may provide consent. If the individual's legal guardian cannot be located or is unavailable, a health care provider may authorize the test when the test results are necessary for diagnostic purposes to provide appropriate urgent medical care.

2. Within seven days of the receipt of a test result indicating HIV infection which has been confirmed as positive according to prevailing medical technology or immediately after the initial examination or treatment of an individual infected with HIV, the physician or other health care provider at whose request the test was performed or who performed the initial examination or treatment shall make a report to the department on a form provided by the department.

3. Within seven days of diagnosing a person as having AIDS or an AIDS-related condition, the diagnosing physician shall make a report to the department on a form provided by the department.

4. Within seven days of the death of a person with HIV infection, the attending physician shall make a report to the department on a form provided by the department.

5. Within seven days of the receipt of a test result indicating HIV infection which has been confirmed as positive according to prevailing medical technology, the director of a blood bank shall make a report to the department on a form provided by the department.

6. Within seven days of the receipt of a test result that is indicative of HIV, the director of a clinical laboratory shall make a report to the department on a form provided by the department.

7. The forms provided by the department shall require inclusion of all of the following information:

- a. The name of the patient.
- b. The address of the patient.
- c. The patient's date of birth.
- d. The gender of the patient.
- e. The race and ethnicity of the patient.
- f. The patient's marital status.
- g. The patient's telephone number.

h. If an HIV-related test was performed, the name and address of the laboratory or blood bank.

i. If an HIV-related test was performed, the date the test was found to be positive and the collection date.

j. If an HIV-related test was performed, the name of the physician or health care provider who performed the test.

k. If the patient is female, whether the patient is pregnant.

8. An individual who repeatedly fails to file the report required under this section is subject to a report being made to the licensing board governing the professional activities of the individual. The department shall notify the individual each time the department determines that the individual has failed to file a required report. The department shall inform the individual in the notification that the individual may provide information to the department to explain or dispute the failure to report.

9. A public, private, or hospital clinical laboratory that repeatedly fails to make the report required under this section is subject to a civil penalty of not more than one thousand dollars per occurrence. The department shall not impose the penalty under this subsection without prior written notice and opportunity for hearing.

2007 Acts, ch 70, §7  
Section amended

**141A.7 Test results — counseling — application for services.**

1. At any time that the subject of an HIV-related test is informed of confirmed positive test results, counseling concerning the emotional and physical health effects shall be initiated. Particular attention shall be given to explaining the need

for the precautions necessary to avoid transmitting the virus. The subject shall be given information concerning additional counseling. If the legal guardian of the subject of the test provides consent to the test pursuant to section 141A.6, the provisions of this subsection shall apply to the legal guardian.

2. Notwithstanding subsection 1, the provisions of this section do not apply to any of the following:

*a.* The performance by a health care provider or health facility of an HIV-related test when the health care provider or health facility procures, processes, distributes, or uses a human body part donated for a purpose specified under the revised uniform anatomical gift Act as provided in chapter 142C, or semen provided prior to July 1, 1988, for the purpose of artificial insemination, or donations of blood, and such test is necessary to ensure medical acceptability of such gift or semen for the purposes intended.

*b.* A person engaged in the business of insurance who is subject to section 505.16.

*c.* The performance by a health care provider or health facility of an HIV-related test when the subject of the test is deceased and a documented significant exposure has occurred.

*d.* The performance by a health care provider or health facility of an HIV-related test when the subject of the test is unable to provide consent and the health care provider or health care facility provides consent for the patient pursuant to section 141A.6.

3. A person may apply for voluntary treatment, contraceptive services, or screening or treatment for HIV infection and other sexually transmitted diseases directly to a licensed physician and surgeon, an osteopathic physician and surgeon, or a family planning clinic. Notwithstanding any other provision of law, however, a minor shall be informed prior to testing that, upon confirmation according to prevailing medical technology of a positive HIV-related test result, the minor's legal guardian is required to be informed by the testing facility. Testing facilities where minors are tested shall have available a program to assist minors and legal guardians with the notification process which emphasizes the need for family support and assists in making available the resources necessary to accomplish that goal. However, a testing facility which is precluded by federal statute, regulation, or centers for disease control and prevention guidelines from informing the legal guardian is exempt from the notification requirement. The minor shall give written consent to these procedures and to receive the services, screening, or treatment. Such consent is not subject to later disaffirmance by reason of minority.

2007 Acts, ch 44, §25; 2007 Acts, ch 70, §8  
See Code editor's note to §29A.28  
Subsections 1 and 2 amended

#### 141A.8 Care provider notification.

1. *a.* Notwithstanding any provision of this chapter to the contrary, if a care provider sustains a significant exposure from an individual, the individual to whom the care provider was exposed is deemed to consent to a test to determine the presence of HIV infection in that individual and is deemed to consent to notification of the care provider of the HIV test results of the individual, upon submission of a significant exposure report by the care provider as provided by rule.

*b.* The hospital or clinic in which the exposure occurred or any other person specified in this section to whom the individual is delivered shall conduct the test. If the individual is delivered by the care provider to an institution administered by the Iowa department of corrections, the test shall be conducted by the staff physician of the institution. If the individual is delivered by the care provider to a jail, the test shall be conducted by the attending physician of the jail or the county medical examiner. The sample and test results shall only be identified by a number.

*c.* A hospital, institutions administered by the department of corrections, and jails shall have written policies and procedures for notification of a care provider under this section. The policies and procedures shall include designation of a representative of the care provider to whom notification shall be provided and who shall, in turn, notify the care provider. The identity of the designated representative of the care provider shall not be revealed to the individual tested. The designated representative shall inform the hospital, institution administered by the department of corrections, or jail of those parties who received the notification, and following receipt of this information and upon request of the individual tested, the hospital, institution administered by the department of corrections, or jail shall inform the individual of the parties to whom notification was provided.

2. *a.* If the test results are positive, the hospital or other person performing the test shall notify the subject of the test and ensure the performance of counseling and reporting requirements of this chapter in the same manner as for an individual from whom actual consent was obtained. The report to the department required pursuant to section 141A.6 shall include the name of the individual tested.

*b.* If the HIV test results of the subject of the test are positive, the hospital or other person performing the test shall notify the care provider or the designated representative of the care provider who shall then notify the care provider who sustained the exposure.

*c.* The notification shall be provided as soon as is reasonably possible following determination that the HIV test results of the subject of the test are positive. The notification shall not include the

name of the individual tested for HIV infection unless the individual provides a specific written release. If the care provider who sustained the significant exposure determines the identity of the individual tested, the identity of the individual shall be confidential information and shall not be disclosed by the care provider to any other person unless a specific written release is obtained from the individual tested.

3. This section does not preclude a hospital or health care provider from providing notification to a care provider under circumstances in which the hospital's or health care provider's policy provides for notification of the hospital's or health care provider's own employees of exposure to HIV infection if the notice does not reveal a patient's name, unless the patient consents.

4. A hospital, health care provider, or other person participating in good faith in making a report under the notification provisions of this section, under procedures similar to this section for notification of its own employees upon filing of a significant exposure report, or in failing to make a report under this section, is immune from any liability, civil or criminal, which might otherwise be incurred or imposed.

5. A hospital's or health care provider's duty to notify under this section is not continuing but is limited to the diagnosis of HIV infection made in the course of admission, care, and treatment following the rendering of health care services or other services to the individual with the infection to which notification under this section applies.

6. Notwithstanding subsection 5, if, following discharge from or completion of care or treatment by a hospital, an individual for whom a significant exposure report was submitted but which report did not result in notification, wishes to provide information regarding the individual's HIV infection status to the care provider who submitted the report, the hospital shall provide a procedure for notifying the care provider.

7. A hospital, health care provider, or other person who is authorized to perform an HIV test under this section, who performs the HIV test in compliance with this section or who fails to perform an HIV test authorized under this section, is immune from any liability, civil or criminal, which might otherwise be incurred or imposed.

8. A hospital, health care provider, or other person who is authorized to perform a test under this section has no duty to perform the HIV test authorized.

9. The employer of a care provider who sustained a significant exposure under this section shall pay the costs of HIV testing for the individual who is the source of the significant exposure and of the testing and counseling of the care provider, if the significant exposure was sustained during the course of employment. However, the department shall assist an individual who is the source of the significant exposure in finding resources to

pay for the cost of the HIV test, and shall assist a care provider who renders direct aid without compensation in finding resources to pay for the cost of the testing and counseling.

2007 Acts, ch 70, §9  
Section amended

#### **141A.9 Confidentiality of information.**

1. Any information, including reports and records, obtained, submitted, and maintained pursuant to this chapter is strictly confidential medical information. The information shall not be released, shared with an agency or institution, or made public upon subpoena, search warrant, discovery proceedings, or by any other means except as provided in this chapter. A person shall not be compelled to disclose the identity of any person upon whom an HIV-related test is performed, or the results of the test in a manner which permits identification of the subject of the test, except to persons entitled to that information under this chapter.

2. HIV-related test results shall be made available for release to the following individuals or under the following circumstances:

a. To the subject of the test or the subject's legal guardian subject to the provisions of section 141A.7, subsection 3, when applicable.

b. To any person who secures a written release of test results executed by the subject of the test or the subject's legal guardian.

c. To an authorized agent or employee of a health facility or health care provider, if the health facility or health care provider ordered or participated in the testing or is otherwise authorized to obtain the test results, the agent or employee provides patient care or handles or processes samples, and the agent or employee has a medical need to know such information.

d. To a health care provider providing care to the subject of the test when knowledge of the test results is necessary to provide care or treatment.

e. To the department in accordance with reporting requirements for an HIV-related condition.

f. To a health facility or health care provider which procures, processes, distributes, or uses a human body part from a deceased person with respect to medical information regarding that person, or semen provided prior to July 1, 1988, for the purpose of artificial insemination.

g. To a person allowed access to an HIV-related test result by a court order which is issued in compliance with the following provisions:

(1) A court has found that the person seeking the test results has demonstrated a compelling need for the test results which need cannot be accommodated by other means. In assessing compelling need, the court shall weigh the need for disclosure against the privacy interest of the test subject and the public interest which may be served by disclosure due to its deterrent effect on

future testing or due to its effect in leading to discrimination.

(2) Pleadings pertaining to disclosure of test results shall substitute a pseudonym for the true name of the subject of the test. The disclosure to the parties of the subject's true name shall be communicated confidentially in documents not filed with the court.

(3) Before granting an order, the court shall provide the person whose test results are in question with notice and a reasonable opportunity to participate in the proceedings if the person is not already a party.

(4) Court proceedings as to disclosure of test results shall be conducted in camera unless the subject of the test agrees to a hearing in open court or unless the court determines that a public hearing is necessary to the public interest and the proper administration of justice.

(5) Upon the issuance of an order to disclose test results, the court shall impose appropriate safeguards against unauthorized disclosure, which shall specify the persons who may gain access to the information, the purposes for which the information shall be used, and appropriate prohibitions on future disclosure.

*h.* To an employer, if the test is authorized to be required under any other provision of law.

*i.* Pursuant to section 915.43, to a convicted or alleged sexual assault offender; the physician or other health care provider who orders the test of a convicted or alleged offender; the victim; the parent, guardian, or custodian of the victim if the victim is a minor; the physician of the victim; the victim counselor or person requested by the victim to provide counseling regarding the HIV-related test and results; the victim's spouse; persons with whom the victim has engaged in vaginal, anal, or oral intercourse subsequent to the sexual assault; members of the victim's family within the third degree of consanguinity; and the county attorney who may use the results as evidence in the pros-

ecution of sexual assault under chapter 915, subchapter IV, or prosecution of the offense of criminal transmission of HIV under chapter 709C. For the purposes of this paragraph, "victim" means victim as defined in section 915.40.

*j.* To employees of state correctional institutions subject to the jurisdiction of the department of corrections, employees of secure facilities for juveniles subject to the department of human services, and employees of city and county jails, if the employees have direct supervision over inmates of those facilities or institutions in the exercise of the duties prescribed pursuant to section 80.9, subsection 2, paragraph "d".

3. Release may be made of medical or epidemiological information for statistical purposes in a manner such that no individual person can be identified.

4. Release may be made of medical or epidemiological information to the extent necessary to enforce the provisions of this chapter and related rules concerning the treatment, control, and investigation of HIV infection by public health officials.

5. Release may be made of medical or epidemiological information to medical personnel to the extent necessary to protect the health or life of the named party.

6. Release may be made of test results concerning a patient pursuant to procedures established under section 141A.5, subsection 2, paragraph "c".

7. Medical information secured pursuant to subsection 1 may be shared between employees of the department who shall use the information collected only for the purposes of carrying out their official duties in preventing the spread of the disease or the spread of other reportable diseases as defined in section 139A.2.

2007 Acts, ch 70, §10  
Section amended

## CHAPTER 142

### DEAD BODIES FOR SCIENTIFIC PURPOSES

#### 142.4 Surrender to relatives.

When any dead body which has been delivered under this chapter for scientific purposes is subsequently claimed by any relative, it shall be at once surrendered to such relative for burial without public expense; and all bodies received under this chapter shall be held for a period of thirty days before being used. Unless such person claiming the body for burial pays the costs that have been incurred in the care and transportation of the body within thirty days after claiming it, all rights thereto shall cease and the body may then be used

as if no claim had been made.

This section shall not apply to bodies given under authority of the revised uniform anatomical gift Act as provided in chapter 142C.

2007 Acts, ch 44, §26  
Unnumbered paragraph 2 amended

#### 142.8 Purpose for which body used.

The dead bodies delivered under this chapter shall be used only within the limits of this state for the purpose of scientific, medical, and surgical study, and no person shall remove the same be-



yond the limits of this state or in any manner traffic therein. Any person who shall violate this section shall be guilty of a serious misdemeanor.

This section shall not apply to bodies given un-

der authority of the revised uniform anatomical gift Act as provided in chapter 142C.

2007 Acts, ch 44, §27  
Unnumbered paragraph 2 amended

## CHAPTER 142C

### REVISED UNIFORM ANATOMICAL GIFT ACT

#### 142C.1 Short title.

This chapter shall be known and may be cited as the “*Revised Uniform Anatomical Gift Act*”.

2007 Acts, ch 44, §1  
Section stricken and rewritten

#### 142C.2 Definitions.

As used in this chapter, unless the context otherwise requires:

1. “*Adult*” means an individual who is eighteen years of age or older.
2. “*Agent*” means an individual who meets any of the following conditions:
  - a. Is authorized to make health care decisions on the principal’s behalf by a durable power of attorney for health care pursuant to chapter 144B.
  - b. Is expressly authorized to make an anatomical gift on the principal’s behalf by any other record signed by the principal.
3. “*Anatomical gift*” or “*gift*” means a donation of all or part of the human body effective after the donor’s death, for the purposes of transplantation, therapy, research, or education.
4. “*Decedent*” means a deceased individual whose body or part is or may be the source of an anatomical gift and includes a stillborn infant.
5. “*Disinterested witness*” means a witness other than the spouse, child, parent, sibling, grandchild, grandparent, or guardian of the individual who makes, amends, revokes, or refuses to make an anatomical gift, or any other adult who exhibited special care and concern for the individual. “*Disinterested witness*” does not include a person who may receive an anatomical gift pursuant to section 142C.5.
6. “*Document of gift*” means a donor card or other record used to make an anatomical gift, including a statement or symbol on a driver’s license or identification card, or an entry in a donor registry.
7. “*Donor*” means an individual whose body or part is the subject of an anatomical gift.
8. “*Donor registry*” means a database that contains records of anatomical gifts and amendments of anatomical gifts.
9. “*Driver’s license*” means a license or permit issued by the state department of transportation to operate a vehicle, whether or not conditions are attached to the license or permit.
10. “*Eye bank*” means a person that is licensed,

accredited, or regulated under federal or state law to engage in the recovery, screening, testing, processing, storage, or distribution of human eyes or portions of human eyes.

11. “*Forensic pathologist*” means a pathologist who is further certified in the subspecialty of forensic pathology by the American board of pathology.

12. “*Guardian*” means a person appointed by a court to make decisions regarding the support, care, education, health, or welfare of an individual, but does not include a guardian ad litem.

13. “*Hospital*” means a hospital licensed under chapter 135B, or a hospital licensed, accredited, or approved under federal law or the laws of any other state, and includes a hospital operated by the federal government, a state, or a political subdivision of a state, although not required to be licensed under state laws.

14. “*Identification card*” means a nonoperator’s identification card issued by the state department of transportation pursuant to section 321.190.

15. “*Iowa donor network*” means the nonprofit organization certified by the centers for Medicare and Medicaid services of the United States department of health and human services as the single organ procurement agency serving the state and which also serves as the tissue recovery agency for the state.

16. “*Iowa donor registry*” means the Iowa donor registry administered by the Iowa donor network.

17. “*Know*” means to have actual knowledge.

18. “*Medical examiner*” means an individual who is appointed as a medical examiner pursuant to section 331.801 or 691.5.

19. “*Minor*” means an individual who is less than eighteen years of age.

20. “*Organ procurement organization*” means a person designated by the United States secretary of health and human services as an organ procurement organization.

21. “*Parent*” means a parent whose parental rights have not been terminated.

22. “*Part*” means an organ, an eye, or tissue of a human being, but does not include the whole body of a human being.

23. “*Pathologist*” means a licensed physician who is certified in anatomic or clinical pathology

by the American board of pathology.

24. “*Person*” means person as defined in section 4.1.

25. “*Physician*” means an individual authorized to practice medicine and surgery or osteopathy and surgery under the laws of any state.

26. “*Procurement organization*” means an eye bank, organ procurement organization, or tissue bank.

27. “*Prospective donor*” means an individual who is dead or near death and has been determined by a procurement organization to have a part that could be medically suitable for transplantation, therapy, research, or education, but does not include an individual who has made a refusal.

28. “*Reasonably available*” means able to be contacted by a procurement organization without undue effort and willing and able to act in a timely manner consistent with existing medical criteria necessary for the making of an anatomical gift.

29. “*Recipient*” means an individual into whose body a decedent’s part has been transplanted or is intended for transplant.

30. “*Record*” means information that is inscribed on a tangible medium or that is stored in an electronic or other medium and is retrievable in perceivable form.

31. “*Refusal*” means a record created pursuant to section 142C.3 that expressly states an individual’s intent to prohibit other persons from making an anatomical gift of the individual’s body or part.

32. “*Sign*” means to do any of the following with the present intent to authenticate or adopt a record:

- a. Execute or adopt a tangible symbol.
- b. Attach to or logically associate with the record an electronic symbol, sound, or process.

33. “*State*” means any state of the United States, the District of Columbia, Puerto Rico, the United States Virgin Islands, or any territory or insular possession subject to the jurisdiction of the United States.

34. “*Technician*” means an individual determined to be qualified to remove or process parts by an appropriate organization that is licensed, accredited, or regulated under federal or state law and includes an enucleator.

35. “*Tissue*” means a portion of the human body other than an organ or an eye, but does not include blood unless the blood is donated for the purpose of research or education.

36. “*Tissue bank*” means a person that is licensed, accredited, or regulated under federal or state law to engage in the recovery, screening, testing, processing, storage, or distribution of tissue.

37. “*Transplant hospital*” means a hospital that furnishes organ transplants and other medical and surgical specialty services required for the care of transplant patients.

2007 Acts, ch 44, §2  
Section stricken and rewritten

**142C.3 Persons who may make — manner of making — amending or revoking — refusal to make anatomical gift before donor’s death — preclusive effect.**

1. *Who may make.* Subject to subsection 5, an anatomical gift of a donor’s body or part may be made during the life of the donor for the purposes of transplantation, therapy, research, or education in the manner prescribed in subsection 2 by any of the following:

a. The donor if the donor is any of the following:

- (1) An adult.
- (2) A minor, if the minor is emancipated.
- (3) A minor, if the minor is authorized under state law to apply for a driver’s license or identification card because the minor is at least 14 years of age, and the minor authorizes a statement or symbol indicating an anatomical gift on a driver’s license, identification card, or donor registry entry with the signed approval of a parent or guardian.

b. An agent of the donor, unless the durable power of attorney for health care or other record prohibits the agent from making the anatomical gift.

c. A parent of the donor, if the donor is an unemancipated minor.

d. The guardian of the donor.

2. *Manner of making.*

a. A donor may make an anatomical gift by any of the following means:

(1) By authorizing a statement or symbol indicating that the donor has made an anatomical gift to be imprinted on the donor’s driver’s license or identification card.

(2) In a will.

(3) During a terminal illness or injury of the donor, by any form of communication addressed to at least two adults, at least one of whom is a disinterested witness.

(4) As provided in paragraph “b”.

b. (1) A donor or other person authorized to make an anatomical gift under subsection 1 may make a gift by a donor card or other record signed by the donor or other person making the gift or by authorizing that a statement or symbol indicating that the donor has made an anatomical gift be included on the donor registry.

(2) If the donor or other person is physically unable to sign a record, the record may be signed by another individual at the direction of the donor or other person and shall meet all of the following requirements:

(a) Be witnessed by at least two adults, at least one of whom is a disinterested witness, who have signed at the request of the donor or other person.

(b) State that the record has been signed and witnessed as provided in subparagraph subdivision (a).

c. Revocation, suspension, expiration, or cancellation of a driver’s license or identification card

upon which an anatomical gift is indicated shall not invalidate the gift.

*d.* An anatomical gift made by will takes effect upon the donor's death whether or not the will is probated. Invalidation of the will after the donor's death does not invalidate the gift.

3. *Amending or revoking gift before donor's death.*

*a.* Subject to subsection 5, a donor or other person authorized to make an anatomical gift under subsection 1 may amend or revoke an anatomical gift by any of the following means:

(1) A record signed by any of the following:

(a) The donor.

(b) The other person authorized to make an anatomical gift.

(c) Subject to paragraph "b", another individual acting at the direction of the donor or the other authorized person if the donor or other person is physically unable to sign the record.

(2) A later-executed document of gift that amends or revokes a previous anatomical gift or portion of an anatomical gift, either expressly or by inconsistency.

*b.* A record signed pursuant to paragraph "a", subparagraph (1), subparagraph subdivision (c), shall comply with all of the following:

(1) Be witnessed by at least two adults, at least one of whom is a disinterested witness, who have signed at the request of the donor or the other authorized person.

(2) State that the record has been signed and witnessed as provided in subparagraph (1).

*c.* Subject to subsection 5, a donor or other person authorized to make an anatomical gift under subsection 1 may revoke an anatomical gift by the destruction or cancellation of the document of gift, or the portion of the document of gift used to make the gift, with the intent to revoke the gift.

*d.* A donor may amend or revoke an anatomical gift that was not made in a will by any form of communication during a terminal illness or injury addressed to at least two adults, at least one of whom is a disinterested witness.

*e.* A donor who makes an anatomical gift in a will may amend or revoke the gift in the manner provided for amendment or revocation of wills or as provided in paragraph "a".

4. *Refusal to make.*

*a.* An individual may refuse to make an anatomical gift of the individual's body or part by any of the following means:

(1) A record signed by any of the following:

(a) The individual.

(b) Subject to paragraph "b", another individual acting at the direction of the individual if the individual is physically unable to sign the record.

(2) The individual's will, whether or not the will is admitted to probate or invalidated after the individual's death.

(3) Any form of communication made by the individual during the individual's terminal illness or

injury addressed to at least two adults, at least one of whom is a disinterested witness.

*b.* A record signed pursuant to paragraph "a", subparagraph (1), subparagraph subdivision (b), shall comply with all of the following:

(1) Be witnessed by at least two adults, at least one of whom is a disinterested witness, who have signed at the request of the individual.

(2) State that the record has been signed and witnessed as provided in subparagraph (1).

*c.* An individual who has made a refusal may amend or revoke the refusal in accordance with any of the following:

(1) In the manner provided in paragraph "a" for making a refusal.

(2) By subsequently making an anatomical gift pursuant to subsection 2 that is inconsistent with the refusal.

(3) By destroying or canceling the record evidencing the refusal, or the portion of the record used to make the refusal, with the intent to revoke the refusal.

*d.* Except as otherwise provided in subsection 5, paragraph "h", in the absence of an express, contrary indication by the individual set forth in the refusal, an individual's unrevoked refusal to make an anatomical gift of the individual's body or part prohibits all other persons from making an anatomical gift of the individual's body or part.

5. *Preclusive effect.*

*a. Donor gift or amendment — subsequent actions by others prohibited.* Except as otherwise provided in paragraph "g", and subject to paragraph "f", in the absence of a contrary indication by the donor, a person other than the donor is prohibited from making, amending, or revoking an anatomical gift of a donor's body or part if the donor made an anatomical gift of the donor's body or part under subsection 2 or an amendment to an anatomical gift of the donor's body or part under subsection 3.

*b. Donor revocation not a refusal.* A donor's revocation of an anatomical gift of the donor's body or part under subsection 3 is not a refusal and does not prohibit another person specified in subsection 1 or section 142C.4 from making an anatomical gift of the donor's body or part under subsection 2 or section 142C.4.

*c. Gift on amendment by another — subsequent actions by others prohibited.* If a person other than the donor makes an unrevoked anatomical gift of the donor's body or part under subsection 2, or an amendment to an anatomical gift of the donor's body or part under subsection 3, another person may not make, amend, or revoke the gift of the donor's body or part under section 142C.4.

*d. Revocation by another not prohibitive of other gift.* A revocation of an anatomical gift of a donor's body or part under subsection 3 by a person other than the donor does not prohibit another person from making an anatomical gift of the body

or part under subsection 2 or section 142C.4.

*e. Gift of part not prohibitive of gift of another part.* In the absence of a contrary indication by the donor or other person authorized to make an anatomical gift under subsection 1, an anatomical gift of a part is neither a refusal to donate another part nor a limitation on the making of an anatomical gift of another part at a later time by the donor or another authorized person.

*f. Gift for one purpose not prohibitive of another purpose.* In the absence of a contrary indication by the donor or other person authorized to make an anatomical gift under subsection 1, an anatomical gift of a part for one or more of the purposes specified in subsection 1 is not a limitation on the making of an anatomical gift of the part for any of the other purposes by the donor or any other person under subsection 2 or section 142C.4.

*g. Unemancipated minor gift — parent revocation.* If a donor who is an unemancipated minor dies, a parent of the donor who is reasonably available may revoke or amend an anatomical gift of the donor's body or part.

*h. Unemancipated minor refusal — parent revocation or amendment.* If an unemancipated minor who signed a refusal dies, a parent of the minor who is reasonably available may revoke the minor's refusal.

2007 Acts, ch 44, §3  
Section stricken and rewritten

#### **142C.4 Who may make anatomical gift of decedent's body or part — amending or revoking gift.**

1. Subject to subsection 2, and unless prohibited by section 142C.3, subsection 4 or 5, an anatomical gift of a decedent's body or part for purposes of transplantation, therapy, research, or education may be made by any member of the following classes of persons who is reasonably available, in the order of priority listed.

*a.* An agent of the decedent at the time of death who could have made an anatomical gift under section 142C.3, subsection 1, immediately before the decedent's death.

*b.* The spouse of the decedent.

*c.* Adult children of the decedent.

*d.* Parents of the decedent.

*e.* Adult siblings of the decedent.

*f.* Adult grandchildren of the decedent.

*g.* Grandparents of the decedent.

*h.* An adult who exhibited special care and concern for the decedent.

*i.* Any persons who were acting as guardians of the decedent at the time of death.

*j.* Any other person having the authority to dispose of the decedent's body.

2. *a.* If there is more than one member of a class listed in subsection 1, paragraph "a", "c", "d", "e", "f", "g", or "i", entitled to make an anatomical gift, an anatomical gift may be made by one member of the class unless that member or a person to

whom the gift may pass under section 142C.5 knows of an objection by another member of the class. If an objection is known, the gift shall be made only by a majority of the members of the class who are reasonably available.

*b.* A person shall not make an anatomical gift if, at the time of the death of the decedent, a person in a prior class under subsection 1 is reasonably available to make or to object to the making of an anatomical gift.

3. A person authorized to make an anatomical gift under subsection 1 may make an anatomical gift by a document of gift signed by the person making the gift or by the person's oral communication that is electronically recorded or is contemporaneously reduced to a record and signed by the recipient of the oral communication.

4. Subject to subsection 5, an anatomical gift by a person authorized under subsection 1 may be amended or revoked orally or in a record by any member of the prior class who is reasonably available. If more than one member of the prior class is reasonably available, the gift made by a person authorized under subsection 1 may be:

*a.* Amended only if a majority of the reasonably available members agree to the amending of the gift.

*b.* Revoked only if a majority of the reasonably available members agree to the revoking of the gift or if they are equally divided as to whether to revoke the gift.

5. A revocation under subsection 4 is effective only if, before an incision has been made to remove a part from the donor's body or before invasive procedures have begun to prepare the recipient, the procurement organization, transplant hospital, or physician or technician knows of the revocation.

2007 Acts, ch 44, §4  
Section stricken and rewritten

#### **142C.4A Cooperation between medical examiner and organ procurement organization — facilitation of anatomical gift from decedent whose body is under jurisdiction of medical examiner.**

1. A medical examiner shall cooperate with procurement organizations to maximize the opportunity to recover organs for the purpose of transplantation when the recovery of organs does not interfere with a death investigation.

2. If a medical examiner receives notice from a procurement organization that an organ might be or was made available with respect to a decedent whose body is under the jurisdiction of the medical examiner and a postmortem examination will be performed, unless the medical examiner denies recovery in accordance with this section, the medical examiner or designee shall conduct a postmortem examination of the body or the organ in a manner and within a period compatible with its preservation for the purposes of the gift. Every reasonable effort shall be made to accomplish the

mutual goals of organ donation and a thorough death investigation.

3. An organ shall not be removed from the body of a decedent under the jurisdiction of a medical examiner for transplantation unless the organ is the subject of an anatomical gift. This subsection does not preclude a medical examiner from performing a medicolegal investigation pursuant to subsection 5 upon the body or organs of a decedent under the jurisdiction of the medical examiner.

4. Upon request of an organ procurement organization, a medical examiner shall release to the organ procurement organization the name and contact information of a decedent whose body is under the jurisdiction of the medical examiner. If the decedent's organs are medically suitable for transplantation, the pathologist or medical examiner shall release to the organ procurement organization the postmortem examination results, limited to cause and manner of death and any evidence of infection or other disease process, which might preclude safe transplantation of recovered organs. The organ procurement organization may make a subsequent disclosure of the postmortem examination results only if relevant to transplantation.

5. The medical examiner may conduct a medicolegal examination by reviewing all medical records, laboratory test results, X rays, other diagnostic results, and other information that any person possesses about a donor or prospective donor whose body is under the jurisdiction of the medical examiner, which the medical examiner determines may be relevant to the investigation.

6. A person who has any information requested by a medical examiner pursuant to subsection 5 shall provide that information as expeditiously as possible to allow the medical examiner to conduct the medicolegal investigation within a period compatible with the preservation of organs for the purpose of transplantation.

7. If an anatomical gift has been or might be made of an organ of a decedent whose body is under the jurisdiction of the medical examiner and a postmortem examination is not required, or the medical examiner determines that a postmortem examination is required but that the recovery of the organ that is the subject of an anatomical gift will not interfere with the examination, the medical examiner and organ procurement organization shall cooperate in the timely removal of the organ from the decedent for the purpose of transplantation.

8. *a.* If an anatomical gift of an organ from a decedent under the jurisdiction of the medical examiner has been or might be made, but the pathologist or medical examiner initially believes that the recovery of the organ could interfere with the postmortem investigation into the decedent's cause or manner of death, the pathologist or medi-

cal examiner shall consult with the organ procurement organization or physician or technician designated by the organ procurement organization about the proposed recovery.

*b.* Ancillary clinical tests such as a magnetic resonance imaging (MRI), a computed tomography (CT) scan, or skeletal survey may be required by the pathologist prior to determination of suitability of organ procurement. These tests shall be performed and interpreted by the appropriate physician at the pathologist's request, and reported in a timely fashion. All expenses for such tests shall be the responsibility of the organ procurement organization regardless of outcome.

*c.* After consultation pursuant to paragraph "a" and any preliminary investigation pursuant to paragraph "b", the pathologist or medical examiner may allow recovery, depending on the nature of the case and the availability of a pathologist to view the body prior to recovery.

9. If the manner of death may be homicide or has the potential for litigation, the organ recovery shall be approved by the forensic pathologist, and the forensic pathologist may examine the body prior to organ recovery and document by diagrams and photographs all visible injuries.

10. *a.* If the medical examiner or designee allows recovery of an organ under subsection 7, 8, or 9, the organ procurement organization, upon request, shall cause the physician or technician who removes the organ to provide the medical examiner with a record describing the condition of the organ, a biopsy, a photograph, and any other information and observations that would assist in the postmortem examination.

*b.* Arrangements for the examination of bodies of such decedents shall be coordinated between the organ procurement organization and the state medical examiner.

*c.* If applicable, and whenever possible, the forensic pathologist who examined the decedent's body prior to recovery of the organ shall perform the autopsy. If the forensic pathologist is unable to accommodate examination of the body due to scheduling or staffing, the request for organ donation may be denied.

11. If a medical examiner or designee is required to be present at a removal procedure under subsection 9, upon request, the organ procurement organization requesting the recovery of the organ shall reimburse the medical examiner or designee for the additional costs incurred in complying with subsection 9.

12. A physician or technician who removes an organ at the direction of the organ procurement organization may be called to testify about findings from the surgical recovery of organs at no cost to taxpayers if the decedent is under the jurisdiction of the medical examiner.

13. *a.* The medical examiner or pathologist with jurisdiction over the body of a decedent has

discretion to grant or deny permission for organ or tissue recovery.

b. If the recovery of organs or tissues may hinder the determination of cause or manner of death or if evidence may be destroyed by the recovery, permission may be denied.

c. The medical examiner or a pathologist performing state autopsies shall work closely with procurement organizations in an effort to balance the needs of the public and the decedent's next of kin.

2007 Acts, ch 44, §5  
Section stricken and rewritten

**142C.5 Persons who may receive anatomical gifts and purposes for which anatomical gifts may be made.**

1. An anatomical gift may be made to the following persons named in a document of gift:

a. A hospital, accredited medical or osteopathic medical school, dental school, college, or university, organ procurement organization, or other appropriate person for research or education.

b. An eye bank or tissue bank.

c. Subject to subsection 2, an individual designated by the person making the anatomical gift if the individual is the recipient of the part.

2. If an anatomical gift to an individual under subsection 1, paragraph "c", cannot be transplanted into the individual, the part passes in accordance with subsection 7 in the absence of an express, contrary indication by the person making the anatomical gift.

3. If an anatomical gift of one or more specific parts or of all parts is made in a document of gift that does not name a person described in subsection 1 but identifies the purpose for which an anatomical gift may be used, the following rules apply:

a. If the part is an eye and the gift is for the purpose of transplantation or therapy, the gift passes to the appropriate eye bank.

b. If the part is tissue and the gift is for the purpose of transplantation or therapy, the gift passes to the appropriate tissue bank.

c. If the part is an organ and the gift is for the purpose of transplantation or therapy, the gift passes to the appropriate organ procurement organization as custodian of the organ.

d. If the part is an organ, an eye, or tissue and the gift is for the purpose of research or education, the gift passes to the appropriate procurement organization.

4. For the purpose of subsection 3, if there is more than one purpose of an anatomical gift set forth in the document of gift but the purposes are not set forth in any priority, the gift shall be used for transplantation or therapy, if suitable. If the gift cannot be used for transplantation or therapy, the gift may be used for research or education.

5. If an anatomical gift of one or more specific parts is made in a document of gift that does not name a person described in subsection 1 and does

not identify the purpose of the gift, the gift may be used only for transplantation or therapy, and the gift passes in accordance with subsection 7.

6. If a document of gift specifies only a general intent to make an anatomical gift by words such as "donor", "organ donor", or "body donor", or by a symbol or statement of similar import, the gift may be used only for transplantation or therapy, and the gift passes in accordance with subsection 7.

7. For the purposes of subsections 2, 5, and 6, the following rules shall apply:

a. If the part is an eye, the gift passes to the appropriate eye bank.

b. If the part is tissue, the gift passes to the appropriate tissue bank.

c. If the part is an organ, the gift passes to the appropriate organ procurement organization as custodian of the organ.

8. An anatomical gift of an organ for transplantation or therapy, other than an anatomical gift under subsection 1, paragraph "c", passes to the organ procurement organization as custodian of the organ.

9. If an anatomical gift does not pass pursuant to subsections 1 through 8, or the decedent's body or part is not used for transplantation, therapy, research, or education, custody of the body or part passes to the person under obligation to dispose of the body or part.

10. A person shall not accept an anatomical gift if the person knows that the gift was not effectively made under section 142C.3, subsection 2, or section 142C.4, or if the person knows that the decedent made a refusal under section 142C.3, subsection 4, that was not revoked. For purposes of this subsection, if a person knows that an anatomical gift was made on a document of gift, the person is deemed to know of any amendment or revocation of the gift or any refusal to make an anatomical gift on the same document of gift.

11. Except as otherwise provided in subsection 1, paragraph "c", nothing in this chapter shall affect the allocation of organs for transplantation or therapy.

2007 Acts, ch 44, §6  
Section stricken and rewritten

**142C.5A Search and notification.**

1. The following persons shall make a reasonable search of an individual who the person reasonably believes is dead or near death for a document of gift or other information identifying the individual as a donor or as an individual who made a refusal:

a. A law enforcement officer, fire fighter, paramedic, or other emergency rescuer finding the individual.

b. If no other source of the information is immediately available, a hospital, as soon as practical after the individual's arrival at the hospital.

2. If a document of gift or a refusal to make an

anatomical gift is located by the search required by subsection 1, paragraph “a”, and the individual or deceased individual to whom it relates is taken to a hospital, the person responsible for conducting the search shall deliver the document of gift or refusal to the hospital.

3. A person is not subject to criminal or civil liability for failing to discharge the duties imposed by this section but may be subject to administrative sanctions.

2007 Acts, ch 44, §7  
NEW section

#### **142C.6 Delivery of document of gift not required — right to examine.**

1. A document of gift does not require delivery during the donor’s lifetime to be effective.

2. Upon or after an individual’s death, a person in possession of the document of gift or a refusal to make an anatomical gift with respect to the individual shall allow examination and copying of the document of gift or the refusal by a person authorized to make or object to the making of an anatomical gift with respect to the individual or by a person to whom the gift could pass under section 142C.5.

2007 Acts, ch 44, §8  
Section stricken and rewritten

#### **142C.7 Confidential information.**

A hospital, licensed or certified health care professional pursuant to chapter 148, 148C, 150A, or 152, or medical examiner may release patient information to a procurement organization as part of a referral or retrospective review of the patient as a potential donor. Any information regarding a patient, including the patient’s identity, however, constitutes confidential medical information and under any other circumstances is prohibited from disclosure without the written consent of the patient or the patient’s legal representative.

2007 Acts, ch 44, §9  
Section stricken and rewritten

#### **142C.8 Rights and duties of procurement organizations and donors.**

1. When a hospital refers an individual at or near death to a procurement organization, the procurement organization shall make a reasonable search of the records of the state department of transportation and any donor registry that the hospital knows exists for the geographical area in which the individual resides to ascertain whether the individual has made an anatomical gift.

2. A procurement organization shall be allowed reasonable access to information in the records of the state department of transportation to ascertain whether an individual at or near death is a donor.

3. When a hospital refers an individual at or

near death to a procurement organization, the procurement organization may conduct any reasonable examination necessary to ensure the medical suitability of a part that is or could be the subject of an anatomical gift for transplantation, therapy, research, or education from a donor or a prospective donor. During the examination period, measures necessary to ensure the medical suitability of the part shall not be withdrawn unless the hospital or procurement organization knows that the individual expressed a contrary intent.

4. Unless prohibited by law other than this chapter, at any time after a donor’s death, the person to whom a part passes under section 142C.5 may conduct any reasonable examination necessary to ensure the medical suitability of the body or part for its intended purpose.

5. Unless prohibited by law other than this chapter, an examination under subsection 3 or 4 may include an examination of all medical and dental records of the donor or prospective donor.

6. Upon the death of a minor who was a donor or had signed a refusal, unless a procurement organization knows the minor is emancipated, the procurement organization shall conduct a reasonable search for the parents of the minor and provide the parents with an opportunity to revoke or amend the anatomical gift or revoke the refusal.

7. Upon referral by a hospital under subsection 1, a procurement organization shall make a reasonable search for any person listed in section 142C.4 having priority to make an anatomical gift on behalf of a prospective donor. If a procurement organization receives information that an anatomical gift to any other person was made, amended, or revoked, the procurement organization shall promptly advise the other person of all relevant information.

8. Subject to section 142C.5, subsection 9, the rights of a person to whom a part passes under section 142C.5 are superior to the rights of all other persons with respect to the part.

9. The person may accept or reject an anatomical gift in whole or in part. Subject to the terms of the document of gift and this chapter, a person who accepts an anatomical gift of an entire body may allow embalming, burial or cremation, and use of the remains in a funeral service. If the gift is of a part, the person to whom the part passes under section 142C.5, upon the death of the donor and prior to embalming, burial, or cremation, shall cause the part to be removed without unnecessary mutilation.

10. The physician who attends the decedent at death and the physician who determines the time of death shall not participate in the procedures for removing or transplanting a part from the decedent.

11. A physician or technician may remove a donated part from the body of a donor that the physi-

cian or technician is qualified to remove.

2007 Acts, ch 44, §10  
Section stricken and rewritten

#### 142C.9 Coordination of procurement and use.

Each hospital in the state shall enter into agreements or affiliations with procurement organizations for coordination of procurement and use of anatomical gifts.

2007 Acts, ch 44, §11  
Section stricken and rewritten

#### 142C.10 Sale or purchase of parts prohibited — penalty.

1. A person shall not knowingly, for valuable consideration, purchase or sell a part for transplantation or therapy if removal of the part is intended to occur after the death of the decedent.

2. Valuable consideration does not include reasonable payment for the removal, processing, preservation, quality control, storage, transportation, implantation, or disposal of a part.

3. A person who violates this section commits a class “C” felony.

2007 Acts, ch 44, §12  
Section stricken and rewritten

#### 142C.10A Other prohibited acts — penalty.

A person who, in order to obtain a financial gain, intentionally falsifies, forges, conceals, defaces, or obliterates a document of gift, an amendment or revocation of a document of gift, or a refusal, commits a class “C” felony.

2007 Acts, ch 44, §13  
NEW section

#### 142C.11 Immunity.

1. A person who complies with this chapter in good faith or with the applicable anatomical gift law of another state, or who attempts in good faith to comply, is immune from liability in any civil action, criminal prosecution, or administrative proceeding.

2. An individual who makes an anatomical gift pursuant to this chapter and the individual’s estate are not liable for any injury or damages that may result from the making or the use of the anatomical gift, if the gift is made in good faith.

3. In determining whether an anatomical gift has been made, amended, or revoked under this chapter, a person may rely upon representations of an individual listed in section 142C.4, subsection 1, paragraph “b”, “c”, “d”, “e”, “f”, “g”, or “h”, relating to the individual’s relationship to the donor or prospective donor unless the person knows that the representation is untrue.

2007 Acts, ch 44, §14  
Section stricken and rewritten

#### 142C.12A Law governing validity, choice of law, presumption of validity.

1. A document of gift is valid if executed in accordance with any of the following:

a. This chapter.

b. The laws of the state or country where the document of gift was executed.

c. The laws of the state or country where the person making the anatomical gift was domiciled, has a place of residence, or was a national at the time the document of gift was executed.

2. If a document of gift is valid under this section, the law of this state governs the interpretation of the document of gift.

3. A person may presume that a document of gift or amendment of an anatomical gift is valid unless that person knows that it was not validly executed or was revoked.

2007 Acts, ch 44, §15  
NEW section

#### 142C.12B Effect of anatomical gift on advance health care directive.

1. As used in this section:

a. “*Advance health care directive*” means a durable power of attorney for health care pursuant to chapter 144B or a record signed or authorized by a prospective donor containing the prospective donor’s direction concerning a health care decision for the prospective donor.

b. “*Declaration*” means a record signed by a prospective donor specifying the circumstances under which a life support system may be withheld or withdrawn from the prospective donor.

c. “*Health care decision*” means any decision regarding the health care of the prospective donor.

2. a. If a prospective donor has a declaration or advance health care directive and the terms of the declaration or directive and the express or implied terms of a potential anatomical gift are in conflict with regard to the administration of measures necessary to ensure the medical suitability of a part for transplantation or therapy, the prospective donor’s attending physician and prospective donor shall confer to resolve the conflict.

b. If the prospective donor is incapable of resolving the conflict, an agent acting under the prospective donor’s declaration or directive or, if no agent exists or the agent is not reasonably available, another person, authorized by law other than this chapter to make health care decisions on behalf of the prospective donor, shall act for the donor to resolve the conflict. The agent or other person shall resolve the conflict consistent with the desires of the donor as expressed in a declaration executed in accordance with chapter 144A, or a durable power of attorney for health care executed in accordance with chapter 144B, or as otherwise known, or if not known, consistent with the donor’s best interest.



c. The conflict shall be resolved as expeditiously as possible.

d. Information relevant to the resolution of the conflict may be obtained from the appropriate procurement organization and any other person authorized to make an anatomical gift for the prospective donor under section 142C.4. Prior to resolution of the conflict, measures necessary to ensure the medical suitability of the part shall not be withheld or withdrawn from the prospective donor if withholding or withdrawing the measures is not contraindicated by appropriate end-of-life care.

2007 Acts, ch 44, §16  
NEW section

#### **142C.13 Transitional provisions.**

This chapter applies to an anatomical gift, or amendment to, revocation of, or refusal to make an anatomical gift, whenever made.

2007 Acts, ch 44, §17  
Section stricken and rewritten

#### **142C.14 Uniformity of application and construction.**

This chapter shall be applied and construed with consideration given to the need to promote uniformity of the law with respect to anatomical gifts among states which enact this law.

2007 Acts, ch 44, §18  
Section stricken and rewritten

#### **142C.14A Electronic signatures.**

This chapter modifies, limits, and supersedes the federal Electronic Signatures in Global and National Commerce Act, 15 U.S.C. § 7001 et seq., but does not modify, limit, or authorize electronic delivery of any of the notices described in § 103(b) of that Act, 15 U.S.C. § 7003(b).

2007 Acts, ch 44, §19  
NEW section

#### **142C.15 Anatomical gift public awareness and transplantation fund — established — uses of fund.**

1. An anatomical gift public awareness and transplantation fund is created as a separate fund in the state treasury under the control of the Iowa department of public health. The fund shall consist of moneys remitted by the county treasurer of a county or by the department of transportation which were collected through the payment of a contribution made by an applicant for registration of a motor vehicle pursuant to section 321.44A and any other contributions to the fund.

2. The moneys collected under this section and deposited in the fund are appropriated to the Iowa department of public health for the purposes specified in this section. Moneys in the fund shall not be subject to appropriation or expenditure for any other purpose.

3. The treasurer of state shall act as custodian of the fund and shall disburse amounts contained in the fund as directed by the department. The

treasurer of state may invest the moneys deposited in the fund. The income from any investment shall be credited to and deposited in the fund. Notwithstanding section 8.33, moneys in the fund are not subject to reversion to the general fund of the state. The fund shall be administered by the department which shall make expenditures from the fund consistent with the purposes of this section.

4. The Iowa department of public health may use not more than five percent of the moneys in the fund for administrative costs. The remaining moneys in the fund may be expended through grants to any of the following persons, subject to the following conditions:

a. Not more than twenty percent of the moneys in the fund annually may be expended in the form of grants to state agencies or to nonprofit legal entities with an interest in anatomical gift public awareness and transplantation to conduct public awareness projects. Moneys remaining that were not requested and awarded for public awareness projects may be used to support the Iowa donor registry. Grants shall be made based upon the submission of a grant application.

b. Not more than thirty percent of the moneys in the fund annually may be expended in the form of grants to hospitals for reimbursement for costs directly related to the development of in-hospital anatomical gift public awareness projects, anatomical gift referral protocols, and associated administrative expenses. As a condition of receiving a grant, a hospital shall demonstrate, through documentation, that the hospital, during the previous calendar year, properly complied with in-hospital anatomical gift request protocols for all deaths occurring in the hospital at a percentage rate which places the hospital in the upper fifty percent of all protocol compliance rates for hospitals submitting documentation for cost reimbursement under this section.

c. Not more than fifty percent of the moneys in the fund annually may be expended in the form of grants to transplant recipients, transplant candidates, living organ donors, or to legal representatives on behalf of transplant recipients, transplant candidates, or living organ donors. Transplant recipients, transplant candidates, living organ donors, or the legal representatives of transplant recipients, transplant candidates, or living organ donors shall submit grant applications with supporting documentation provided by a hospital that performs transplants, verifying that the person by or for whom the application is submitted requires a transplant or is a living organ donor and specifying the amount of the costs associated with the following, if funds are not available from any other third-party payor:

(1) The costs of the organ transplantation procedure.

(2) The costs of post-transplantation drug or other therapy.

(3) Other transplantation costs including but

not limited to food, lodging, and transportation.

2007 Acts, ch 44, §20  
Subsection 4, paragraph a amended

**142C.16 Anatomical gift public awareness advisory committee — established — duties.**

1. The Iowa department of public health shall establish an anatomical gift public awareness advisory committee. Members shall include a representative of each of the following, appointed by the respective entity or that entity's successor:

- a. A state organ procurement organization.
- b. The Iowa medical society.
- c. The Iowa hospital association.
- d. The osteopathic medical association.
- e. A procurement organization.
- f. The Iowa chapter of the national association of social workers. The representative shall be a member of the association knowledgeable in anatomical gifts.
- g. The Iowa funeral directors association.
- h. The Iowa department of public health.
- i. The department of human services.
- j. The department of inspections and appeals.
- k. The state medical examiner.

2. Members shall serve staggered terms of two years. Appointments of members of the committee shall comply with section 69.16 but are not subject to section 69.16A. Vacancies shall be filled by the original appointing authority and in the manner of the original appointment.

3. Members shall receive actual expenses incurred while serving in their official capacity and may also be eligible to receive compensation as provided in section 7E.6.

4. The committee shall annually select a chairperson from its membership. A majority of the members of the committee shall constitute a quorum.

5. The advisory committee shall assist the department in all of the following activities:

- a. Accepting and awarding grants to promote the donation of anatomical gifts.
- b. Establishing criteria for the application for and awarding of grants to promote the donation of anatomical gifts.
- c. Examining the anatomical gifts system to identify improvements or enhancements to promote anatomical gifts.

d. Recommending legislation to improve state law regarding anatomical gifts.

2007 Acts, ch 44, §21 – 23  
Subsection 1, paragraph e amended  
Subsection 1, NEW paragraph k  
Subsection 2 amended

**142C.18 Iowa donor registry.**

1. The director of public health shall contract with and recognize the Iowa donor registry for the purpose of indicating on the donor registry all relevant information regarding a donor's making or amending of an anatomical gift.

2. The state department of transportation shall cooperate with a person that administers the Iowa donor registry for the purpose of transferring to the donor registry all relevant information regarding a donor's making of an anatomical gift.

3. The Iowa donor registry shall do all of the following:

a. Allow a donor or other person authorized under section 142C.3 to include on the donor registry a statement or symbol that the donor has made or amended an anatomical gift.

b. Be accessible to a procurement organization to allow the procurement organization to obtain relevant information on the donor registry to determine, at or near the death of the donor or a prospective donor, whether the donor or prospective donor has made, amended, or revoked an anatomical gift.

c. Be accessible for purposes of paragraphs "a" and "b" seven days a week on a twenty-four-hour per day basis.

d. Provide a centralized, automated system to compile donation information received by the state department of transportation, county treasurers, and the Iowa donor network.

e. Provide educational materials regarding the making, amending, or revoking of an anatomical gift or a refusal to make an anatomical gift.

4. Personally identifiable information on the donor registry about a donor or prospective donor shall not be used or disclosed without the express consent of the donor, prospective donor, or person that made the anatomical gift for any purpose other than to determine, at or near the death of the donor or prospective donor, whether the donor or prospective donor has made, amended, or revoked an anatomical gift.

2007 Acts, ch 44, §24  
Section stricken and rewritten

## CHAPTER 144

### VITAL STATISTICS

**144.28 Medical certification.**

1. The medical certification shall be completed and signed by the physician in charge of the patient's care for the illness or condition which re-

sulted in death within seventy-two hours after receipt of the death certificate from the funeral director or individual who initially assumes custody of the body, except when inquiry is required by the

county medical examiner. If upon inquiry into the death, the county medical examiner determines that a preexisting natural disease or condition was the likely cause of death and that the death does not affect the public interest as described in section 331.802, subsection 3, the county medical examiner may elect to defer to the physician in charge of the patient's preexisting condition the certification of the cause of death. When inquiry is required by the county medical examiner, the medical examiner shall investigate the cause of death and shall complete and sign the medical certification within seventy-two hours after determination of the cause of death.

2. The person completing the medical certification of cause of death shall attest to its accuracy either by signature or by an electronic process approved by rule.

2007 Acts, ch 159, §26  
Subsection 1 amended

#### 144.46 Fees.

1. The department by rule shall establish fees based on the average administrative cost which shall be collected by the state registrar or the county registrar for each of the following:

a. A certified copy or short form certification of a certificate or record.

b. A search of the files or records when no copy is made, or when no record is found on file.

c. A copy of a certificate or record or a vital statistics data file provided to a researcher in accordance with section 144.44.

d. A copy of a certificate or record or a vital statistics data file provided to a federal, state, local, or other public or private agency for statistical purposes in accordance with section 144.45.

e. Verification or certification of vital statistics

data provided to a federal, state, or local governmental agency authorized by rule to receive such data.

2. Fees collected by the state registrar and by the county registrar on behalf of the state under this section shall be deposited in the general fund of the state and the vital records fund established in section 144.46A in accordance with an apportionment established by rule. Fees collected by the county registrar pursuant to section 331.605, subsection 6, shall be deposited in the county general fund.

2007 Acts, ch 159, §27  
Section amended

#### 144.46A Vital records fund.

1. A vital records fund is created under the control of the department. Moneys in the fund shall be used for purposes of the purchase and maintenance of an electronic system for vital records scanning, data capture, data reporting, storage, and retrieval, and for all registration and issuance activities. Moneys in the fund may also be used for other related purposes including but not limited to the streamlining of administrative procedures and electronically linking offices of county registrars to state vital records so that the records may be issued at the county level.

2. Moneys credited to the fund pursuant to section 144.46 and otherwise are appropriated to the department to be used for the purposes designated in subsection 1. Notwithstanding section 8.33, moneys credited to the fund that remain unencumbered or unobligated at the close of the fiscal year shall not revert to any fund but shall remain available for expenditure for the purposes designated.

2007 Acts, ch 159, §28  
Subsections 2 and 3 amended

## CHAPTER 147

### GENERAL PROVISIONS, HEALTH-RELATED PROFESSIONS

#### 147.1 Definitions.

1. As used in this chapter, unless the context otherwise requires, "book", "list", "record", or "schedule" kept by a county auditor, assessor, treasurer, recorder, sheriff, or other county officer means the county system as defined in section 445.1.

2. For the purpose of this and the following chapters of this subtitle:

a. "Board" shall mean one of the boards enumerated in section 147.13 or any other board established in this subtitle which is appointed by the governor to license applicants and impose licensee discipline as authorized by law.

b. "Department" shall mean the Iowa department of public health.

c. "Licensed" or "certified" when applied to a physician and surgeon, podiatric physician, osteopath, osteopathic physician and surgeon, physician assistant, psychologist or associate psychologist, chiropractor, nurse, dentist, dental hygienist, optometrist, speech pathologist, audiologist, pharmacist, physical therapist, occupational therapist, respiratory care practitioner, practitioner of cosmetology arts and sciences, practitioner of barbering, funeral director, dietitian, marital and family therapist, mental health counselor, social worker, massage therapist, athletic trainer, acupuncturist, or sign language interpreter or translator means a person licensed under this subtitle.

d. "Peer review" means evaluation of profes-

sional services rendered by a person licensed to practice a profession.

*e. "Peer review committee"* means one or more persons acting in a peer review capacity who also serve as an officer, director, trustee, agent, or member of any of the following:

(1) A state or local professional society of a profession for which there is peer review.

(2) Any organization approved to conduct peer review by a society as designated in paragraph "a" of this subsection.

(3) The medical staff of any licensed hospital.

(4) A board enumerated in section 147.13 or any other board established in this subtitle which is appointed by the governor to license applicants and impose licensee discipline as authorized by law.

(5) The board of trustees of a licensed hospital when performing a function relating to the reporting required by section 147.135, subsection 3.

(6) A health care entity, including but not limited to a group medical practice, that provides health care services and follows a formal peer review process for the purpose of furthering quality health care.

*f. "Profession"* means medicine and surgery, podiatry, osteopathy, osteopathic medicine and surgery, practice as a physician assistant, psychology, chiropractic, nursing, dentistry, dental hygiene, optometry, speech pathology, audiology, pharmacy, physical therapy, occupational therapy, respiratory care, cosmetology arts and sciences, barbering, mortuary science, marital and family therapy, mental health counseling, social work, dietetics, massage therapy, athletic training, acupuncture, or sign language interpreting or transliterating.

2007 Acts, ch 10, §26, 27

Subsection 2, former paragraph b amended and redesignated as a and former paragraph a redesignated as b

Subsection 2, paragraph c amended

Subsection 2, paragraph e, subparagraph (4) amended

Subsection 2, paragraph f amended

**147.2 License required.**

A person shall not engage in the practice of medicine and surgery, podiatry, osteopathy, osteopathic medicine and surgery, psychology, chiropractic, physical therapy, nursing, dentistry, dental hygiene, optometry, speech pathology, audiology, occupational therapy, respiratory care, pharmacy, cosmetology, barbering, social work, dietetics, marital and family therapy or mental health counseling, massage therapy, mortuary science, athletic training, acupuncture, or sign language interpreting or transliterating, or shall not practice as a physician assistant as defined in the following chapters of this subtitle, unless the person has obtained from the department a license for that purpose.

For purposes of this section, a person who is li-

censed in another state and recognized for licensure in this state pursuant to the nurse licensure compact contained in section 152E.1 or pursuant to the advanced practice registered nurse compact contained in section 152E.3 shall be considered to have obtained a license to practice nursing from the department.

2007 Acts, ch 10, §28

2005 amendment to unnumbered paragraph 2 to be repealed effective July 1, 2008; 2005 Acts, ch 53, §1, 11

Unnumbered paragraph 1 amended

**147.5 License required — exception.**

Every license to practice a profession shall be in the form of a certificate under the seal of the department, signed by the director of public health. Such license shall be issued in the name of the licensing board which conducts examinations for that particular profession.

This section shall not apply to a person who is licensed in another state and recognized for licensure in this state pursuant to the nurse licensure compact contained in section 152E.1 or pursuant to the advanced practice registered nurse compact contained in section 152E.3.

2007 Acts, ch 10, §29

2005 amendment to unnumbered paragraph 2 to be repealed effective July 1, 2008; 2005 Acts, ch 53, §2, 11

Unnumbered paragraph 1 amended

**147.11 Reinstatement.**

Any licensee who allows the license to lapse by failing to renew the same, as provided in section 147.10, may be reinstated without examination upon recommendation of the licensing board for the licensee's profession and upon payment of the renewal fees then due.

2007 Acts, ch 10, §30

Section amended

**HEALTH PROFESSION BOARDS**

**147.12 Health profession boards.**

1. For the purpose of giving examinations to applicants for licenses to practice the professions for which licenses are required by this subtitle, the governor shall appoint, subject to confirmation by the senate, a board for each of the professions. The board members shall not be required to be members of professional societies or associations composed of members of their professions.

2. If a person who has been appointed by the governor to serve on a board has ever been disciplined in a contested case by the board to which the person has been appointed, all board complaints and statements of charges, settlement agreements, findings of fact, and orders pertaining to the disciplinary action shall be made available to the senate committee to which the appointment is referred at the committee's request before

the full senate votes on the person's appointment.

2007 Acts, ch 10, §31  
Confirmation, see §2.32  
Section amended and former unnumbered paragraphs 1 and 2 editorially designated as subsections 1 and 2

#### **147.13 Designation of boards.**

The boards provided in section 147.12 shall be designated as follows:

1. For medicine and surgery, osteopathy, osteopathic medicine and surgery, and acupuncture, the board of medicine.
2. For physician assistants, the board of physician assistants.
3. For psychology, the board of psychology.
4. For podiatry, the board of podiatry.
5. For chiropractic, the board of chiropractic.
6. For physical therapists and occupational therapists, the board of physical and occupational therapy.
7. For nursing, the board of nursing.
8. For dentistry, dental hygiene, and dental assisting, the dental board.
9. For optometry, the board of optometry.
10. For speech pathology and audiology, the board of speech pathology and audiology.
11. For cosmetology arts and sciences, the board of cosmetology arts and sciences.
12. For barbering, the board of barbering.
13. For pharmacy, the board of pharmacy.
14. For mortuary science, the board of mortuary science.
15. For social workers, the board of social work.
16. For marital and family therapists and mental health counselors, the board of behavioral science.
17. For dietetics, the board of dietetics.
18. For respiratory care therapists, the board of respiratory care.
19. For massage therapists, the board of massage therapy.
20. For athletic trainers, the board of athletic training.
21. For interpreters, the board of sign language interpreters and transliterators.
22. For hearing aids, the board of hearing aid dispensers.
23. For nursing home administrators, the board of nursing home administrators.

2007 Acts, ch 10, §32; 2007 Acts, ch 218, §197  
Section amended

#### **147.14 Composition of boards.**

The board members shall consist of the following:

1. For barbering, three members licensed to practice barbering, and two members who are not licensed to practice barbering and who shall represent the general public. A quorum shall consist of a majority of the members of the board.
2. For medicine, five members licensed to practice medicine and surgery, two members li-

censed to practice osteopathic medicine and surgery, and three members not licensed to practice either medicine and surgery or osteopathic medicine and surgery, and who shall represent the general public. A majority of members of the board constitutes a quorum.

3. For nursing, four registered nurses, two of whom shall be actively engaged in practice, two of whom shall be nurse educators from nursing education programs; of these, one in higher education and one in area community and vocational-technical registered nurse education; one licensed practical nurse actively engaged in practice; and two members not registered nurses or licensed practical nurses and who shall represent the general public. The representatives of the general public shall not be members of health care delivery systems. A majority of the members of the board constitutes a quorum.

4. For dentistry, five members licensed to practice dentistry, two members licensed to practice dental hygiene, and two members not licensed to practice dentistry or dental hygiene and who shall represent the general public. A majority of the members of the board shall constitute a quorum. No member of the dental faculty of the school of dentistry at the state university of Iowa shall be eligible to be appointed. Persons appointed to the board as dental hygienist members shall not be employed by or receive any form of remuneration from a dental or dental hygiene educational institution. The two dental hygienist board members and one dentist board member shall constitute a dental hygiene committee of the board as provided in section 153.33A.

5. For pharmacy, five members licensed to practice pharmacy and two members who are not licensed to practice pharmacy and who shall represent the general public. A majority of the members of the board shall constitute a quorum.

6. For optometry, five members licensed to practice optometry and two members who are not licensed to practice optometry and who shall represent the general public. A majority of the members of the board shall constitute a quorum.

7. For psychology, five members who are licensed to practice psychology and two members not licensed to practice psychology and who shall represent the general public. Of the five members who are licensed to practice psychology, one member shall be primarily engaged in graduate teaching in psychology, two members shall be persons who render services in psychology, one member shall represent areas of applied psychology and may be affiliated with training institutions and shall devote a major part of the member's time to rendering service in psychology, and one member shall be primarily engaged in research psychology. A majority of the members of the board constitutes a quorum.

8. For chiropractic, five members licensed to practice chiropractic and two members who are

not licensed to practice chiropractic and who shall represent the general public. A majority of the members of the board shall constitute a quorum.

9. For speech pathology and audiology, five members licensed to practice speech pathology or audiology at least two of which shall be licensed to practice speech pathology and at least two of which shall be licensed to practice audiology, and two members who are not licensed to practice speech pathology or audiology and who shall represent the general public. A majority of the members of the board shall constitute a quorum.

10. For physical therapy and occupational therapy, three members licensed to practice physical therapy, two members licensed to practice occupational therapy, and two members who are not licensed to practice physical therapy or occupational therapy and who shall represent the general public. A quorum shall consist of a majority of the members of the board.

11. For dietetics, one licensed dietitian representing the approved or accredited dietetic education programs, one licensed dietitian representing clinical dietetics in hospitals, one licensed dietitian representing community nutrition services and two members who are not licensed dietitians and who shall represent the general public. A majority of the members of the board constitutes a quorum.

12. For the board of physician assistants, five members licensed to practice as physician assistants, at least two of whom practice in counties with a population of less than fifty thousand, one member licensed to practice medicine and surgery who supervises a physician assistant, one member licensed to practice osteopathic medicine and surgery who supervises a physician assistant, and two members who are not licensed to practice either medicine and surgery or osteopathic medicine and surgery or licensed as a physician assistant and who shall represent the general public. At least one of the physician members shall be in practice in a county with a population of less than fifty thousand. A majority of members of the board constitutes a quorum.

13. For behavioral science, three members licensed to practice marital and family therapy, one of whom shall be employed in graduate teaching, training, or research in marital and family therapy and two of whom shall be practicing marital and family therapists; three members licensed to practice mental health counseling, one of whom shall be employed in graduate teaching, training, or research in mental health counseling and two of whom shall be practicing mental health counselors; and three members who are not licensed to practice marital and family therapy or mental health counseling and who shall represent the general public. A majority of the members of the board constitutes a quorum.

14. For cosmetology arts and sciences, a total of seven members, three who are licensed cos-

metologists, one who is a licensed electrologist, esthetician, or nail technologist, one who is a licensed instructor of cosmetology arts and sciences at a public or private school and who does not own a school of cosmetology arts and sciences, and two who are not licensed in a practice of cosmetology arts and sciences and who shall represent the general public.

15. For respiratory care, one licensed physician with training in respiratory care, three respiratory care practitioners who have practiced respiratory care for a minimum of six years immediately preceding their appointment to the board and who are recommended by the society for respiratory care, and one member not licensed to practice medicine or respiratory care who shall represent the general public. A majority of members of the board constitutes a quorum.

16. For mortuary science, four members licensed to practice mortuary science, one member owning, operating, or employed by a crematory, and two members not licensed to practice mortuary science and not a crematory owner, operator, or employee who shall represent the general public. A majority of the members of the board constitutes a quorum.

17. For massage therapists, four members licensed to practice massage therapy and three members who are not licensed to practice massage therapy and who shall represent the general public. A majority of the members of the board constitutes a quorum.

18. For athletic trainers, three members licensed to practice athletic training, three members licensed to practice medicine and surgery, and one member not licensed to practice athletic training or medicine and surgery and who shall represent the general public. A majority of the members of the board constitutes a quorum.

19. For podiatry, five members licensed to practice podiatry and two members who are not licensed to practice podiatry and who shall represent the general public. A majority of the members of the board shall constitute a quorum.

20. For social work, a total of seven members, five who are licensed to practice social work, with at least one from each of three levels of licensure described in section 154C.3, subsection 1, two employed by a licensee under chapter 237, and two who are not licensed social workers and who shall represent the general public.

21. For sign language interpreting and transliterating, four members licensed to practice interpreting and transliterating, three of whom shall be practicing interpreters and transliterators at the time of appointment to the board and at least one of whom is employed in an educational setting; and three members who are consumers of interpreting or transliterating services as defined in section 154E.1, each of whom shall be deaf. A majority of members of the board constitutes a quorum.

22. For hearing aid dispensers, three licensed hearing aid dispensers and two members who are not licensed hearing aid dispensers who shall represent the general public. A majority of the members of the board constitutes a quorum.

23. For nursing home administrators, a total of nine members: Four licensed nursing home administrators, one of whom is the administrator of a nonproprietary nursing home; three licensed members of any profession concerned with the care and treatment of chronically ill or elderly patients who are not nursing home administrators or nursing home owners; and two members of the general public who are not licensed under chapter 147, have no financial interest in any nursing home, and who shall represent the general public. A majority of the members of the board constitutes a quorum.

2007 Acts, ch 10, §33; 2007 Acts, ch 218, §188  
See Code editor's note to §29A.28  
Section amended

#### 147.16 Board members.

1. Each licensed board member shall be actively engaged in the practice or the instruction of the board member's profession and shall have been so engaged for a period of five years just preceding the board member's appointment, the last two of which shall be in this state.

2. However, each licensed physician assistant member of the board of physician assistants shall be actively engaged in practice as a physician assistant and shall have been so engaged for a period of three years just preceding the member's appointment, the last year of which shall be in this state.

2007 Acts, ch 10, §34  
Section amended and former unnumbered paragraphs 1 and 2 editorially designated as subsections 1 and 2

#### 147.18 Disqualifications.

A board member shall not be connected in any manner with any wholesale or jobbing house dealing in supplies or have a financial interest in or be an instructor at a proprietary school.

2007 Acts, ch 10, §35  
Section amended

#### 147.19 Terms of office.

The board members shall serve three-year terms, which shall commence and end as provided by section 69.19. Any vacancy in the membership of a board shall be filled by appointment of the governor subject to senate confirmation. A member shall serve no more than three terms or nine years.

2007 Acts, ch 10, §36  
Confirmation, see §2.32  
Section amended

#### 147.20 Nomination of board members.

The regular state association or society for each profession may recommend the names of potential

board members to the governor, but the governor shall not be bound by the recommendations.

2007 Acts, ch 10, §37  
Section amended

#### 147.22 Officers.

Each board shall organize annually and shall select a chairperson and a secretary from its own membership.

2007 Acts, ch 10, §38  
Section amended

#### 147.24 Compensation.

Members of a board shall receive actual expenses for their duties as a member of the board. Each member of each board may also be eligible to receive compensation as provided in section 7E.6. The funds shall be appropriated to the department and allocated to each board within the limits of funds.

2007 Acts, ch 10, §39  
Section amended

#### 147.25 System of health personnel statistics — fee.

1. The division for records and statistics within the department shall establish and maintain a system of health personnel statistics which shall include the collection, preservation, revision and dissemination of statistical data to enable the department or other agencies concerned with delivery of health care services in this state to determine the total number, employment status, location of practice or place of employment, areas of professional specialization and ages of licensed health care practitioners and other pertinent information bearing on the availability of trained and licensed personnel in health care fields to provide services in this state. The statistical data shall be computed and available upon request at least biannually in the form of a report to agencies, both public and private, which are concerned with the delivery of health care in this state.

2. The department shall enter into cooperative arrangements with and seek the technical expertise of agencies collecting and producing health personnel statistics in order to eliminate duplication in the collection of health personnel information and to assist in the standardization and coordination of procedures relating to the collection of health personnel statistics.

3. Boards collecting information necessary for the division for records and statistics to carry out the provisions of this section shall provide the department with the information which may be gathered by means including but not limited to questionnaires forwarded to applicants for a license or renewal of a license.

4. In addition to any other fee provided by law, a fee may be set by the respective boards for each license and renewal of a license to practice a profession, which fee shall be based on the annual cost of collecting information for use by the depart-

ment in the administration of the system of health personnel statistics established by this section. The fee shall be retained by the respective boards in the manner in which license and renewal fees are retained in section 147.82.

2006 Acts, ch 1155, §4, 15; 2007 Acts, ch 10, §40, 184  
Nonreversion of unencumbered or unobligated funds appropriated or received as fees or repayment receipts for the fiscal period beginning July 1, 2006, and ending July 1, 2007, until the close of the next succeeding fiscal year; 2006 Acts, ch 1155, §14, 15

2006 amendment to subsection 4 takes effect July 1, 2007; 2006 Acts, ch 1155, §15

See Code editor's note to §29A.28  
Code editor directive applied  
Former unnumbered paragraphs 1 and 2 designated as subsections 1 and 2

Former unnumbered paragraphs 3 and 4 amended and designated as subsections 3 and 4

#### **147.26 Supplies and examination quarters.**

The department shall furnish each board with all articles and supplies required for the public use and necessary to enable the board to perform the duties imposed upon it by law. Such articles and supplies shall be obtained by the department in the same manner in which the regular supplies for the department are obtained and the cost shall be assessed to the board. The director of the department of administrative services shall furnish each board with suitable quarters in which to conduct the examination and the cost of the quarters shall be assessed to the board.

2007 Acts, ch 10, §41  
Section amended

#### **147.28 National organization.**

Each board may maintain a membership in the national organization of the regulatory boards of its profession to be paid from funds appropriated to the board.

2007 Acts, ch 10, §42  
Section amended

**147.28A Scope of practice review committees — future repeal.** Repealed by its own terms; 2005 Acts, ch 175, § 84.

#### **147.33 Professional schools.**

As a basis for such action on the part of the board, the registrar of the state university of Iowa and the dean of the professional school which teaches the profession for which the board gives license examinations shall supply such data relative to any such professional school as the board may request.

2007 Acts, ch 10, §44  
Section amended

#### **147.34 Examinations.**

Examinations for each profession licensed under this subtitle shall be conducted at least one time per year at such time as the department may fix in cooperation with each board. Examinations may be given at the state university of Iowa at the close of each school year for professions regulated

by this subtitle and examinations may be given at other schools located in the state at which any of the professions regulated by this subtitle are taught. At least one session of each board shall be held annually at the seat of government and the locations of other sessions shall be determined by the board, unless otherwise ordered by the department. Applicants who fail to pass the examination once shall be allowed to take the examination at the next scheduled time. Thereafter, applicants shall be allowed to take the examination at the discretion of the board. Examinations may be given by a board which are prepared and scored by persons outside the state, and boards may contract for such services. A board may make an agreement with boards in other states for administering a uniform examination. An applicant who has failed an examination may request in writing information from the board concerning the examination grade and subject areas or questions which the applicant failed to answer correctly, except that if the board administers a uniform, standardized examination, the board shall only be required to provide the examination grade and such other information concerning the applicant's examination results which are available to the board.

2007 Acts, ch 10, §45  
Section amended

#### **147.35 Names of eligible candidates.**

Prior to each examination the department shall transmit to each board the list of candidates who are eligible to take the examination given by such board. In making up such list the department may call upon any board, or any member thereof, for information relative to the eligibility of any applicant.

2007 Acts, ch 10, §46  
Section amended

#### **147.36 Rules.**

Each board shall establish rules for:

1. The qualifications required for applicants seeking to take examinations.
2. The denial of applicants seeking to take examinations.
3. The conducting of examinations.
4. The grading of examinations and passing upon the technical qualifications of applicants, as shown by such examinations.
5. The minimum scores required for passing standardized examinations.

2007 Acts, ch 10, §47  
Unnumbered paragraph 1 amended

#### **147.37 Identity of candidate concealed.**

All examinations in theory shall be in writing, and the identity of the person taking the same shall not be disclosed upon the examination papers in such a way as to enable the members of the board to know by whom written until after the papers have been passed upon. In examinations in practice the identity of the candidate shall also be



concealed as far as possible.

2007 Acts, ch 10, §48  
Section amended

#### **147.39 Clerk.**

Upon the request of any board, the department shall detail some employee to act as clerk of any examination given by the board. Such clerk shall have charge of the candidates during the examination and perform such other duties as the board may direct. If the duties of such clerk are performed away from the seat of government, the clerk shall receive necessary travel and expenses, which shall be paid from the appropriations to the board in the same manner in which other similar expenses are paid. The department shall be reimbursed by the board for costs incurred.

2007 Acts, ch 10, §49  
Section amended

#### **147.40 Certification of applicants.**

Every examination shall be passed upon in accordance with the established rules of the board and shall be satisfactory to at least a majority of the professional members of the board. In the case of the dental board, only licensed dentist members of the board shall determine whether an applicant has passed the examination to practice as a licensed dentist. After each examination, the board shall certify the names of the successful applicants to the department in the manner prescribed by it. The department shall then issue the proper license.

2007 Acts, ch 10, §50; 2007 Acts, ch 218, §198  
Section amended

#### **147.41 Partial examinations.**

Any board may provide for a partial examination for a license to practice a profession to any applicant who has completed a portion of the professional course. For such purpose the board shall establish by rule:

1. The portion of such course which shall be completed prior to such examination.
2. The subjects to be covered by such examination and the subjects to be covered by the final examination to be taken by such applicant after the completion of the professional course and prior to the issuance of the license, but the subjects covered in the partial and final examinations shall be the same as those specified in this subtitle for the regular examination.

2007 Acts, ch 10, §51  
Unnumbered paragraph 1 amended

#### **147.42 Rules relative to partial examinations.**

If a board provides for partial examinations under section 147.41, the department shall adopt rules establishing:

1. The portion of the license fee fixed in this chapter which shall be paid for a partial examination.

2. The credentials which shall be presented to the department by an applicant showing the applicant's qualifications to take such examination.

3. The method of certifying the list of the eligible applicants for such examination to the appropriate board.

4. The method of certifying back to the department the list of applicants who successfully pass such examination.

5. The method of keeping the records of such applicants for use at the time of completing the examination for a license.

6. The credentials which shall be presented to the department by such an applicant upon the completion of the professional course.

7. The method of certifying such applicant to the proper board for the remainder of the examination.

8. Such other matters of procedure as are necessary to carry into effect section 147.41.

2007 Acts, ch 10, §52  
Section amended

#### **147.44 Agreements.**

For the purpose of recognizing licenses which have been issued in other states to practice any profession for which a license is required by this subtitle, the department shall enter into a reciprocal agreement with every state which is certified to the department by the appropriate board under the provisions of section 147.45 and with which this state does not have an existing agreement at the time of such certification.

2007 Acts, ch 10, §53  
Section amended

#### **147.45 States entitled to reciprocal relations.**

The department shall at least once each year lay before the appropriate board the requirements of the several states for a license to practice the profession for which the board conducts examinations for licenses in this state. The board shall immediately examine such requirements and after making such other inquiries as it deems necessary, shall certify to the department the states having substantially equivalent requirements to those existing in this state for that particular profession and with which the board desires this state to enter into reciprocal relations.

2007 Acts, ch 10, §54  
Section amended

#### **147.46 Reciprocal agreements.**

In negotiating any reciprocal agreement, the department shall be governed by the following regulations:

1. *Protection to licensees of this state.* When the laws of any state or the rules of the authorities of said state place any requirement or disability upon any person licensed in this state to practice any profession regulated by this subtitle, which affects the right of said person to be licensed or to

practice the person's profession in said state, then the same requirement or disability shall be placed upon any person licensed in said state when applying for a license to practice in this state.

2. *Special conditions.* When any board has established by rule any special condition upon which reciprocal agreements shall be entered into, as provided in section 147.47, such condition shall be incorporated into the reciprocal agreements negotiated with reference to licenses to practice the professions for which the board conducts examinations.

2007 Acts, ch 10, §55  
Subsection 2 amended

#### 147.47 Special conditions.

A board shall have power to provide by rule that no reciprocal relation shall be entered into by the department with any state with reference to licenses to practice the profession for which the board conducts examinations, unless every person licensed in another state when applying for a license to practice in this state shall comply with one or both of the following conditions:

1. Furnish satisfactory proof to the department that the person has been actively engaged in the practice of the profession for a certain period of years to be fixed by the board.

2. Pass a practical examination in the practice of the person's particular profession as prescribed by the board.

2007 Acts, ch 10, §56  
Section amended

#### 147.48 Termination of agreements.

If the requirements for a license in any state with which this state has a reciprocal agreement are changed by any law or rule of the authorities in that state so that such requirements are no longer substantially as high as those existing in this state, the agreement shall be deemed terminated and licenses issued in that state shall not be recognized as a basis of granting a license in this state until a new agreement has been negotiated. The fact of such change shall be determined by the appropriate board and certified to the department for its guidance in enforcing the provisions of this section.

2007 Acts, ch 10, §57  
Section amended

#### 147.49 License of another state.

The department shall, upon presentation of a license to practice a profession issued by the duly constituted authority of another state with which this state has established reciprocal relations, and subject to the rules of the board for such profession, license the applicant to practice in this state, unless under the rules of the board a practical examination is required. The department may, upon the recommendation of the board of medicine, accept in lieu of the examination prescribed in sec-

tion 148.3 or section 150A.3 a license to practice medicine and surgery or osteopathic medicine and surgery, issued by the duly constituted authority of another state, territory, or foreign country. Endorsement may be accepted by the department in lieu of further written examination without regard to the existence or nonexistence of a reciprocal agreement, but shall not be in lieu of the standards and qualifications prescribed by section 148.3 or section 150A.3.

2007 Acts, ch 10, §58  
Section amended

#### 147.50 Practical examinations.

If the rules of any board require an applicant for a license under a reciprocal agreement to pass a practical examination in the practice of the applicant's profession, the applicant shall make application for the license to the department upon a form provided by the department.

2007 Acts, ch 10, §59  
Section amended

#### 147.53 Power to adopt rules.

The department and each board shall adopt necessary rules, not inconsistent with law, for carrying out the reciprocal relations with other states which are authorized by this chapter.

2007 Acts, ch 10, §60  
Section amended

#### 147.74 Professional titles or abbreviations — false use prohibited.

1. Any person who falsely claims by the use of any professional title or abbreviation, either in writing, cards, signs, circulars, or advertisements, to be a practitioner of a system of the healing arts other than the one under which the person holds a license or who fails to use the following designations shall be guilty of a simple misdemeanor.

2. A physician or surgeon may use the prefix "Dr." or "Doctor", and shall add after the person's name the letters, "M.D."

3. An osteopath or osteopathic physician and surgeon may use the prefix "Dr." or "Doctor", and shall add after the person's name the letters, "D.O.", or the words "osteopath" or "osteopathic physician and surgeon".

4. A chiropractor may use the prefix "Doctor", but shall add after the person's name the letters, "D.C." or the word, "chiropractor".

5. A dentist may use the prefix "Doctor", but shall add after the person's name the letters "D.D.S." or the word "dentist" or "dental surgeon".

6. A podiatric physician may use the prefix "Dr." but shall add after the person's name the words "podiatric physician".

7. A graduate of a school accredited by the board of optometry may use the prefix "Doctor", but shall add after the person's name the letters "O.D."

8. A physical therapist registered or licensed under chapter 148A may use the words "physical

therapist” after the person’s name or signify the same by the use of the letters “P.T.” after the person’s name.

9. A physical therapist assistant licensed under chapter 148A may use the words “physical therapist assistant” after the person’s name or signify the same by use of the letters “P.T.A.” after the person’s name.

10. A psychologist who possesses a doctoral degree and who claims to be a certified practicing psychologist may use the prefix “Doctor” but shall add after the person’s name the word “psychologist”.

11. A speech pathologist with an earned doctoral degree in speech pathology obtained beyond a bachelor’s degree from an accredited school, college, or university, may use the suffix designating the degree, or the prefix “Doctor” or “Dr.” and add after the person’s name the words “speech pathologist”. An audiologist with an earned doctoral degree in audiology obtained beyond a bachelor’s degree from an accredited school, college, or university, may use the suffix designating the degree, or the prefix “Doctor” or “Dr.” and add after the person’s name the word “audiologist”.

12. A bachelor social worker licensed under chapter 154C may use the words “licensed bachelor social worker” or the letters “L.B.S.W.” after the person’s name. A master social worker licensed under chapter 154C may use the words “licensed master social worker” or the letters “L.M.S.W.” after the person’s name. An independent social worker licensed under chapter 154C may use the words “licensed independent social worker”, or the letters “L.I.S.W.” after the person’s name.

13. A marital and family therapist licensed under chapter 154D and this chapter may use the words “licensed marital and family therapist” after the person’s name or signify the same by the use of the letters “L.M.F.T.” after the person’s name. A marital and family therapist licensed under chapter 154D and this chapter who possesses a doctoral degree may use the prefix “Doctor” or “Dr.” in conjunction with the person’s name, but shall add after the person’s name the words “licensed marital and family therapist”.

14. A mental health counselor licensed under chapter 154D and this chapter may use the words “licensed mental health counselor” after the person’s name. A mental health counselor licensed under chapter 154D and this chapter who possesses a doctoral degree may use the prefix “Doctor” or “Dr.” in conjunction with the person’s name, but shall add after the person’s name the words “licensed mental health counselor”.

15. A pharmacist who possesses a doctoral degree recognized by the American council of pharmaceutical education from a college of pharmacy approved by the board of pharmacy or a doctor of philosophy degree in an area related to pharmacy

may use the prefix “Doctor” or “Dr.” but shall add after the person’s name the word “pharmacist” or “Pharm. D.”

16. A physician assistant licensed under chapter 148C may use the words “physician assistant” after the person’s name or signify the same by the use of the letters “P.A.” after the person’s name.

17. A massage therapist licensed under chapter 152C may use the words “licensed massage therapist” or the initials “L.M.T.” after the person’s name.

18. An acupuncturist licensed under chapter 148E may use the words “licensed acupuncturist” after the person’s name.

19. A respiratory care practitioner licensed under chapter 152B and this chapter may use the title “respiratory care practitioner” or the letters “R.C.P.” after the person’s name.

20. An athletic trainer licensed under chapter 152D and this chapter may use the words “licensed athletic trainer” or the letters “LAT” after the person’s name.

21. A registered nurse licensed under chapter 152 may use the words “registered nurse” or the letters “R.N.” after the person’s name. A licensed practical nurse licensed under chapter 152 may use the words “licensed practical nurse” or the letters “L.P.N.” after the person’s name.

22. A sign language interpreter or transliterator licensed under chapter 154E and this chapter may use the title “licensed sign language interpreter” or the letters “L.I.” after the person’s name.

23. No other practitioner licensed to practice a profession under any of the provisions of this subtitle shall be entitled to use the prefix “Dr.” or “Doctor”.

2007 Acts, ch 10, §61; 2007 Acts, ch 215, §246  
Subsections 7, 15, and 22 amended

#### 147.76 Rules.

The boards for the various professions shall adopt all necessary and proper rules to administer and interpret this chapter and chapters 147A through 158, except chapter 148D.

2007 Acts, ch 10, §62  
Section amended

#### 147.80 License — examination — fees.

1. Each board shall set the fees for the examination of applicants, which fees shall be based upon the cost of administering the examinations. A board shall set the license fees and renewal fees required for any of the following based upon the cost of sustaining the board and the actual costs of licensing:

a. License to practice dentistry issued upon the basis of an examination given by the dental board, license to practice dentistry issued under a reciprocal agreement, resident dentist’s license, renewal of a license to practice dentistry.

b. License to practice pharmacy issued upon

the basis of an examination given by the board of pharmacy, license to practice pharmacy issued under a reciprocal agreement, renewal of a license to practice pharmacy.

*c.* License to practice medicine and surgery, osteopathic medicine and surgery, or osteopathy and renewal of a license to practice medicine and surgery, osteopathic medicine and surgery, or osteopathy.

*d.* Certificate to practice psychology or associate psychology issued on the basis of an examination given by the board of psychology, or certificate to practice psychology or associate psychology issued under a reciprocity agreement or by endorsement, renewal of a certificate to practice psychology or associate psychology.

*e.* Application for a license to practice as a physician assistant, issuance of a license to practice as a physician assistant issued upon the basis of an examination given or approved by the board of physician assistants, issuance of a license to practice as a physician assistant issued under a reciprocal agreement, renewal of a license to practice as a physician assistant, temporary license to practice as a physician assistant.

*f.* License to practice chiropractic issued on the basis of an examination given by the board of chiropractic. License to practice chiropractic issued by endorsement or under a reciprocal agreement, renewal of a license to practice chiropractic.

*g.* License to practice podiatry issued upon the basis of an examination given by the board of podiatry, license to practice podiatry issued under a reciprocal agreement, renewal of a license to practice podiatry.

*h.* License to practice physical therapy issued upon the basis of an examination given by the board of physical and occupational therapy, license to practice physical therapy issued under a reciprocal agreement, renewal of a license to practice physical therapy.

*i.* License to practice as a physical therapist assistant issued on the basis of an examination given by the board of physical and occupational therapy, license to practice as a physical therapist assistant issued under a reciprocal agreement, renewal of a license to practice as a physical therapist assistant.

*j.* For a license to practice optometry issued upon the basis of an examination given by the board of optometry, license to practice optometry issued under a reciprocal agreement, renewal of a license to practice optometry.

*k.* License to practice dental hygiene issued upon the basis of an examination given by the dental board, license to practice dental hygiene issued under a reciprocal agreement, renewal of a license to practice dental hygiene.

*l.* License to practice mortuary science issued upon the basis of an examination given by the board of mortuary science, license to practice mortuary science issued under a reciprocal agree-

ment, renewal of a license to practice mortuary science.

*m.* (1) License to practice nursing issued upon the basis of an examination given by the board of nursing; license to practice nursing based on an endorsement from another state, territory, or foreign country; renewal of a license to practice nursing.

(2) A nurse who does not engage in nursing during the year succeeding the expiration of the license shall notify the board to place the nurse upon the inactive list and the nurse shall not be required to pay the renewal fee so long as the nurse remains inactive and so notifies the board. To resume nursing, the nurse shall notify the board and remit the renewal fee for the current period.

*n.* License to practice cosmetology arts and sciences issued upon the basis of an examination given by the board of cosmetology arts and sciences, license to practice cosmetology arts and sciences under a reciprocal agreement, renewal of a license to practice cosmetology arts and sciences, temporary permit to practice as a cosmetology arts and sciences trainee, original license to conduct a school of cosmetology arts and sciences, renewal of license to conduct a school of cosmetology arts and sciences, original license to operate a salon, renewal of a license to operate a salon, original license to practice manicuring and pedicuring, renewal of a license to practice manicuring and pedicuring, annual inspection of a school of cosmetology arts and sciences, annual inspection of a salon, original cosmetology arts and sciences school instructor's license, and renewal of cosmetology arts and sciences school instructor's license.

*o.* License to practice barbering on the basis of an examination given by the board of barbering, license to practice barbering under a reciprocal agreement, renewal of a license to practice barbering, annual inspection by the department of inspections and appeals of barber school and annual inspection of barber shop, an original barber school license, renewal of a barber school license, transfer of license upon change of ownership of a barber shop or barber school, inspection by the department of inspections and appeals and an original barber shop license, renewal of a barber shop license, original barber school instructor's license, renewal of a barber school instructor's license.

*p.* License to practice speech pathology or audiology issued on the basis of an examination given by the board of speech pathology and audiology, or license to practice speech pathology or audiology issued under a reciprocity agreement, renewal of a license to practice speech pathology or audiology.

*q.* License to practice occupational therapy issued upon the basis of an examination given by the board of physical and occupational therapy, license to practice occupational therapy issued under a reciprocal agreement, renewal of a license to practice occupational therapy.

r. License to assist in the practice of occupational therapy issued upon the basis of an examination given by the board of physical and occupational therapy, license to assist in the practice of occupational therapy issued under a reciprocal agreement, renewal of a license to assist in the practice of occupational therapy.

s. License to practice social work issued on the basis of an examination by the board of social work, or license to practice social work issued under a reciprocity agreement, or renewal of a license to practice social work.

t. License to practice marital and family therapy issued upon the basis of an examination given by the board of behavioral science, license to practice marital and family therapy issued under a reciprocal agreement, or renewal of a license to practice marital and family therapy.

u. License to practice mental health counseling issued upon the basis of an examination given by the board of behavioral science, license to practice mental health counseling issued under a reciprocal agreement, or renewal of a license to practice mental health counseling.

v. License to practice dietetics issued upon the basis of an examination given by the board of dietetics, license to practice dietetics issued under a reciprocal agreement, or renewal of a license to practice dietetics.

w. License to practice acupuncture, license to practice acupuncture under a reciprocal agreement, or renewal of a license to practice acupuncture.

x. License to practice respiratory care, license to practice respiratory care under a reciprocal license, or renewal of a license to practice respiratory care.

y. License to practice massage therapy, license to practice massage therapy under a reciprocal license, or renewal of a license to practice massage therapy.

z. License to practice athletic training, license to practice athletic training under a reciprocal license, or renewal of a license to practice athletic training.

aa. Registration to practice as a dental assistant, registration to practice as a dental assistant under a reciprocal agreement, or renewal of registration to practice as a dental assistant.

ab. License to practice sign language interpreting and transliterating, license to practice sign language interpreting and transliterating under a reciprocal license, or renewal of a license to practice sign language interpreting and transliterating.

ac. License to practice hearing aid dispensing, license to practice hearing aid dispensing under a reciprocal license, or renewal of a license to practice hearing aid dispensing.

ad. License to practice nursing home administration, license to practice nursing home administration under a reciprocal license, or renewal of a

license to practice nursing home administration.

ae. For a certified statement that a licensee is licensed in this state.

af. Duplicate license, which shall be so designated on its face, upon satisfactory proof the original license issued by the department has been destroyed or lost.

2. The licensing and certification division shall prepare estimates of projected revenues to be generated by the licensing, certification, and examination fees of each board as well as a projection of the fairly apportioned administrative costs and rental expenses attributable to each board. Each board shall annually review and adjust its schedule of fees so that, as nearly as possible, projected revenues equal projected costs and any imbalance in revenues and costs in a fiscal year is offset in a subsequent fiscal year.

3. The board of medicine, the board of pharmacy, the dental board, and the board of nursing shall retain individual executive officers, but shall make every effort to share administrative, clerical, and investigative staffs to the greatest extent possible. The department shall annually submit a status report to the general assembly in December regarding the sharing of staff during the previous fiscal year.

2007 Acts, ch 10, §63; 2007 Acts, ch 218, §199, 200  
Section amended and editorially renumbered

#### 147.82 Fees.

All fees collected by a board listed in section 147.80 or by the department for the bureau of professional licensure, and fees collected pursuant to sections 124.301 and 147.80 and chapter 155A by the board of pharmacy, shall be retained by each board or by the department for the bureau of professional licensure. The moneys retained by a board shall be used for any of the board's duties, including but not limited to the addition of full-time equivalent positions for program services and investigations. Revenues retained by a board pursuant to this section shall be considered repayment receipts as defined in section 8.2. Notwithstanding section 8.33, moneys retained by a board pursuant to this section are not subject to reversion to the general fund of the state.

2006 Acts, ch 1155, §6, 15; 2007 Acts, ch 10, §184

Nonreversion of unencumbered or unobligated funds appropriated or received as fees or repayment receipts for the fiscal period beginning July 1, 2006, and ending July 1, 2007, until the close of the next succeeding fiscal year; 2006 Acts, ch 1155, §14, 15

2006 amendment takes effect July 1, 2007; 2006 Acts, ch 1155, §15

Code editor directive applied  
Section stricken and rewritten

#### 147.87 Enforcement.

The department shall enforce the provisions of this and the following chapters of this subtitle and for that purpose may request the department of inspections and appeals to make necessary investigations. Every licensee and member of a board shall furnish the department or the department of inspections and appeals such evidence as the member or licensee may have relative to any al-

leged violation which is being investigated.

2007 Acts, ch 10, §64  
Continuing education and regulation, chapter 272C  
Section amended

#### **147.88 Inspections.**

The department of inspections and appeals may perform inspections as required by this subtitle, except for the board of medicine, board of pharmacy, board of nursing, and the dental board. The department of inspections and appeals shall employ personnel related to the inspection functions.

2007 Acts, ch 10, §65; 2007 Acts, ch 218, §201  
Section amended

#### **147.89 Report of violators.**

Every licensee and member of a board shall report, also, to the department the name of every person, without a license, that the member or licensee has reason to believe is engaged in:

1. Practicing any profession for which a license is required.
2. Operating as an itinerant practitioner of such profession.

2007 Acts, ch 10, §66  
Unnumbered paragraph 1 amended

#### **147.91 Publications.**

1. The department shall have available for each profession the following information:

- a. The law regulating the practice of the profession.
- b. The rules of the Iowa department of public health and the department of inspections and appeals relative to licenses.
- c. The rules of the board relative to examinations.

2. Such information shall be supplied to any person applying for the same. The department may, to the extent feasible, make the information described in this section available by electronic means, including, but not limited to, access to the documents through the internet.

2007 Acts, ch 10, §67  
Unnumbered paragraph 1 editorially designated as subsection 1 and former subsections 1 and 2 redesignated as paragraphs a and b of subsection 1  
Former subsection 3 amended and redesignated editorially as paragraph c of subsection 1  
Former unnumbered paragraph 2 designated editorially as subsection 2

#### **147.94 Pharmacists.**

The provisions of this chapter relative to the making of application for a license, the issuance of a license, the negotiation of reciprocal agreements for recognition of foreign licenses, and the preservation of records shall not apply to the licensing of persons to practice pharmacy, but such licensing shall be governed by the following:

1. Every application for a license to practice pharmacy shall be made to the executive director of the board of pharmacy.
2. A license and all renewals of a license shall be issued by the board of pharmacy.

3. Every reciprocal agreement for the recognition of any license issued in another state shall be negotiated by the board of pharmacy.

4. All records in connection with the licensing of pharmacists shall be kept by the executive director of the board of pharmacy.

2007 Acts, ch 10, §68  
Subsections 1 – 4 amended

#### **147.95 Enforcement — agents as peace officers.**

The provisions of this subtitle insofar as they affect the practice of pharmacy shall be enforced by the board of pharmacy and the provisions of sections 147.87, 147.88, and 147.89 shall not apply to said profession. Officers, agents, inspectors, and representatives of the board of pharmacy shall have the powers and status of peace officers when enforcing the provisions of this subtitle.

2007 Acts, ch 10, §69  
Section amended

#### **147.96 Board of pharmacy.**

In discharging the duties and exercising the powers provided for in sections 147.94 and 147.95, the board of pharmacy and the executive director of the board shall be governed by all the provisions of this chapter which govern the department when discharging a similar duty or exercising a similar power with reference to any of the professions regulated by this subtitle.

2007 Acts, ch 10, §70  
Section amended

#### **147.98 Executive director of the board of pharmacy.**

The board of pharmacy may employ a full-time executive director, who shall not be a member of the board, at such compensation as may be fixed pursuant to chapter 8A, subchapter IV, but the provisions of section 147.22 providing for a secretary for each board shall not apply to the board of pharmacy.

2007 Acts, ch 10, §71; 2007 Acts, ch 215, §247  
Section amended

#### **147.99 Duties of executive director.**

The executive director of the board of pharmacy shall, upon the direction of the board, make inspections of alleged violations of the provisions of this subtitle relative to the practice of pharmacy and of chapters 124, 126, and 205. The executive director shall be allowed necessary traveling and hotel expenses in making such inspections.

2007 Acts, ch 10, §72  
Section amended

#### **147.100 Expirations and renewals.**

Licenses shall expire in multiyear intervals as determined by each board. A person who fails to renew a license by the expiration date shall be allowed to do so within thirty days following its expiration, but the board may assess a reasonable penalty.

2007 Acts, ch 10, §73  
Section amended

### **147.102 Psychologists, chiropractors, and dentists.**

Notwithstanding the provisions of this subtitle, every application for a license to practice psychology, chiropractic, or dentistry shall be made directly to the chairperson, executive director, or secretary of the board of such profession, and every reciprocal agreement for the recognition of any such license issued in another state shall be negotiated by the board for such profession. All examination, license, and renewal fees received from persons licensed to practice any of such professions shall be paid to and collected by the chairperson, executive director, or secretary of the board of such profession. The salary of the secretary shall be established by the governor with the approval of the executive council pursuant to section 8A.413, subsection 2, under the pay plan for exempt positions in the executive branch of government.

2007 Acts, ch 10, §74  
Section amended

### **147.103 Investigators for physician assistants.**

1. The board of physician assistants may appoint investigators, who shall not be members of the board, to administer and aid in the enforcement of the provisions of law relating to physician assistants. The amount of compensation for the investigators shall be determined pursuant to chapter 8A, subchapter IV.

2. Investigators authorized by the board of physician assistants have the powers and status of peace officers when enforcing this chapter and chapters 148C and 272C.

2007 Acts, ch 10, §75  
Section amended and former unnumbered paragraphs 1 and 2 editorially designated as subsections 1 and 2

### **147.103A Physicians and surgeons, osteopaths, and osteopathic physicians and surgeons.**

This chapter shall apply to the licensing of persons to practice as physicians and surgeons, osteopaths, and osteopathic physicians and surgeons by the board of medicine subject to the following provisions:

1. A person violating the provisions of section 147.2, 147.84, or 147.85, shall upon conviction be guilty of a class "D" felony.

2. The issuance of reciprocal agreements pursuant to section 147.44 is not required and is subject to the discretion of the board.

3. The board may appoint investigators, who shall not be members of the board, and whose compensation shall be determined pursuant to chapter 8A, subchapter IV. Investigators appointed by the board have the powers and status of peace officers when enforcing this chapter and chapters 148, 150, 150A, and 272C.

4. Applications for a license shall be made to the chairperson, executive director, or secretary of

the board. All examination, license, and renewal fees shall be paid to and collected by the chairperson, executive director, or secretary of the board. The salary of the executive director of the board shall be established by the governor with approval of the executive council pursuant to section 8A.413, subsection 2, under the pay plan for exempt positions in the executive branch of government.

5. The board shall give priority to the processing of applications for licensure submitted by physicians and surgeons, osteopaths, and osteopathic physicians and surgeons whose practice will primarily involve provision of service to underserved populations, including but not limited to persons who are minorities or low-income, or who live in rural areas.

6. Disciplinary hearings held pursuant to section 272C.6, subsection 1, shall be heard by the board, or by a panel of not less than three board members, at least two of which are licensed in the profession, or by a panel of not less than three members appointed pursuant to section 272C.6, subsection 2. Notwithstanding chapters 17A and 21, a disciplinary hearing shall be open to the public at the discretion of the licensee.

2006 Acts, ch 1155, §7, 15; 2007 Acts, ch 10, §76, 77  
Nonreversion of unencumbered or unobligated funds appropriated or received as fees or repayment receipts for the fiscal period beginning July 1, 2006, and ending July 1, 2007, until the close of the next succeeding fiscal year; 2006 Acts, ch 1155, §14, 15

2006 amendment to subsection 4 takes effect July 1, 2007; 2006 Acts, ch 1155, §15

Unnumbered paragraph 1 amended  
Subsections 3 and 4 amended

### **147.107 Drug dispensing, supplying, and prescribing — limitations.**

1. A person, other than a pharmacist, physician, dentist, podiatric physician, or veterinarian who dispenses as an incident to the practice of the practitioner's profession, shall not dispense prescription drugs or controlled substances.

2. *a.* A pharmacist, physician, dentist, or podiatric physician who dispenses prescription drugs, including but not limited to controlled substances, for human use, may delegate nonjudgmental dispensing functions to staff assistants only when verification of the accuracy and completeness of the prescription is determined by the pharmacist or practitioner in the pharmacist's or practitioner's physical presence. However, the physical presence requirement does not apply when a pharmacist or practitioner is utilizing an automated dispensing system. When using an automated dispensing system the pharmacist or practitioner shall utilize an internal quality control assurance plan that ensures accuracy for dispensing. Verification of automated dispensing accuracy and completeness remains the responsibility of the pharmacist or practitioner and shall be determined in accordance with rules adopted by the board of pharmacy, the board of medicine, the dental board, and the board of podiatry for their

respective licensees.

b. A dentist, physician, or podiatric physician who dispenses prescription drugs, other than drug samples, pursuant to this subsection, shall register the fact that they dispense prescription drugs with the practitioner's respective board at least biennially.

c. A physician, dentist, or podiatric physician who dispenses prescription drugs, other than drug samples, pursuant to this subsection, shall offer to provide the patient with a written prescription that may be dispensed from a pharmacy of the patient's choice or offer to transmit the prescription orally, electronically, or by facsimile in accordance with section 155A.27 to a pharmacy of the patient's choice.

3. A physician's assistant or registered nurse may supply when pharmacist services are not reasonably available or when it is in the best interests of the patient, on the direct order of the supervising physician, a quantity of properly packaged and labeled prescription drugs, controlled substances, or contraceptive devices necessary to complete a course of therapy. However, a remote clinic, staffed by a physician's assistant or registered nurse, where pharmacy services are not reasonably available, shall secure the regular advice and consultation of a pharmacist regarding the distribution, storage, and appropriate use of such drugs, substances, and devices.

4. Notwithstanding subsection 3, a physician assistant shall not dispense prescription drugs as an incident to the practice of the supervising physician or the physician assistant, but may supply, when pharmacist services are not reasonably available, or when it is in the best interests of the patient, a quantity of properly packaged and labeled prescription drugs, controlled substances, or medical devices necessary to complete a course of therapy. However, a remote clinic, staffed by a physician assistant, where pharmacy services are not reasonably available, shall secure the regular advice and consultation of a pharmacist regarding the distribution, storage, and appropriate use of such drugs, substances, and devices. Prescription drugs supplied under the provisions of this subsection shall be supplied for the purpose of accommodating the patient and shall not be sold for more than the cost of the drug and reasonable overhead costs, as they relate to supplying prescription drugs to the patient, and not at a profit to the physician or the physician assistant. If prescription drug supplying authority is delegated by a supervising physician to a physician assistant, a nurse or staff assistant may assist the physician assistant in providing that service. Rules shall be adopted by the board of physician assistants, after consultation with the board of pharmacy, to implement this subsection.

5. Notwithstanding subsection 1 and any other provision of this section to the contrary, a physician may delegate the function of prescribing

drugs, controlled substances, and medical devices to a physician assistant licensed pursuant to chapter 148C. When delegated prescribing occurs, the supervising physician's name shall be used, recorded, or otherwise indicated in connection with each individual prescription so that the individual who dispenses or administers the prescription knows under whose delegated authority the physician assistant is prescribing. Rules relating to the authority of physician assistants to prescribe drugs, controlled substances, and medical devices pursuant to this subsection shall be adopted by the board of physician assistants, after consultation with the board of medicine and the board of pharmacy. However, the rules shall prohibit the prescribing of schedule II controlled substances which are listed as depressants pursuant to chapter 124.

6. Health care providers shall consider the instructions of the physician assistant to be instructions of the supervising physician if the instructions concern duties delegated to the physician assistant by a supervising physician.

7. Notwithstanding subsection 1, a family planning clinic may dispense birth control drugs and devices upon the order of a physician. Subsections 2 and 3 do not apply to a family planning clinic under this subsection.

8. Notwithstanding subsection 1, but subject to the limitations contained in subsections 2 and 3, a registered nurse who is licensed and registered as an advanced registered nurse practitioner and who qualifies for and is registered in a recognized nursing specialty may prescribe substances or devices, including controlled substances or devices, if the nurse is engaged in the practice of a nursing specialty regulated under rules adopted by the board of nursing in consultation with the board of medicine and the board of pharmacy.

9. Notwithstanding section 147.86, a person, including a pharmacist, who violates this section is guilty of a simple misdemeanor.

2007 Acts, ch 10, §78; 2007 Acts, ch 218, §202  
Subsections 2, 4, 5, and 8 amended

#### **147.108 Contact lens prescribing and dispensing.**

1. A person shall not dispense or adapt contact lenses without first receiving authorization to do so by a written, electronic, or facsimile prescription, except when authorized orally under subsection 2, from a person licensed under chapter 148, 150, 150A, or 154. The board of optometry shall adopt rules relating to electronic or facsimile transmission of a prescription under this section.

2. After contact lenses have been adequately adapted and the patient released from initial follow-up care by a person licensed under chapter 148, 150, 150A, or 154, the patient may request a copy, at no cost, of the contact lens prescription from that licensed person. A person licensed under chapter 148, 150, 150A, or 154 shall not with-



hold a contact lens prescription after the requirements of this section have been met. The prescription, at the option of the prescriber, may be given orally only to a person who is actively practicing and licensed under chapter 148, 150, 150A, 154, or 155A. The contact lens prescription shall contain an expiration date, at the discretion of the prescriber, but not to exceed eighteen months. The contact lens prescription shall contain the necessary requirements of the ophthalmic lens, and the prescription validation requirements as defined by rules adopted pursuant to this section. The prescription may contain adapting and material guidelines and may also contain specific instructions for use by the patient. For the purpose of this section, “*ophthalmic lens*” means one which has been fabricated to fill the requirements of a particular contact lens prescription.

3. A person who fills a contact lens prescription shall maintain a file of a valid prescription for a period of two years.

4. Notwithstanding section 147.86, a person who violates this section is guilty of a simple misdemeanor for a first violation. Subsequent violations are governed by section 147.86.

2007 Acts, ch 10, §79  
Subsection 1 amended

**147.109 Ophthalmic spectacle lens prescribing and dispensing.**

1. A person shall not dispense or adapt an ophthalmic spectacle lens or lenses without first receiving authorization to do so by a written, electronic, or facsimile prescription from a person licensed under chapter 148, 150, 150A, or 154. For the purpose of this section, “*ophthalmic spectacle lens*” means one which has been fabricated to fill the requirements of a particular spectacle lens prescription. The board of optometry shall adopt rules relating to electronic or facsimile transmission of a prescription under this section.

2. Upon completion of an eye examination, a person licensed under chapter 148, 150, 150A, or 154 shall furnish the patient a copy of their ophthalmic spectacle lens prescription at no cost. The ophthalmic spectacle lens prescription shall contain an expiration date. The ophthalmic spectacle lens prescription shall contain the requirements of the ophthalmic spectacle lens and the prescription validation requirements as defined by rules adopted pursuant to this section. The prescription, at the option of the prescriber, may contain adapting and material guidelines and may also contain specific instructions for use by the patient.

3. Upon request of a patient, a person licensed under chapter 148, 150, 150A, or 154 shall provide the prescription of the patient, if the prescription has not expired, at no cost to another person licensed under chapter 148, 150, 150A, or 154. The person licensed under chapter 148, 150, 150A, or 154 shall accept the prescription and shall not require the patient to undergo an eye examination

unless, due to observation or patient history, the licensee has reason to require an examination.

4. A dispenser shall maintain a file of a valid prescription for a period of two years.

5. Notwithstanding section 147.86, a person who violates this section is guilty of a simple misdemeanor for a first violation. Subsequent violations are governed by section 147.86.

2007 Acts, ch 10, §80  
Subsection 1 amended

INSPECTOR FOR DENTAL BOARD

**147.114 Inspector.**

An inspector may be appointed by the dental board pursuant to the provisions of chapter 8A, subchapter IV.

2007 Acts, ch 10, §81; 2007 Acts, ch 218, §203  
Section amended

**147.115 through 147.134** Reserved.

**147.135 Peer review committees — nonliability — records and reports privileged and confidential.**

1. A person shall not be civilly liable as a result of acts, omissions, or decisions made in connection with the person’s service on a peer review committee. However, such immunity from civil liability shall not apply if an act, omission, or decision is made with malice.

2. As used in this subsection, “*peer review records*” means all complaint files, investigation files, reports, and other investigative information relating to licensee discipline or professional competence in the possession of a peer review committee or an employee of a peer review committee. As used in this subsection, “*peer review committee*” does not include licensing boards. Peer review records are privileged and confidential, are not subject to discovery, subpoena, or other means of legal compulsion for release to a person other than an affected licensee or a peer review committee, and are not admissible in evidence in a judicial or administrative proceeding other than a proceeding involving licensee discipline or a proceeding brought by a licensee who is the subject of a peer review record and whose competence is at issue. A person shall not be liable as a result of filing a report or complaint with a peer review committee or providing information to such a committee, or for disclosure of privileged matter to a peer review committee. A person present at a meeting of a peer review committee shall not be permitted to testify as to the findings, recommendations, evaluations, or opinions of the peer review committee in any judicial or administrative proceeding other than a proceeding involving licensee discipline or a proceeding brought by a licensee who is the subject of a peer review committee meeting and whose competence is at issue. Information or documents discoverable from sources other than the peer review

committee do not become nondiscoverable from the other sources merely because they are made available to or are in the possession of a peer review committee. However, such information relating to licensee discipline may be disclosed to an appropriate licensing authority in any jurisdiction in which the licensee is licensed or has applied for a license. If such information indicates a crime has been committed, the information shall be reported to the proper law enforcement agency. This subsection shall not preclude the discovery of the identification of witnesses or documents known to a peer review committee. Any final written decision and finding of fact by a licensing board in a disciplinary proceeding is a public record. Upon appeal by a licensee of a decision of a board, the entire case record shall be submitted to the reviewing court. In all cases where privileged and confidential information under this subsection becomes discoverable, admissible, or part of a court record the identity of an individual whose privilege has been involuntarily waived shall be withheld.

3. *a.* A full and confidential report concerning any final hospital disciplinary action approved by a hospital board of trustees that results in a limitation, suspension, or revocation of a physician's privilege to practice for reasons relating to the physician's professional competence or concerning any voluntary surrender or limitation of privileges for reasons relating to professional competence shall be made to the board of medicine by the hospital administrator or chief of medical staff within ten days of such action. The board of medicine shall investigate the report and take appropriate action. These reports shall be privileged and confidential as though included in and subject to the requirements for peer review committee information in subsection 2. Persons making these reports and persons participating in resulting proceedings related to these reports shall be immune from civil liability with respect to the making of the report or participation in resulting proceedings. As used in this subsection, "*physician*" means a person licensed pursuant to chapter 148, chapter 150, or chapter 150A.

*b.* Notwithstanding subsection 2, if the board of medicine conducts an investigation based on a complaint received or upon its own motion, a hospital pursuant to subpoena shall make available information and documents requested by the board, specifically including reports or descriptions of any complaints or incidents concerning an individual who is the subject of the board's investigation, even though the information and documents are also kept for, are the subject of, or are being used in peer review by the hospital. However, the deliberations, testimony, decisions, conclusions, findings, recommendations, evaluations, work product, or opinions of a peer review committee or its members and those portions of any docu-

ments or records containing or revealing information relating thereto shall not be subject to the board's request for information, subpoena, or other legal compulsion. All information and documents received by the board from a hospital under this section shall be confidential pursuant to section 272C.6, subsection 4.

2007 Acts, ch 10, §82  
Subsections 2 and 3 amended

#### 147.151 Definitions.

As used in this division, unless the context otherwise requires:

1. "*Audiologist*" means a person who engages in the practice of audiology as defined in this section.

2. "*Board*" means the board of speech pathology and audiology established pursuant to section 147.14, subsection 9.

3. The "*practice of audiology*" means the application of principles, methods, and procedures for measurement, testing, evaluation, prediction, consultation, counseling, instruction, habilitation, rehabilitation, or remediation related to hearing and disorders of hearing and associated communication disorders for the purpose of non-medically evaluating, identifying, preventing, ameliorating, modifying, or remediating such disorders and conditions in individuals or groups of individuals, including the determination and use of appropriate amplification.

4. The "*practice of speech pathology*" means the application of principles, methods, and procedures for the measurement, testing, evaluation, prediction, consultation, counseling, instruction, habilitation, rehabilitation, or remediation related to the development and disorders of speech, fluency, voice, or language for the purposes of non-medically evaluating, preventing, ameliorating, modifying, or remediating such disorders and conditions in individuals or groups of individuals.

5. "*Speech pathologist*" means a person who engages in the practice of speech pathology as defined in this section.

2007 Acts, ch 10, §83  
Subsection 2 amended

#### 147.152 Applicability.

1. Nothing contained in this division shall be construed to apply to:

*a.* Licensed physicians and surgeons, licensed osteopathic physicians and surgeons, licensed osteopaths, approved physician assistants and registered nurses acting under the supervision of a physician, persons conducting hearing tests under the direct supervision of a licensed physician and surgeon, licensed osteopathic physician and surgeon, or licensed osteopath, or students of medicine or surgery or osteopathic medicine and surgery pursuing a course of study in a medical school or college of osteopathic medicine and surgery approved by the board of medicine while performing

functions incidental to their course of study.

*b.* Hearing aid fitting, the dispensing or sale of hearing aids and the providing of hearing aid service and maintenance by a hearing aid dispenser or holder of a temporary permit as defined and licensed under chapter 154A.

*c.* Students enrolled in an accredited college or university pursuing a course of study leading to a degree in speech pathology or audiology while receiving clinical training as a part of the course of study and acting under the supervision of a licensed speech pathologist or audiologist provided they use the title “trainee” or similar title clearly indicating training status.

*d.* Nonprofessional aides who perform their services under the supervision of a speech pathologist or audiologist as appropriate and who meet such qualifications as may be established by the board for aides if they use the title “aide”, “assistant”, “technician”, or other similar title clearly indicating their status.

*e.* Audiometric tests administered pursuant to the United States Occupational Safety and Health Act of 1970 or chapter 88, and in accordance with regulations issued thereunder, by employees of a person engaged in business, including the state of Iowa, its various departments, agencies, and political subdivisions, solely to employees of such employer, while acting within the scope of their em-

ployment.

*f.* Persons certified by the department of education as speech clinicians or hearing clinicians and employed by a school district or area education agency while acting within the scope of their employment.

2. A person exempted from the provisions of this division by this section shall not use the title speech pathologist or audiologist or any title or device indicating or representing in any manner that the person is a speech pathologist or is an audiologist; provided, a hearing aid dispenser licensed under chapter 154A may use the title “certified hearing aid audiologist” when granted by the national hearing aid society; and provided, persons who meet the requirements of section 147.153, subsection 1, who are certified by the department of education as speech clinicians may use the title speech pathologist and persons who meet the requirements of section 147.153, subsection 2, who are certified by the department of education as hearing clinicians may use the title audiologist, while acting within the scope of their employment.

2007 Acts, ch 10, §84

Unnumbered paragraph 1 editorially designated as subsection 1 and former subsection 1 amended and editorially redesignated as paragraph a of subsection 1

Former subsections 2 – 6 editorially redesignated as paragraphs b – f of subsection 1

Former unnumbered paragraph 2 editorially designated as subsection 2

## CHAPTER 147A

### EMERGENCY MEDICAL CARE — TRAUMA CARE

#### 147A.13 Physician assistant exception.

This subchapter does not restrict a physician assistant, licensed pursuant to chapter 148C, from staffing an authorized ambulance, rescue, or first response service if the physician assistant can document equivalency through education and additional skills training essential in the delivery of out-of-hospital emergency care. The equivalency shall be accepted when:

1. Documentation has been reviewed and ap-

proved at the local level by the medical director of the ambulance, rescue, or first response service in accordance with the rules of the board of physician assistants developed after consultation with the department.

2. Authorization has been granted to that ambulance, rescue, or first response service by the department.

2007 Acts, ch 10, §85  
Subsection 1 amended

## CHAPTER 148

### MEDICINE AND SURGERY

Enforcement, §147.87, 147.90, 147.92

Penalty, §147.86

Licensing board, support staff exceptions; location and powers; see §135.11A, 135.31

Utilization and cost control review committee; §514F.1

#### 148.2 Persons not required to qualify.

Section 148.1 shall not be construed to include the following classes of persons:

1. Persons who advertise or sell patent or proprietary medicines.
2. Persons who advertise, sell, or prescribe

natural mineral waters flowing from wells or springs.

3. Students of medicine or surgery who have completed at least two years' study in a medical school, approved by the board, and who prescribe medicine under the supervision of a licensed physician and surgeon, or who render gratuitous service to persons in case of emergency.

4. Licensed podiatric physicians, osteopaths, osteopathic physicians and surgeons, chiropractors, physical therapists, nurses, dentists, optometrists, and pharmacists who are exclusively engaged in the practice of their respective professions.

5. Physicians and surgeons of the United States army, navy, air force, marines, public health service, or other uniformed service when acting in the line of duty in this state, and holding a current, active permanent license in good standing in another state, district, or territory of the United States, or physicians and surgeons licensed in another state, when incidentally called into this state in consultation with a physician and surgeon licensed in this state.

6. A graduate of a medical school who is continuing training and performing the duties of an intern, or who is engaged in postgraduate training deemed the equivalent of an internship in a hospital approved for training by the board.

2007 Acts, ch 10, §86  
Subsections 3 and 6 amended

#### 148.2A Board of medicine.

As used in this chapter, "board" means the board of medicine established in chapter 147.

2007 Acts, ch 10, §87  
Section amended

#### 148.3 Requirements for license.

An applicant for a license to practice medicine and surgery shall:

1. Present a diploma issued by a medical college approved by the board, or present other evidence of equivalent medical education approved by the board. The board may accept, in lieu of a diploma from a medical college approved by them, all of the following:

*a.* A diploma issued by a medical college which has been neither approved nor disapproved by the board.

*b.* A valid standard certificate issued by the educational commission for foreign medical graduates or similar accrediting agency.

2. Pass an examination prescribed by the board which shall include subjects which determine the applicant's qualifications to practice medicine and surgery and which shall be given according to the methods deemed by the board to be the most appropriate and practicable. However, the federation licensing examination or any other national standardized examination which the board approves may be administered to any or all

applicants in lieu of or in conjunction with other examinations which the board prescribes. The board may establish necessary achievement levels on all examinations for a passing grade and adopt rules relating to examinations.

3. Present to the board satisfactory evidence that the applicant has successfully completed one year of postgraduate internship or resident training in a hospital approved for such training by the board. Beginning July 1, 2006, an applicant who holds a valid certificate issued by the educational commission for foreign medical graduates shall submit satisfactory evidence of successful completion of two years of such training.

2007 Acts, ch 10, §88  
Section amended

#### 148.4 Certificates of national board.

The board of medicine may accept in lieu of the examination prescribed in section 148.3 a certificate of examination issued by the national board of medical examiners of the United States of America, but every applicant for a license upon the basis of such certificate shall be required to pay the fee prescribed by the board of medicine for licenses.

2007 Acts, ch 10, §89  
Section amended

#### 148.5 Resident physician license.

A physician, who is a graduate of a medical school and is serving as a resident physician who is not otherwise licensed to practice medicine and surgery in this state, shall be required to obtain from the board a license to practice as a resident physician. The license shall be designated "Resident Physician License" and shall authorize the licensee to serve as a resident physician only, under the supervision of a licensed practitioner of medicine and surgery or osteopathic medicine and surgery, in an institution approved for such training by the board. A license shall be valid for a duration as determined by the board. The fee for each license shall be set by the board to cover the administrative costs of issuing the license. The board shall determine in each instance those eligible for a license, whether or not examinations shall be given, and the type of examinations. Requirements of the law pertaining to regular permanent licensure shall not be mandatory for a resident physician license except as specifically designated by the board. The granting of a resident physician license does not in any way indicate that the person licensed is necessarily eligible for regular permanent licensure, or that the board in any way is obligated to license the individual.

2007 Acts, ch 10, §90  
Section amended

#### 148.6 Revocation.

1. The board, after due notice and hearing in accordance with chapter 17A, may issue an order to discipline a licensee for any of the grounds set

forth in section 147.55, chapter 272C, or this subsection. Notwithstanding section 272C.3, licensee discipline may include a civil penalty not to exceed ten thousand dollars.

2. Pursuant to this section, the board may discipline a licensee who is guilty of any of the following acts or offenses:

*a.* Knowingly making misleading, deceptive, untrue or fraudulent representation in the practice of the physician's profession.

*b.* Being convicted of a felony in the courts of this state or another state, territory, or country. Conviction as used in this paragraph shall include a conviction of an offense which if committed in this state would be deemed a felony without regard to its designation elsewhere, or a criminal proceeding in which a finding or verdict of guilt is made or returned, but the adjudication of guilt is either withheld or not entered. A certified copy of the final order or judgment of conviction or plea of guilty in this state or in another state shall be conclusive evidence.

*c.* Violating a statute or law of this state, another state, or the United States, without regard to its designation as either felony or misdemeanor, which statute or law relates to the practice of medicine.

*d.* Having the license to practice medicine and surgery, osteopathic medicine and surgery, or osteopathy revoked or suspended, or having other disciplinary action taken by a licensing authority of another state, territory, or country. A certified copy of the record or order of suspension, revocation, or disciplinary action is prima facie evidence.

*e.* Knowingly aiding, assisting, procuring, or advising a person to unlawfully practice medicine and surgery, osteopathic medicine and surgery, or osteopathy.

*f.* Being adjudged mentally incompetent by a court of competent jurisdiction. Such adjudication shall automatically suspend a license for the duration of the license unless the board orders otherwise.

*g.* Being guilty of a willful or repeated departure from, or the failure to conform to, the minimal standard of acceptable and prevailing practice of medicine and surgery, osteopathic medicine and surgery, or osteopathy in which proceeding actual injury to a patient need not be established; or the committing by a physician of an act contrary to honesty, justice, or good morals, whether the same is committed in the course of the physician's practice or otherwise, and whether committed within or without this state.

*h.* Inability to practice medicine and surgery, osteopathic medicine and surgery, or osteopathy with reasonable skill and safety by reason of illness, drunkenness, excessive use of drugs, narcotics, chemicals, or other type of material or as a result of a mental or physical condition. The board may, upon probable cause, compel a physician to

submit to a mental or physical examination by designated physicians or to submit to alcohol or drug screening within a time specified by the board. Failure of a physician to submit to an examination or to submit to alcohol or drug screening shall constitute admission to the allegations made against the physician and the finding of fact and decision of the board may be entered without the taking of testimony or presentation of evidence. At reasonable intervals, a physician shall be afforded an opportunity to demonstrate that the physician can resume the competent practice of medicine with reasonable skill and safety to patients.

A person licensed to practice medicine and surgery, osteopathic medicine and surgery, or osteopathy who makes application for the renewal of a license, as required by section 147.10, gives consent to submit to a mental or physical examination as provided by this paragraph when directed in writing by the board. All objections shall be waived as to the admissibility of the examining physicians' testimony or examination reports on the grounds that they constitute privileged communication. The medical testimony or examination reports shall not be used against a physician in another proceeding and shall be confidential, except for other actions filed against a physician to revoke or suspend a license.

*i.* Willful or repeated violation of lawful rule or regulation adopted by the board or violating a lawful order of the board, previously entered by the board in a disciplinary or licensure hearing, or violating the terms and provisions of a consent agreement or informal settlement between a licensee and the board.

2007 Acts, ch 10, §91  
Service of notice, R.C.P. 1.305 and 1.306  
Section amended

#### **148.7 Procedure for suspension or revocation.**

A proceeding for the revocation or suspension of a license to practice medicine and surgery, osteopathic medicine and surgery, or osteopathy or to discipline a person licensed to practice medicine and surgery, osteopathic medicine and surgery, or osteopathy shall be substantially in accord with the following procedure:

1. The board may, upon its own motion or upon verified complaint in writing, and shall, if such complaint is filed by the director of public health, issue an order fixing the time and place for hearing. A written notice of the time and place of the hearing together with a statement of the charges shall be served upon the licensee at least ten days before the hearing in the manner required for the service of notice of the commencement of an ordinary action or by restricted certified mail.

2. If the licensee has left the state, the notice and statement of the charges shall be so served at

least twenty days before the date of the hearing, wherever the licensee may be found. If the whereabouts of the licensee is unknown, service may be had by publication as provided in the rules of civil procedure upon filing the affidavit required by the rules. In case the licensee fails to appear, either in person or by counsel at the time and place designated in the notice, the board shall proceed with the hearing as hereinafter provided.

3. The hearing shall be before a member or members designated by the board or before an administrative law judge appointed by the board according to the requirements of section 17A.11, subsection 1. The presiding board member or administrative law judge may issue subpoenas, administer oaths, and take or cause depositions to be taken in connection with the hearing. The presiding board member or administrative law judge shall issue subpoenas at the request and on behalf of the licensee. The hearing shall be open to the public.

The administrative law judge shall be an attorney vested with full authority of the board to schedule and conduct hearings. The administrative law judge shall prepare and file with the board the administrative law judge's findings of fact and conclusions of law, together with a complete written transcript of all testimony and evidence introduced at the hearing and all exhibits, pleas, motions, objections, and rulings of the administrative law judge.

4. A stenographic record of the proceedings shall be kept. The licensee shall have the opportunity to appear personally and by an attorney, with the right to produce evidence in the licensee's own behalf, to examine and cross-examine witnesses and to examine documentary evidence produced against the licensee.

5. If a person refuses to obey a subpoena issued by the presiding member or administrative law judge or to answer a proper question during the hearing, the presiding member or administrative law judge may invoke the aid of a court of competent jurisdiction or judge of this court in requiring the attendance and testimony of the person and the production of papers. A failure to obey the order of the court may be punished by the court as a civil contempt may be punished.

6. Unless the hearing is before the entire board, a transcript of the proceeding, together with exhibits presented, shall be considered by the entire board at the earliest practicable time. The licensee and the licensee's attorney shall have the opportunity to appear personally to present the licensee's position and arguments to the board. The board shall determine the charge or charges upon the merits on the basis of the evidence in the record before it.

7. If a majority of the members of the board vote in favor of finding the licensee guilty of an act or offense specified in section 147.55 or 148.6, the

board shall prepare written findings of fact and its decision imposing one or more of the following disciplinary measures:

a. Suspend the licensee's license to practice the profession for a period to be determined by the board.

b. Revoke the licensee's license to practice the profession.

c. Suspend imposition of judgment and penalty or impose the judgment and penalty, but suspend enforcement and place the physician on probation. The probation ordered may be vacated upon noncompliance. The board may restore and reissue a license to practice medicine and surgery, osteopathic medicine and surgery, or osteopathy, but may impose a disciplinary or corrective measure which the board might originally have imposed. A copy of the board's order, findings of fact, and decision, shall be served on the licensee in the manner of service of an original notice or by certified mail return receipt requested.

8. Judicial review of the board's action may be sought in accordance with the terms of the Iowa administrative procedure Act, chapter 17A.

9. The board's order revoking or suspending a license to practice medicine and surgery, osteopathic medicine and surgery, or osteopathy or to discipline a licensee shall remain in force and effect until the appeal is finally determined and disposed of upon its merit.

2007 Acts, ch 10, §92  
Subsections 1 – 3, 7, and 9 amended

#### **148.8 Voluntary surrender of license.**

The board may accept the voluntary surrender of a license if accompanied by a written statement of intention. A voluntary surrender, when accepted, has the same force and effect as an order of revocation.

2007 Acts, ch 10, §93  
Section amended

#### **148.9 Reinstatement.**

Any person whose license has been suspended, revoked, or placed on probation may apply to the board for reinstatement at any time and the board may hold hearings on any such petition and may order reinstatement and impose terms and conditions thereof and issue a certificate of reinstatement to the director of public health who shall thereupon issue a license as directed by the board.

2007 Acts, ch 10, §94  
Section amended

#### **148.10 Temporary certificate.**

The board may, in its discretion, issue a temporary certificate authorizing the licensee to practice medicine and surgery or osteopathic medicine and surgery in a specific location or locations and for a specified period of time if, in the opinion of the board, a need exists and the person possesses the

qualifications prescribed by the board for the license, which shall be substantially equivalent to those required for licensure under this chapter or chapter 150A, as the case may be. The board shall determine in each instance those eligible for this license, whether or not examinations shall be given, and the type of examinations. No requirements of the law pertaining to regular permanent licensure are mandatory for this temporary license except as specifically designated by the board. The granting of a temporary license does not in any way indicate that the person so licensed is necessarily eligible for regular licensure or that the board in any way is obligated to so license the person.

The temporary certificate shall be issued for a period not to exceed one year and may be renewed, but a person shall not practice medicine and surgery or osteopathic medicine and surgery in excess of three years while holding a temporary certificate. The fee for this license and the fee for renewal of this license shall be set by the board. The fees shall be based on the administrative costs of issuing and renewing the licenses.

2007 Acts, ch 10, §95; 2007 Acts, ch 215, §248  
Section amended

#### **148.11 Special license to practice medicine and surgery.**

1. Whenever the need exists, the board may issue a special license. The special license shall authorize the licensee to practice medicine and surgery under the policies and standards applicable to the health care services of a medical school academic staff member or as otherwise specified in the special license.

2. A person applying for a special license shall:

- a. Be a physician in a professional specialty.
- b. Present a diploma issued by a medical college.

c. Present evidence of an unrestricted license to practice medicine and surgery which has been issued by a foreign state or territory or an alien country.

d. Present a letter of recommendation from the dean of a medical school in this state indicating that the applicant has been invited to serve on the academic staff of the medical school.

e. Present letters of recommendation from universities, other educational institutions, or research facilities that indicate the noteworthy professional attainment by the applicant.

f. Present biographical background information concerning the applicant's education and qualifications.

3. The fee for initial issuance of a special license shall be established in an amount sufficient to cover the costs of issuing the special license. If the special license is extended beyond one year, an annual renewal fee shall be established in an amount sufficient to cover the costs of renewing the special license.

4. Notwithstanding the provisions of chapter 17A, the board may cancel a special license at any time without hearing. However, when such license is proposed to be canceled, the board shall promptly notify the licensee by certified mail sent to the last known address of the licensee. Thirty days after the service of such notice, the special license shall be canceled.

5. A special license issued under this section shall automatically expire upon the special licensee discontinuing service on the academic staff of a medical school in this state. An expired special license shall not be renewed. However, a former special licensee may reapply for a special license.

2007 Acts, ch 10, §96  
Subsection 1 amended

#### **148.12 Voluntary agreements.**

The board, after due notice and hearing, may issue an order to revoke, suspend, or restrict a license to practice medicine and surgery, osteopathic medicine and surgery, or osteopathy, or to issue a restricted license on application if the board determines that a physician licensed to practice medicine and surgery, osteopathic medicine and surgery, or osteopathy, or an applicant for licensure has entered into a voluntary agreement to restrict the practice of medicine and surgery, osteopathic medicine and surgery, or osteopathy in another state, district, territory, country, or an agency of the federal government. A certified copy of the voluntary agreement shall be considered prima facie evidence.

2007 Acts, ch 10, §97  
Section amended

#### **148.13 Authority of board as to supervising physicians and review of contested cases under chapter 148C — rules.**

1. The board of medicine shall adopt rules setting forth in detail its criteria and procedures for determining the ineligibility of a physician to serve as a supervising physician under chapter 148C. The rules shall provide that a physician may serve as a supervising physician under chapter 148C until such time as the board of medicine determines, following normal disciplinary procedures, that the physician is ineligible to serve in that capacity.

2. The board of medicine shall establish by rule specific procedures for consulting with and considering the advice of the board of physician assistants in determining whether to initiate a disciplinary proceeding under chapter 17A against a licensed physician in a matter involving the supervision of a physician assistant.

3. In exercising their respective authorities, the board of medicine and the board of physician assistants shall cooperate with the goal of encouraging the utilization of physician assistants in a manner that is consistent with the provision of quality health care and medical services for the citizens of Iowa.

4. The board of medicine shall adopt rules requiring a physician serving as a supervising physician to notify the board of medicine of the identity of a physician assistant the physician is supervis-

ing, and of any change in the status of the supervisory relationship.

2007 Acts, ch 10, §98  
Section amended

## CHAPTER 148A

### PHYSICAL THERAPY

#### 148A.1 Definitions — referral — authorization.

1. *a.* As used in this chapter, “board” means the board of physical and occupational therapy created under chapter 147.

*b.* As used in this chapter, “physical therapy” is that branch of science that deals with the evaluation and treatment of human capabilities and impairments. Physical therapy uses the effective properties of physical agents including, but not limited to, mechanical devices, heat, cold, air, light, water, electricity, and sound, and therapeutic exercises, and rehabilitative procedures to prevent, correct, minimize, or alleviate a physical impairment. Physical therapy includes the interpretation of performances, tests, and measurements, the establishment and modification of physical therapy programs, treatment planning, consultative services, instructions to the patients, and the administration and supervision attendant to physical therapy facilities.

2. Physical therapy evaluation and treatment may be rendered by a physical therapist with or without a referral from a physician, podiatric physician, dentist, or chiropractor, except that a hospital may require that physical therapy evaluation and treatment provided in the hospital shall be done only upon prior review by and authorization of a member of the hospital’s medical staff.

2007 Acts, ch 10, §99  
NEW subsection 1, paragraph a  
Former unnumbered paragraph 1 editorially divided and designated as subsection 1, paragraph b, and subsection 2

#### 148A.4 Requirements to practice.

Each applicant for a license to practice physical therapy shall:

1. Complete a course of study in, and hold a diploma or certificate issued by, a school of physical therapy accredited by the American physical therapy association or another appropriate accrediting body, and meet requirements as established by rules of the board.

2. Have passed an examination administered by the board.

2007 Acts, ch 10, §100  
Section amended

#### 148A.6 Physical therapist assistant.

1. A licensed physical therapist assistant is required to function under the direction and supervision of a licensed physical therapist to perform physical therapy procedures delegated and supervised by the licensed physical therapist in a manner consistent with the rules adopted by the board. Selected and delegated tasks of physical therapist assistants may include but are not limited to therapeutic procedures and related tasks, routine operational functions, documentation of treatment progress, and the use of selected physical agents. The ability of the licensed physical therapist assistant to perform the selected and delegated tasks shall be assessed on an ongoing basis by the supervising physical therapist. The licensed physical therapist assistant shall not interpret referrals, perform initial evaluation or reevaluations, initiate physical therapy treatment programs, change specified treatment programs, or discharge a patient from physical therapy services.

2. Each applicant for a license to practice as a physical therapist assistant shall:

*a.* Successfully complete a course of study for the physical therapist assistant accredited by the commission on accreditation in education of the American physical therapy association, or another appropriate accrediting body, and meet other requirements established by the rules of the board.

*b.* Have passed an examination administered by the board.

3. This section does not prevent a person not licensed as a physical therapist assistant from performing services ordinarily performed by a physical therapy aide, assistant, or technician, provided that the person does not represent to the public that the person is a licensed physical therapist assistant, or use the title “physical therapist assistant” or the letters “P.T.A.”, and provided that the person performs services consistent with the supervision requirements of the board for persons not licensed as physical therapist assistants.

2007 Acts, ch 10, §101  
Section amended



## CHAPTER 148B

### OCCUPATIONAL THERAPY

#### 148B.2 Definitions.

As used in this chapter:

1. “*Board*” means the board of physical and occupational therapy created under chapter 147.
2. “*Occupational therapy*” means the therapeutic application of specific tasks used for the purpose of evaluation and treatment of problems interfering with functional performance in persons impaired by physical illness or injury, emotional disorder, congenital or developmental disability, or the aging process in order to achieve optimum function, for maintenance of health and prevention of disability.
3. “*Occupational therapist*” means a person licensed under this chapter to practice occupational therapy.
4. “*Occupational therapy assistant*” means a person licensed under this chapter to assist in the practice of occupational therapy.

2007 Acts, ch 10, §102  
Subsection 1 amended

#### 148B.7 Board of physical and occupational therapy — powers and duties.

The board shall adopt rules relating to professional conduct to carry out the policy of this chapter, including but not limited to rules relating to professional licensing and to the establishment of ethical standards of practice for persons holding a license to practice occupational therapy in this state.

2007 Acts, ch 10, §103  
Section headnote amended

#### 148B.8 Board of physical and occupational therapy — administrative provisions.

The board may employ an executive secretary and officers and employees as necessary, and shall determine their duties and fix their compensation.

2007 Acts, ch 10, §104  
Section headnote amended

## CHAPTER 148C

### PHYSICIAN ASSISTANTS

#### 148C.1 Definitions.

1. “*Approved program*” means a program for the education of physician assistants which has been accredited by the American medical association’s committee on allied health education and accreditation or its successor, by the commission on accreditation of allied health educational programs or its successor, or by the accreditation review commission on education for the physician assistant or its successor.
2. “*Board*” means the board of physician assistants created under chapter 147.
3. “*Department*” means the Iowa department of public health.
4. “*Licensed physician assistant*” means a person who is licensed by the board to practice as a physician assistant under the supervision of one or more physicians. “*Supervision*” does not require the personal presence of the supervising physician at the place where medical services are rendered except insofar as the personal presence is expressly required by this chapter or required by rules of the board adopted pursuant to this chapter.
5. “*Physician*” means a person who is currently licensed in Iowa to practice medicine and surgery, osteopathic medicine and surgery, or osteopathy. Notwithstanding this subsection, a physician supervising a physician assistant practicing in a federal facility or under federal authority

shall not be required to obtain licensure beyond licensure requirements mandated by the federal government for supervising physicians.

6. “*Physician assistant*” means a person who has successfully completed an approved program and passed an examination approved by the board or is otherwise found by the board to be qualified to perform medical services under the supervision of a physician.

7. “*Trainee*” means a person who is currently enrolled in an approved program.

2007 Acts, ch 10, §105  
Subsection 2 amended

#### 148C.3 Licensure.

1. The board shall adopt rules to govern the licensure of physician assistants. An applicant for licensure shall submit the fee prescribed by the board and shall meet the requirements established by the board with respect to each of the following:

*a.* Academic qualifications, including evidence of graduation from an approved program. A physician assistant who is not a graduate of an approved program, but who passed the national commission on certification of physician assistants’ physician assistant national certifying examination prior to 1986, is exempt from this graduation requirement.

b. Evidence of passing the national commission on the certification of physician assistants' physician assistant national certifying examination or an equivalent examination approved by the board.

c. Hours of continuing medical education necessary to become or remain licensed.

2. Rules shall be adopted by the board pursuant to this chapter requiring a licensed physician assistant to be supervised by physicians. The rules shall provide that not more than two physician assistants shall be supervised by a physician at one time. The rules shall also provide that a physician assistant shall notify the board of the identity of the physician assistant's supervising physician and of any change in the status of the supervisory relationship.

3. A licensed physician assistant shall perform only those services for which the licensed physician assistant is qualified by training or not prohibited by the board.

4. The board may issue a temporary license

under special circumstances and upon conditions prescribed by the board. A temporary license shall not be valid for more than one year and shall not be renewed more than once.

5. The board may issue an inactive license under conditions prescribed by rules adopted by the board.

6. The board shall adopt rules pursuant to this section after consultation with the board of medicine.

2007 Acts, ch 10, §106  
Subsection 6 amended

**148C.12 Annual report.**

By January 31 of each year the board and the board of medicine shall provide to the general assembly and the governor a joint report detailing the boards' collaborative efforts and team building practices.

2007 Acts, ch 10, §184; 2007 Acts, ch 218, §189  
Code editor directive applied  
NEW section

**CHAPTER 148E**

**ACUPUNCTURE**

**148E.1 Definitions.**

As used in this chapter, unless the context otherwise requires:

1. "*Acupuncture*" means a form of health care developed from traditional and modern oriental medical concepts that employs oriental medical diagnosis and treatment, and adjunctive therapies and diagnostic techniques, for the promotion, maintenance, and restoration of health and the prevention of disease.

2. "*Acupuncturist*" means a person who is engaged in the practice of acupuncture.

3. "*Board*" means the board of medicine estab-

lished in chapter 147.

4. "*Practice of acupuncture*" means the insertion of acupuncture needles and the application of moxibustion to specific areas of the human body based upon oriental medical diagnosis as a primary mode of therapy. Adjunctive therapies within the scope of acupuncture may include manual, mechanical, thermal, electrical, and electromagnetic treatment, and the recommendation of dietary guidelines and therapeutic exercise based on traditional oriental medicine concepts.

2007 Acts, ch 10, §107  
Subsection 3 amended

**CHAPTER 149**

**PODIATRY**

**149.1 Persons engaged in practice — definitions.**

1. For the purpose of this subtitle the following classes of persons shall be deemed to be engaged in the practice of podiatry:

a. Persons who publicly profess to be podiatric physicians or who publicly profess to assume the duties incident to the practice of podiatry.

b. Persons who diagnose, prescribe, or pre-

scribe and furnish medicine for ailments of the human foot, or treat such ailments by medical, mechanical, or surgical treatments.

2. As used in this chapter, "*board*" means the board of podiatry, created under chapter 147.

3. As used in this chapter, "*human foot*" means the ankle and soft tissue which insert into the foot as well as the foot.

4. "*Podiatric physician*" means a physician or

surgeon licensed under this chapter to engage in the practice of podiatric medicine and surgery.

2007 Acts, ch 10, §108

NEW subsection 2 and former subsections 2 and 3 renumbered as 3 and 4

### 149.3 License.

Every applicant for a license to practice podiatry shall:

1. Be a graduate of an accredited school of podiatry.
2. Present an official transcript issued by a school of podiatry approved by the board.
3. Pass an examination as determined by the board by rule.
4. Have successfully completed a residency as determined by the board by rule. This subsection applies to all applicants who graduate from a school of podiatry on or after January 1, 1995.

2007 Acts, ch 10, §109; 2007 Acts, ch 126, §36  
Subsections 2 and 4 amended

### 149.4 Approved school.

A school of podiatry shall not be approved by the board as a school of recognized standing unless the school:

1. Requires for graduation or the receipt of any podiatric degree the completion of a course of study covering a period of at least eight months in each of four calendar years.
2. A school of podiatry shall not be approved by the board which does not have as an additional entrance requirement two years study in a recog-

nized college, university, or academy.

2007 Acts, ch 10, §110

Section amended

### 149.7 Temporary certificate.

1. The board may issue a temporary certificate authorizing the licensee named in the certificate to practice podiatry if, in the opinion of the board, a need exists and the person possesses the qualifications prescribed by the board for the certificate, which shall be substantially equivalent to those required for regular licensure under this chapter. The board shall determine in each instance the applicant's eligibility for the certificate, whether or not an examination shall be given, and the type of examination. The requirements of the law pertaining to regular permanent licensure shall not be mandatory for this temporary certificate except as specifically designated by the board. The granting of a temporary certificate does not in any way indicate that the person licensed is necessarily eligible for regular licensure, and the board is not obligated to license the person.

2. The temporary certificate shall be issued for one year and may be renewed, but a person shall not be entitled to practice podiatry in excess of three years while holding a temporary certificate. The fee for this certificate shall be set by the board, and if extended beyond one year, a renewal fee per year shall be set by the board. The fees shall be based on the administrative costs of issuing and renewing the certificates.

2007 Acts, ch 10, §111

Section amended and former unnumbered paragraphs 1 and 2 editorially designated as subsections 1 and 2

## CHAPTER 150

### OSTEOPATHY

#### 150.11 Osteopathy discontinued.

After May 10, 1963, no license to practice osteopathy shall be issued, provided that the Iowa department of public health shall issue renewal licenses to practice osteopathy as provided in chapter 147 and the department, upon recommendation of the board of medicine, may grant a license

to practice osteopathy by reciprocity or endorsement if the applicant holds a valid license to practice osteopathy or osteopathic medicine and surgery issued by another state prior to May 10, 1963.

2007 Acts, ch 10, §112

Section amended

## CHAPTER 150A

### OSTEOPATHIC MEDICINE AND SURGERY

#### 150A.1A Definition.

As used in this chapter, "board" means the board of medicine created under chapter 147.

2007 Acts, ch 10, §113

NEW section

#### 150A.2 Persons not engaged in practice.

Section 150A.1 shall not be construed to include the following classes of persons:

1. Persons who advertise or sell patent or pro-

prietary medicines.

2. Persons who advertise, sell, or prescribe natural mineral waters flowing from wells or springs.

3. Students of medicine or surgery or osteopathic medicine and surgery, who have completed at least two years study in a medical school or college of osteopathic medicine and surgery approved by the board, and who prescribe medicine under the supervision of a licensed physician and surgeon or osteopathic physician and surgeon, or who render gratuitous service to persons in case of emergency.

4. Licensed physicians and surgeons, podiatric physicians, osteopaths, chiropractors, nurses, dentists, optometrists, and pharmacists who are exclusively engaged in the practice of their respective professions.

5. Physicians and surgeons of the United States army, navy or public health service when acting in the line of duty in this state, or physicians and surgeons, or osteopathic physicians and surgeons, licensed in another state, when incidentally called into this state in consultation with a physician or surgeon, or osteopathic physician and surgeon, licensed in this state.

2007 Acts, ch 10, §114  
Subsection 3 amended

#### 150A.3 Requirements to practice.

Each applicant for a license to practice osteopathic medicine and surgery shall:

1. Either comply with all of the following:

*a.* Present a diploma issued, after May 10, 1963, by a college of osteopathic medicine and surgery approved by the board or present other evidence of equivalent medical education approved by the board.

*b.* Pass an examination prescribed by the board in subjects including anatomy, chemistry, physiology, materia medica and therapeutics, obstetrics, pathology, medicine, public health and hygiene, and surgery. The board may require written, oral, and practical examinations of the applicant.

*c.* Present to the Iowa department of public health satisfactory evidence that the applicant has completed one year of internship or resident training in a hospital approved for such training by the board.

2. Or comply with the following:

*a.* Present a valid license to practice osteopathy in this state together with satisfactory evidence that the applicant has completed either:

(1) A two-year postgraduate course, of nine months each, in an accredited college of osteopathy, osteopathic medicine and surgery or medicine approved by the board, involving a thorough and intensive study of the subject of surgery as prescribed by the board, or

(2) A one-year postgraduate course of nine months in such accredited college, and in addition

thereto, has completed a one-year course of training as a surgical assistant in a hospital having at least twenty-five beds for patients and equipped for doing surgical work.

*b.* Pass an examination as prescribed by the board in the subject of surgery, which shall be of such character as to thoroughly test the qualifications of the applicant as a practitioner of major surgery.

2007 Acts, ch 10, §115; 2007 Acts, ch 215, §249  
Section amended

#### 150A.4 Approved colleges.

Any college of osteopathic medicine and surgery which does not permit the board to make such reasonable annual inspection as the board desires shall not be approved by the board. Until July 1, 1968, any college of osteopathic medicine and surgery which is accredited by the American osteopathic association shall, by virtue thereof, stand as provisionally approved by the board unless the board, by majority action including the osteopathic physician and surgeon member, shall disapprove.

2007 Acts, ch 10, §116  
Section amended

#### 150A.7 National board certificate.

The Iowa department of public health may, with the approval of the board, accept in lieu of the examination prescribed in section 150A.3 a certificate of examination issued by the national board of osteopathic examiners of the United States of America, but every applicant for a license upon the basis of such certificate shall be required to pay the fee prescribed for license issued under reciprocal agreements.

2007 Acts, ch 10, §117  
Section amended

#### 150A.9 Resident license.

An osteopathic physician and surgeon, who is a graduate of a college of osteopathic medicine and surgery and is serving as a resident physician and who is not licensed to practice osteopathic medicine and surgery in this state, shall be required to obtain from the board a license to practice as a resident osteopathic physician and surgeon. The license shall be designated "Resident Osteopathic Physician and Surgeon License", and shall authorize the licensee to serve as a resident physician only, under the supervision of a licensed practitioner of osteopathic medicine and surgery or licensed practitioner of medicine and surgery, in an institution approved for such training by the board. A license shall be valid for a duration as determined by the board. The fee for each license shall be set by the board and based on the administrative cost of issuing the license. The board shall determine in each instance those eligible for a license, whether or not examinations shall be given, and the type of examinations. Requirements of the law pertaining to regular permanent licensure

shall not be mandatory for a resident osteopathic physician and surgeon's license except as specifically designated by the board. The granting of a resident osteopathic physician and surgeon's license does not in any way indicate that the person

licensed is necessarily eligible for regular permanent licensure or that the board is obligated to license the person.

2007 Acts, ch 10, §118  
Section amended

## CHAPTER 151

### CHIROPRACTIC

#### 151.1A Board defined.

As used in this chapter, "board" means the board of chiropractic created under chapter 147.

2007 Acts, ch 10, §119  
NEW section

#### 151.2 Persons not engaged in.

Section 151.1 shall not be construed to include the following classes of persons:

1. Licensed physicians and surgeons, licensed osteopaths, and licensed osteopaths and surgeons, and physical therapists who are exclusively engaged in the practice of their respective professions.

2. Physicians and surgeons of the United States army, navy, or public health service when acting in the line of duty in this state, or to chiropractors licensed in another state, when incidentally called into this state in consultation with a chiropractor licensed in this state.

3. Students of chiropractic who have entered upon a regular course of study in a chiropractic college approved by the board, who practice chiropractic under the direction of a licensed chiropractor and in accordance with the rules of the board.

2007 Acts, ch 10, §120  
Subsection 3 amended

#### 151.3 License.

Every applicant for a license to practice chiropractic shall:

1. Present satisfactory evidence that the applicant possesses a preliminary education equal to the requirements for graduation from an accredited high school or other secondary school.

2. Present a diploma issued by a college of chiropractic approved by the board.

3. Pass an examination prescribed by the board in the subjects of anatomy, physiology, nutrition and dietetics, symptomatology and diagnosis, hygiene and sanitation, chemistry, histology, pathology, and principles and practice of chiropractic, including a clinical demonstration of vertebral palpation, nerve tracing, and adjusting.

2007 Acts, ch 10, §121  
Subsections 2 and 3 amended

#### 151.4 Approved college.

1. A college of chiropractic shall not be ap-

proved by the board as a college of recognized standing unless the college:

a. Requires for graduation or for the receipt of any chiropractic degree the completion of a course of study covering a period of four academic years totaling not less than four thousand sixty-minute hours in actual resident attendance.

b. Gives an adequate course of study in the subjects enumerated in subsection 3 of section 151.3 and including practical clinical instruction.

c. Publishes in a regularly issued catalogue the requirements for graduation and degrees as herein specified.

2. An approved college of chiropractic may include but is not limited to offerings of courses of study in procedures for withdrawing a patient's blood, performing or utilizing laboratory tests, and performing physical examinations for diagnostic purposes. A chiropractor, employed by an approved college of chiropractic and who has been trained to withdraw blood may withdraw blood and instruct, and supervise a student in the withdrawing of blood.

2007 Acts, ch 10, §122  
Unnumbered paragraph 1 amended and editorially designated as subsection 1

Former subsections 1 – 3 editorially redesignated as paragraphs a – c of subsection 1

Former unnumbered paragraph 2 editorially designated as subsection 2

#### 151.8 Training in procedures used in practice.

1. A chiropractor shall not use in the chiropractor's practice the procedures otherwise authorized by law unless the chiropractor has received training in their use by a college of chiropractic offering courses of instructions approved by the board.

2. Any chiropractor licensed as of July 1, 1974, may use the procedures authorized by law if the chiropractor files with the board an affidavit that the chiropractor has completed the necessary training and is fully qualified in these procedures and possesses that degree of proficiency and will exercise that care which is common to physicians in this state.

3. A chiropractor using the additional procedures and practices authorized by this chapter shall be held to the standard of care applicable to

any other health care practitioner in this state.

2007 Acts, ch 10, §123  
Section amended and former unnumbered paragraphs 1 – 3 editorially designated as subsections 1 – 3

**151.11 Rules.**

The board shall adopt rules necessary to administer section 151.1, to protect the health, safety, and welfare of the public, including rules governing the practice of chiropractic and defining any terms, whether or not specified in section 151.1, subsection 3. Such rules shall not be inconsistent with the practice of chiropractic and shall not expand the scope of practice of chiropractic or authorize the use of procedures not authorized by this chapter. These rules shall conform with chapter 17A.

2007 Acts, ch 10, §124  
Section amended

**151.12 Temporary certificate.**

1. The board may, in its discretion, issue a temporary certificate authorizing the certificate holder to practice chiropractic if, in the opinion of the board, a need exists and the person possesses the qualifications prescribed by the board for the cer-

tificate, which shall be substantially equivalent to those required for licensure under this chapter. The board shall determine in each instance those eligible for this certificate, whether or not examinations shall be given, the type of examinations, and the duration of the certificate. No requirements of the law pertaining to regular permanent licensure are mandatory for this temporary certificate except as specifically designated by the board. The granting of a temporary certificate does not in any way indicate that the person is eligible for regular licensure or that the board is obligated to issue the person a regular license.

2. The temporary certificate shall be issued for one year and at the discretion of the board may be renewed, but a person shall not practice chiropractic in excess of three years while holding a temporary certificate. The fee for this certificate shall be set by the board, and if extended beyond one year, a renewal fee per year shall be set by the board. The fee for the temporary certificate shall be based on the administrative costs of issuing the certificates.

2007 Acts, ch 10, §125; 2007 Acts, ch 126, §37; 2007 Acts, ch 215, §250  
See Code editor's note to §29A.28  
Section amended

**CHAPTER 152**

**NURSING**

Enforcement, §147.87, 147.90, 147.92  
Penalty, §147.86

Licensing board, support staff exception; location and powers; see §135.11A, 135.31

Utilization and cost control review committee; §514F.1

Authority of advanced registered nurse practitioner to prescribe drugs; limitations; see §147.107

**152.1 Definitions.**

As used in this chapter:

1. *“Board”* means the board of nursing, created under chapter 147.

2. As used in this section, *“nursing diagnosis”* means to identify and use discriminatory judgment concerning physical and psychosocial signs and symptoms essential to determining effective nursing intervention.

3. *“Physician”* means a person licensed in this state to practice medicine and surgery, osteopathy and surgery, or osteopathy, or a person licensed in this state to practice dentistry or podiatry when acting within the scope of the license. A physician licensed to practice medicine and surgery, osteopathic medicine and surgery, or osteopathy in a state bordering this state shall be considered a physician for purposes of this chapter unless previously determined to be ineligible for such consideration by the board of medicine.

4. The *“practice of a licensed practical nurse”* means the practice of a natural person who is licensed by the board to do all of the following:

a. Perform services in the provision of supportive or restorative care under the supervision of a registered nurse or a physician.

b. Perform additional acts under emergency or other conditions which require education and training and which are recognized by the medical and nursing professions and are approved by the board, as being proper to be performed by a licensed practical nurse.

c. Make the pronouncement of death for a patient whose death is anticipated if the death occurs in a licensed hospital, a licensed health care facility, a Medicare-certified home health agency, a Medicare-certified hospice program or facility, or an assisted living facility or residential care facility, with notice of the death to a physician and in accordance with any directions of a physician.

5. The *“practice of nursing”* means the practice of a registered nurse or a licensed practical nurse. It does not mean any of the following:

a. The practice of medicine and surgery, as defined in chapter 148, the osteopathic practice, as defined in chapter 150, the practice of osteopathic

medicine and surgery, as defined in chapter 150A, or the practice of pharmacy as defined in chapter 155A, except practices which are recognized by the medical and nursing professions and approved by the board as proper to be performed by a registered nurse.

*b.* The performance of nursing services by an unlicensed student enrolled in a nursing education program if performance is part of the course of study. Individuals who have been licensed as registered nurses or licensed practical or vocational nurses in any state or jurisdiction of the United States are not subject to this exemption.

*c.* The performance of services by unlicensed workers employed in offices, hospitals, or health care facilities, as defined in section 135C.1, under the supervision of a physician or a nurse licensed under this chapter, or employed in the office of a psychologist, podiatric physician, optometrist, chiropractor, speech pathologist, audiologist, or physical therapist licensed to practice in this state, and when acting while within the scope of the employer's license.

*d.* The practice of a nurse licensed in another state and employed in this state by the federal government if the practice is in discharge of official employment duties.

*e.* The care of the sick rendered in connection with the practice of the religious tenets of any church or order by the adherents thereof which is not performed for hire, or if performed for hire by those who depend upon prayer or spiritual means for healing in the practice of the religion of their church or denomination, so long as they do not otherwise engage in the practice of nursing as practical nurses.

6. The "practice of the profession of a registered nurse" means the practice of a natural person who is licensed by the board to do all of the following:

*a.* Formulate nursing diagnosis and conduct nursing treatment of human responses to actual or potential health problems through services, such as case finding, referral, health teaching, health counseling, and care provision which is supportive to or restorative of life and well-being.

*b.* Execute regimen prescribed by a physician, an advanced registered nurse practitioner, or a physician assistant.

*c.* Supervise and teach other personnel in the performance of activities relating to nursing care.

*d.* Perform additional acts or nursing specialties which require education and training under emergency or other conditions which are recognized by the medical and nursing professions and are approved by the board as being proper to be performed by a registered nurse.

*e.* Make the pronouncement of death for a patient whose death is anticipated if the death occurs in a licensed hospital, a licensed health care facility, a Medicare-certified home health agency, a Medicare-certified hospice program or facility,

an assisted living facility, or a residential care facility, with notice of the death to a physician and in accordance with any directions of a physician.

*f.* Apply to the abilities enumerated in paragraphs "a" through "e" of this subsection scientific principles, including the principles of nursing skills and of biological, physical, and psychosocial sciences.

2007 Acts, ch 10, §126; 2007 Acts, ch 159, §29, 30  
 Subsection 3 amended  
 Subsection 4, paragraph c amended  
 Subsection 6, paragraph e amended

### 152.3 Director's duties.

The duties of the executive director shall be as follows:

1. To receive all applications to be licensed for the practice of nursing.

2. To collect and receive all fees.

3. To keep all records pertaining to the licensing of nurses, including a record of all board proceedings.

4. To perform such other duties as may be prescribed by the board.

5. To appoint assistants to the director and persons necessary to administer this chapter. Any appointments shall be merit appointments made pursuant to chapter 8A, subchapter IV.

2006 Acts, ch 1155, §§, 9, 15

Nonreversion of unencumbered or unobligated funds appropriated or received as fees or repayment receipts for the fiscal period beginning July 1, 2006, and ending July 1, 2007, until the close of the next succeeding fiscal year; 2006 Acts, ch 1155, §14, 15

2006 amendments to subsection 2 and striking subsection 3 take effect July 1, 2007; 2006 Acts, ch 1155, §15

Subsection 2 amended

Subsection 3 stricken and former subsections 4 - 6 renumbered as 3 -

5

### 152.7 Applicant qualifications.

1. In addition to the provisions of section 147.3, an applicant to be licensed for the practice of nursing shall have the following qualifications:

*a.* Be a graduate of an accredited high school or the equivalent.

*b.* Pass an examination as prescribed by the board.

*c.* Complete a course of study approved by the board pursuant to section 152.5.

2. For purposes of licensure pursuant to the nurse licensure compact contained in section 152E.1, the compact administrator may refuse to accept a change in the qualifications for licensure as a registered nurse or as a licensed practical or vocational nurse by a licensing authority in another state which is a party to the compact which substantially modifies that state's qualifications for licensure in effect on July 1, 2000. For purposes of licensure pursuant to the advanced practice registered nurse compact contained in section 152E.3, the compact administrator may refuse to accept a change in the qualifications for licensure as an advanced practice registered nurse by a licensing authority in another state which is a party to the compact which substantially modifies that state's

qualifications for licensure in effect on July 1, 2005. A refusal to accept a change in a party state's qualifications for licensure may result in submitting the issue to an arbitration panel or in withdrawal from the respective compact, at the

discretion of the compact administrator.

2007 Acts, ch 22, §37  
2005 and 2006 amendments to subsection 2 to be repealed effective July 1, 2008; 2005 Acts, ch 53, §5, 11; 2006 Acts, ch 1030, §15, 88  
Section amended

## CHAPTER 152A

### DIETETICS

#### 152A.1 Definitions.

As used in this chapter, unless the context otherwise requires:

1. *“Board”* means the board of dietetics created under chapter 147.

2. *“Licensed dietitian”* or *“dietitian”* means a person who holds a valid license to practice dietetics pursuant to this chapter.

2007 Acts, ch 10, §127  
Subsection 1 amended

## CHAPTER 152B

### RESPIRATORY CARE

#### 152B.1 Definitions.

As used in this chapter, unless otherwise defined or the context otherwise requires:

1. *“Board”* means the board of respiratory care created under chapter 147.

2. *“Department”* means the Iowa department of public health.

3. *“Formal training”* means a supervised, structured educational activity that includes pre-clinical didactic and laboratory activities and clinical activities approved by an accrediting agency recognized by the board, and including an evaluation of competence through a standardized testing mechanism that is determined by the board to be both valid and reliable.

4. *“Qualified medical director”* means a licensed physician or surgeon who is a member of a hospital's or health care facility's active medical staff and who has special interest and knowledge in the diagnosis and treatment of respiratory problems, is qualified by special training or experience in the management of acute and chronic respiratory disorders, is responsible for the quality, safety, and appropriateness of the respiratory care services provided, and is readily accessible to the respiratory care practitioners to assure their competency.

5. *“Respiratory care”* includes “respiratory therapy” or “inhalation therapy”.

6. *“Respiratory care education program”* means a course of study leading to eligibility for registration or certification in respiratory care which is recognized or approved by the board.

7. *“Respiratory care practitioner”* or *“practitioner”* means a person who meets all of the following:

a. Is qualified in the practice of cardiorespira-

tory care and has the knowledge and skill necessary to administer respiratory care as defined in section 152B.3.

b. Is capable of serving as a resource to the physician in relation to the technical aspects of cardiorespiratory care and to safe and effective methods for administering respiratory care modalities.

c. Is able to function in situations of unsupervised patient contact requiring individual judgment.

d. Is capable of supervising, directing, or teaching less skilled personnel in the provision of respiratory care services.

8. *“Respiratory therapist”* means a person who has successfully completed a respiratory care education program for training respiratory therapists and has passed the registry examination for respiratory therapists administered by the national board for respiratory care or a respiratory therapy licensure examination approved by the board.

9. *“Respiratory therapy technician”* means a person who has successfully completed a respiratory care education program for training therapists and has passed the certification examination for respiratory therapy technicians administered by the national board for respiratory care or a respiratory therapist technicians' licensure examination approved by the board.

2007 Acts, ch 10, §128  
Subsection 1 amended

#### 152B.6 Board duties.

The board shall administer and implement this chapter. The board's duties in these areas shall include, but are not limited to, the following:

1. The adoption, publication and amendment



of rules, in accordance with chapter 17A, necessary for the administration and enforcement of this chapter.

2. The establishment of a system for the licensure of respiratory care practitioners and the establishment and collection of licensure fees.

3. The designation of licensure examinations for respiratory care practitioners.

2006 Acts, ch 1155, §10, 15

Nonreversion of unencumbered or unobligated funds appropriated or received as fees or repayment receipts for the fiscal period beginning July 1, 2006, and ending July 1, 2007, until the close of the next succeeding fiscal year; 2006 Acts, ch 1155, §14, 15

2006 amendments to subsection 2 take effect July 1, 2007; 2006 Acts, ch 1155, §15

Subsection 2 amended

### 152B.13 Board of respiratory care.

1. *a.* The board of respiratory care is established to administer this chapter. Membership of the board shall be established pursuant to section 147.14, subsection 15.

*b.* Not more than a simple majority of the board shall be of one gender. A majority of the members of the board constitutes a quorum. Members shall be appointed by the governor, subject to confirmation by the senate, and shall serve

three-year terms beginning and ending in accordance with section 69.19. A member may not serve more than three consecutive terms. Members shall be compensated for their actual and necessary expenses incurred in the performance of their duties. Expense moneys paid to the members shall be paid from funds appropriated to the board. Each member of the board may also be eligible to receive compensation as provided in section 7E.6.

2. The board shall:

*a.* Examine, license, and renew the licenses of qualified applicants.

*b.* Maintain an up-to-date list of every person licensed to practice respiratory care under this chapter. The list shall show a licensee's last known place of employment, last known place of residence, and the date and number of the licensee's license.

*c.* Cause the prosecution of all persons violating this chapter and incur necessary expenses for the prosecution.

2007 Acts, ch 10, §129

Confirmation, see §2.32

Subsection 1, unnumbered paragraph 1 amended and editorially designated as paragraph a

Subsection 1, unnumbered paragraph 2 editorially designated as paragraph b

## CHAPTER 152C

### MASSAGE THERAPY

#### 152C.1 Definitions.

As used in this chapter, unless the context otherwise requires:

1. "*Board*" means the board of massage therapy created under chapter 147.

2. "*Massage therapist*" means a person licensed to practice the health care service of the healing art of massage therapy under this chapter.

3. "*Massage therapy*" means performance for compensation of massage, myotherapy, massotherapy, bodywork, bodywork therapy, or therapeutic massage including hydrotherapy, superficial hot and cold applications, vibration and topical applications, or other therapy which involves manipulation of the muscle and connective tissue of the body, excluding osseous tissue, to treat the muscle tonus system for the purpose of enhancing health, muscle relaxation, increasing range of motion, reducing stress, relieving pain, or improving circulation.

4. "*Reflexology*" means manipulation of the soft tissues of the human body which is restricted to the hands, feet, or ears, performed by persons who do not hold themselves out to be massage therapists or to be performing massage therapy.

2007 Acts, ch 10, §130

Subsection 1 amended

#### 152C.8 Transition provisions.

1. An applicant for a license to practice massage therapy applying prior to July 1, 2002, shall not be required to meet the completion of curriculum of massage therapy requirements contained in section 152C.3, subsection 1, paragraph "a". The applicant shall, however, be required to pass the board-approved national certification examination and pay the applicable licensing fee.

2. Applicants with a license that has lapsed prior to July 1, 2000, who apply for reinstatement prior to July 1, 2002, shall be required to complete a reinstatement application and pay a renewal fee and reinstatement fee pursuant to section 147.11 and section 147.80, subsection 1, paragraph "y". Penalty fees otherwise incurred pursuant to section 147.10, and continuing education requirements applicable to the period prior to licensure reinstatement, shall be waived by the board.

3. Applicants with a license that has lapsed prior to July 1, 2000, who do not apply for reinstatement prior to July 1, 2002, shall be required to apply for reinstatement in accordance with lapsed license reinstatement provisions established by rule of the board.

Section not amended; internal reference change applied

## CHAPTER 152D

### ATHLETIC TRAINING

#### 152D.1 Definitions.

As used in this chapter, unless the context otherwise requires:

1. “*Athlete*” means a person who participates in a sanctioned amateur or professional sport or other recreational sports activity.
2. “*Athletic injury*” means any of the following:
  - a. An injury or illness sustained by an athlete as a result of the athlete’s participation in sports, games, or recreational sports activities.
  - b. An injury or illness that impedes or prevents an athlete from participating in sports, games, or recreational sports activities.
3. “*Athletic trainer*” means a person licensed under this chapter to practice athletic training under the direction of a licensed physician.
4. “*Athletic training*” means the practice of prevention, recognition, assessment, physical evaluation, management, treatment, disposition, and physical reconditioning of athletic injuries that are within the professional preparation and education of a licensed athletic trainer and under the direction of a licensed physician. The term “*athletic training*” includes the organization and administration of educational programs and ath-

letic facilities, and the education and counseling of the public on matters relating to athletic training.

5. “*Board*” means the board of athletic training created under chapter 147.

2007 Acts, ch 10, §131  
Subsection 5 amended

#### 152D.5 Duties of the board.

The board shall:

1. Adopt rules consistent with this chapter and chapter 147 which are necessary for the performance of its duties.
2. Establish standards and guidelines for athletic trainers including minimum curriculum requirements.
3. Prepare and conduct, or prescribe, an examination for applicants for a license.
4. Establish a system for the collection of licensure fees.

2006 Acts, ch 1155, §11, 15  
Nonreversion of unencumbered or unobligated funds appropriated or received as fees or repayment receipts for the fiscal period beginning July 1, 2006, and ending July 1, 2007, until the close of the next succeeding fiscal year; 2006 Acts, ch 1155, §14, 15

2006 amendments to subsection 4 take effect July 1, 2007; 2006 Acts, ch 1155, §15  
Subsection 4 amended

## CHAPTER 152E

### NURSE LICENSURE COMPACT AND ADVANCED PRACTICE REGISTERED NURSE COMPACT

#### 152E.3 Form of advanced practice registered nurse compact.

The advanced practice registered nurse compact is entered into and enacted into law with all jurisdictions legally joining therein, in the form substantially as follows:

##### ARTICLE I —

##### FINDINGS AND DECLARATION OF PURPOSE

- a. The party states find all of the following:
  1. The health and safety of the public are affected by the degree of compliance with advanced practice registered nurse licensure and practice requirements and the effectiveness of enforcement activities related to state advanced practice registered nurse license or authority to practice laws.
  2. Violations of advanced practice registered nurse licensure and practice and other laws regulating the practice of nursing may result in injury or harm to the public.
  3. The expanded mobility of advanced practice

registered nurses and the use of advanced communication technologies as part of our nation’s health care delivery system require greater coordination and cooperation among states in the areas of advanced practice registered nurse licensure and practice requirements.

4. New practice modalities and technology make compliance with individual state advanced practice registered nurse licensure and practice requirements difficult and complex.
5. The current system of duplicative advanced practice registered nurse licensure and practice requirements for advanced practice registered nurses practicing in multiple states is cumbersome and redundant to both advanced practice registered nurses and states.
6. Uniformity of advanced practice registered nurse requirements throughout the states promotes public safety and public health benefits.
7. Access to advanced practice registered nurse services increases the public’s access to health care, particularly in rural and underserved areas.

- b. The general purposes of this compact are to:
1. Facilitate the states' responsibilities to protect the public's health and safety.
  2. Ensure and encourage the cooperation of party states in the areas of advanced practice registered nurse licensure and practice requirements including promotion of uniform licensure requirements.
  3. Facilitate the exchange of information between party states in the areas of advanced practice registered nurse regulation, investigation, and adverse actions.
  4. Promote compliance with the laws governing advanced practice registered nurse practice in each jurisdiction.
  5. Invest all party states with the authority to hold an advanced practice registered nurse accountable for meeting all state practice laws in the state in which the patient is located at the time care is rendered through the mutual recognition of party state licenses.

#### ARTICLE II — DEFINITIONS

As used in this compact:

- a. "*Advanced practice registered nurse*" means a nurse anesthetist, nurse practitioner, nurse midwife, or clinical nurse specialist to the extent a party state licenses or grants authority to practice in that advanced practice registered nurse role and title.
- b. "*Advanced practice registered nurse licensure and practice requirements*" means the regulatory mechanism used by a party state to grant legal authority to practice as an advanced practice registered nurse.
- c. "*Advanced practice registered nurse uniform license or authority to practice requirements*" means those minimum uniform licensure, education, and examination requirements as agreed to by the compact administrators and adopted by licensing boards for the recognized advanced practice registered nurse role and title.
- d. "*Adverse action*" means a home or remote state action.
- e. "*Alternative program*" means a voluntary, nondisciplinary monitoring program approved by a nurse licensing board.
- f. "*Coordinated licensure information system*" means an integrated process for collecting, storing, and sharing information on advanced practice registered nurse licensure or authority to practice and enforcement activities related to advanced practice registered nurse license or authority to practice laws, which is administered by a nonprofit organization composed of and controlled by state licensing boards.
- g. "*Current significant investigative information*" means either of the following:
1. Investigative information that a licensing board, after a preliminary inquiry that includes notification and an opportunity for the advanced

practice registered nurse to respond if required by state law, has reason to believe is not groundless and, if proved true, would indicate more than a minor infraction.

2. Investigative information that indicates that the advanced practice registered nurse represents an immediate threat to public health and safety regardless of whether the advanced practice registered nurse has been notified and had an opportunity to respond.

h. "*Home state*" means the party state that is the advanced practice registered nurse's primary state of residence.

i. "*Home state action*" means any administrative, civil, equitable, criminal, or other action permitted by the home state's laws which is imposed on an advanced practice registered nurse by the home state's licensing board or other authority, including actions against an individual's license or authority to practice such as revocation, suspension, probation, or any other action which affects an advanced practice registered nurse's authorization to practice.

j. "*Licensing board*" means a party state's regulatory body responsible for advanced practice registered nurse licensure or authority to practice.

k. "*Multistate advanced practice privilege*" means current authority from a remote state permitting an advanced practice registered nurse to practice in that state in the same role and title as the advanced practice registered nurse is licensed or authorized to practice in the home state to the extent that the remote state laws recognize such advanced practice registered nurse role and title. A party state has the authority, in accordance with existing state due process laws, to take action against the advanced practice registered nurse's privilege, including revocation, suspension, probation, or any other action that affects an advanced practice registered nurse's multistate privilege to practice.

l. "*Party state*" means any state that has adopted this compact.

m. "*Prescriptive authority*" means the legal authority to prescribe medications and devices as defined by party state laws.

n. "*Remote state*" means a party state, other than the home state, where either of the following applies:

1. Where the patient is located at the time advanced practice registered nurse care is provided.

2. In the case of advanced practice registered nurse practice not involving a patient, in such party state where the recipient of advanced practice registered nurse care is located.

o. "*Remote state action*" means either of the following:

1. Any administrative, civil, equitable, criminal, or other action permitted by a remote state's laws which is imposed on an advanced practice registered nurse by the remote state's licensing board or other authority, including actions against

an individual's multistate advanced practice privilege in the remote state.

2. Cease and desist and other injunctive or equitable orders issued by remote states or the licensing boards of remote states.

*p.* "State" means a state, territory, or possession of the United States, the District of Columbia, or the Commonwealth of Puerto Rico.

*q.* "State practice laws" means a party state's laws and regulations that govern advanced practice registered nurse practice, define the scope of advanced nursing practice, including prescriptive authority, and create the methods and grounds for imposing discipline. "State practice laws" does not include the requirements necessary to obtain and retain advanced practice registered nurse licensure or authority to practice as an advanced practice registered nurse, except for qualifications or requirements of the home state.

*r.* "Unencumbered" means that a state has no current disciplinary action against an advanced practice registered nurse's license or authority to practice.

ARTICLE III —  
GENERAL PROVISIONS AND JURISDICTION

*a.* All party states shall participate in the nurse licensure compact for registered nurses and licensed practical or vocational nurses in order to enter into the advanced practice registered nurse compact.

*b.* A state shall not enter the advanced practice registered nurse compact until the state adopts, at a minimum, the advanced practice registered nurse uniform license or authority to practice requirements for each advanced practice registered nurse role and title recognized by the state seeking to enter the advanced practice registered nurse compact.

*c.* Advanced practice registered nurse license or authority to practice issued by a home state to a resident in that state shall be recognized by each party state as authorizing a multistate advanced practice privilege to the extent that the role and title are recognized by each party state. To obtain or retain advanced practice registered nurse licensure and practice requirements as an advanced practice registered nurse, an applicant must meet the home state's qualifications for authority or renewal of authority as well as all other applicable state laws.

*d.* The advanced practice registered nurse multistate advanced practice privilege does not include prescriptive authority, and does not affect any requirements imposed by states to grant to an advanced practice registered nurse initial and continuing prescriptive authority according to state practice laws. However, a party state may grant prescriptive authority to an individual on the basis of a multistate advanced practice privilege to the extent permitted by state practice laws.

*e.* A party state may, in accordance with state due process laws, limit or revoke the multistate advanced practice privilege in the party state and may take any other necessary actions under the party state's applicable laws to protect the health and safety of the party state's citizens. If a party state takes action, the party state shall promptly notify the administrator of the coordinated licensure information system. The administrator of the coordinated licensure information system shall promptly notify the home state of any such actions by remote states.

*f.* An advanced practice registered nurse practicing in a party state must comply with the state practice laws of the state in which the patient is located at the time care is provided. The advanced practice registered nurse practice includes patient care and all advanced nursing practice defined by the party state's practice laws. The advanced practice registered nurse practice subjects an advanced practice registered nurse to the jurisdiction of the licensing board, the courts, and the laws of the party state.

*g.* Individuals not residing in a party state may apply for an advanced practice registered nurse license or authority to practice as an advanced practice registered nurse under the laws of a party state. However, the authority to practice granted to these individuals shall not be recognized as granting the privilege to practice as an advanced practice registered nurse in any other party state unless explicitly agreed to by that party state.

ARTICLE IV —  
APPLICATIONS FOR ADVANCED PRACTICE  
REGISTERED NURSE LICENSURE OR  
AUTHORITY TO PRACTICE IN A PARTY STATE

*a.* Once an application for an advanced practice registered nurse license or authority to practice is submitted, a party state shall ascertain, through the coordinated licensure information system, whether the applicant has held, or is the holder of, a nursing license or authority to practice issued by another state, whether the applicant has had a history of previous disciplinary action by any state, whether an encumbrance exists on any license or authority to practice, and whether any other adverse action by any other state has been taken against a license or authority to practice.

This information may be used in approving or denying an application for an advanced practice registered nurse license or authority to practice.

*b.* An advanced practice registered nurse in a party state shall hold an advanced practice registered nurse license or authority to practice in only one party state at a time, issued by the home state.

*c.* An advanced practice registered nurse who intends to change the nurse's primary state of residence may apply for an advanced practice registered nurse license or authority to practice in the

new home state in advance of such change. However, a new license or authority to practice shall not be issued by a party state until after an advanced practice registered nurse provides evidence of change in the nurse's primary state of residence satisfactory to the new home state's licensing board.

*d.* 1. If an advanced practice registered nurse changes the nurse's primary state of residence by moving between two party states, and obtains an advanced practice registered nurse license or authority to practice from the new home state, the advanced practice registered nurse license or authority to practice from the former home state is no longer valid.

2. If an advanced practice registered nurse changes the nurse's primary state of residence by moving from a nonparty state to a party state, and obtains an advanced practice registered nurse license or authority to practice from the new home state, the individual state license issued by the nonparty state is not affected and shall remain in full force if so provided by the laws of the nonparty state.

3. If an advanced practice registered nurse changes the nurse's primary state of residence by moving from a party state to a nonparty state, the advanced practice registered nurse license or authority to practice issued by the prior home state converts to an individual state license, valid only in the former home state, without the multistate licensure privilege to practice in other party states.

#### ARTICLE V — ADVERSE ACTIONS

In addition to the general provisions described in article III, the following provisions apply:

*a.* The licensing board of a remote state shall promptly report to the administrator of the coordinated licensure information system any remote state actions, including the factual and legal basis for such action, if known. The licensing board of a remote state shall also promptly report any significant current investigative information yet to result in a remote state action. The administrator of the coordinated licensure information system shall promptly notify the home state of any such reports.

*b.* The licensing board of a party state shall have the authority to complete any pending investigations for an advanced practice registered nurse who changes the nurse's primary state of residence during the course of such investigations. It shall also have the authority to take appropriate action and shall promptly report the conclusions of such investigations to the administrator of the coordinated licensure information system. The administrator of the coordinated licensure information system shall promptly notify the new home state of any such actions.

*c.* A remote state may take adverse action af-

fecting the multistate advanced practice privilege to practice within that party state. However, only the home state shall have the power to impose adverse action against the advanced practice registered nurse license or authority to practice issued by the home state.

*d.* For purposes of imposing adverse action, the licensing board of the home state shall give the same priority and effect to reported conduct received from a remote state as it would if such conduct had occurred within the home state. In so doing, it shall apply its own state laws to determine appropriate action.

*e.* The home state may take adverse action based on the factual findings of the remote state, so long as each state follows its own procedures for imposing such adverse action.

*f.* Nothing in this compact shall override a party state's decision that participation in an alternative program may be used in lieu of adverse action and that such participation shall remain nonpublic if required by the party state's laws. Party states must require advanced practice registered nurses who enter any alternative programs to agree not to practice in any other party state during the term of the alternative program without prior authorization from such other party state.

*g.* All home state licensing board disciplinary orders, agreed to or otherwise, which limit the scope of the advanced practice registered nurse's practice or require monitoring of the advanced practice registered nurse as a condition of the order shall include the requirements that the advanced practice registered nurse will limit the nurse's practice to the home state during the pendency of the order. This requirement may allow the advanced practice registered nurse to practice in other party states with prior written authorization from both the home state and party state licensing boards.

#### ARTICLE VI — ADDITIONAL AUTHORITIES INVESTED IN PARTY STATE LICENSING BOARDS

Notwithstanding any other powers, party state licensing boards shall have the authority to do all of the following:

*a.* If otherwise permitted by state law, recover from the affected advanced practice registered nurse the costs of investigations and disposition of cases resulting from any adverse action taken against that advanced practice registered nurse.

*b.* Issue subpoenas for both hearings and investigations which require the attendance and testimony of witnesses, and the production of evidence. Subpoenas issued by a licensing board in a party state for the attendance and testimony of witnesses, or the production of evidence from another party state, shall be enforced in the latter state by any court of competent jurisdiction, according to the practice and procedure of that court

applicable to subpoenas issued in proceedings pending before it. The issuing authority shall pay any witness fees, travel expenses, mileage, and other fees required by the service statutes of the state where the witnesses or evidence is located.

c. Issue cease and desist orders to limit or revoke an advanced practice registered nurse's privilege, license, or authority to practice in the state.

d. Promulgate uniform rules and regulations as provided for in article VIII, section c.

#### ARTICLE VII — COORDINATED LICENSURE INFORMATION SYSTEM

a. All party states shall participate in a cooperative effort to create a coordinated database of all advanced practice registered nurses. This system shall include information on the advanced practice registered nurse licensure and practice requirements and disciplinary history of each advanced practice registered nurse, as contributed by party states, to assist in the coordination of the advanced practice registered nurse licensure or authority to practice and enforcement efforts.

b. Notwithstanding any other provision of law, all party states' licensing boards shall promptly report adverse actions, actions against multistate advanced practice privileges, any current significant investigative information yet to result in adverse action, denials of applications, and the reasons for such denials, to the coordinated licensure information system.

c. Current significant investigative information shall be transmitted through the coordinated licensure information system only to party state licensing boards.

d. Notwithstanding any other provision of law, all party states' licensing boards contributing information to the coordinated licensure information system may designate information that shall not be shared with nonparty states or disclosed to other entities or individuals without the express permission of the contributing state.

e. Any personally identifiable information obtained by a party state's licensing board from the coordinated licensure information system shall not be shared with nonparty states or disclosed to other entities or individuals except to the extent permitted by the laws of the party state contributing the information.

f. Any information contributed to the coordinated licensure information system that is subsequently required to be expunged by the laws of the party state contributing that information shall also be expunged from the coordinated licensure information system.

g. The compact administrators, acting jointly with each other and in consultation with the administrator of the coordinated licensure information system, shall formulate necessary and proper procedures for the identification, collection, and

exchange of information under this compact.

#### ARTICLE VIII — COMPACT ADMINISTRATION AND INTERCHANGE OF INFORMATION

a. The head of the licensing board, or the head's designee, of each party state shall be the administrator of this compact for the head's state.

b. The compact administrator of each party state shall furnish to the compact administrator of each other party state any information and documents including, but not limited to, a uniform data set of investigations, identifying information, licensure data, and disclosable alternative program participation information to facilitate the administration of this compact.

c. Compact administrators shall have the authority to develop uniform rules to facilitate and coordinate implementation of this compact. These uniform rules shall be adopted by party states, under the authority invested under article VI, section d.

#### ARTICLE IX — IMMUNITY

A party state or the officers or employees or agents of a party state's licensing board who acts in accordance with the provisions of this compact shall not be liable on account of any act or omission in good faith while engaged in the performance of their duties under this compact. Good faith in this article shall not include willful misconduct, gross negligence, or recklessness.

#### ARTICLE X — ENTRY INTO FORCE, WITHDRAWAL, AND AMENDMENT

a. This compact shall enter into force and become effective as to any state when it has been enacted into the laws of that state. Any party state may withdraw from this compact by enacting a statute repealing the same, but such withdrawal shall not take effect until six months after the withdrawing state has given notice of the withdrawal to the executive heads of all other party states.

b. Withdrawal shall not affect the validity or applicability by the licensing boards of states remaining party to the compact of any report of adverse action occurring prior to the withdrawal.

c. This compact shall not be construed to invalidate or prevent any advanced practice registered nurse licensure or authority to practice agreement or other cooperative arrangement between a party state and a nonparty state that is made in accordance with the other provisions of this compact.

d. This compact may be amended by the party states. An amendment to this compact shall not become effective and binding upon the party states unless and until it is enacted into the laws of all party states.

ARTICLE XI —  
CONSTRUCTION AND SEVERABILITY

*a.* This compact shall be liberally construed so as to effectuate the purposes of the compact. The provisions of this compact shall be severable and if any phrase, clause, sentence, or provision of this compact is declared to be contrary to the constitution of any party state or of the United States, or the applicability of the compact to any government, agency, person, or circumstance is held invalid, the validity of the remainder of this compact and the applicability of the compact to any government, agency, person, or circumstance shall not be affected by that action. If this compact shall be held contrary to the constitution of any state which is party to the compact, the compact shall remain in full force and effect as to the remain-

ing party states and in full force and effect as to the party state affected as to all severable matters.

*b.* 1. In the event party states find a need for settling disputes arising under this compact, the party states may submit the issues in dispute to an arbitration panel which shall be comprised of an individual appointed by the compact administrator in the home state, an individual appointed by the compact administrator in the remote state or states involved, and an individual mutually agreed upon by the compact administrators of all the party states involved in the dispute.

2. The decision of a majority of the arbitrators shall be final and binding.

2007 Acts, ch 22, §38

For future repeal of this section effective July 1, 2008, see 2005 Acts, ch 53, §11

Article II, paragraph j amended

## CHAPTER 153

### DENTISTRY

Penalty, §147.86

Licensing board, support staff exceptions; location and powers; see §135.11A, 135.31

**153.1 through 153.11** Reserved.

#### **153.12 Board defined.**

As used in this chapter, “board” means the dental board created under chapter 147.

2007 Acts, ch 10, §132; 2007 Acts, ch 218, §204  
NEW section

#### **153.14 Persons not included.**

Section 153.13 shall not be construed to include the following classes:

1. Students of dentistry who practice dentistry upon patients at clinics in connection with their regular course of instruction at the state dental college, students of dental hygiene who practice upon patients at clinics in connection with their regular course of instruction at state-approved schools, and students of dental assisting who practice upon patients at clinics in connection with a regular course of instruction determined by the board pursuant to section 153.39.

2. Licensed “physicians and surgeons” or licensed “osteopaths and surgeons” who extract teeth or treat diseases of the oral cavity, gums, teeth, or maxillary bones as an incident to the general practice of their profession.

3. Persons licensed to practice dental hygiene who are exclusively engaged in the practice of said profession.

4. Dentists and dental hygienists who are licensed in another state and who are active or reserve members of the United States military service when acting in the line of duty in this state.

5. Persons registered to practice as a dental assistant.

2007 Acts, ch 10, §133  
Subsection 1 amended

#### **153.15 Dental hygienists — scope of term.**

A licensed dental hygienist may perform those services which are educational, therapeutic, and preventive in nature which attain or maintain optimal oral health as determined by the board and may include but are not necessarily limited to complete oral prophylaxis, application of preventive agents to oral structures, exposure and processing of radiographs, administration of medications prescribed by a licensed dentist, obtaining and preparing nonsurgical, clinical and oral diagnostic tests for interpretation by the dentist, and preparation of preliminary written records of oral conditions for interpretation by the dentist. Such services shall be performed under supervision of a licensed dentist and in a dental office, a public or private school, public health agencies, hospitals, and the armed forces, but nothing herein shall be construed to authorize a dental hygienist to practice dentistry.

2007 Acts, ch 10, §134  
Section amended

#### **153.22 Resident license.**

A dentist or dental hygienist who is serving only as a resident, intern, or graduate student and who is not licensed to practice in this state is required to obtain from the board a temporary or special license to practice as a resident, intern, or graduate student. The license shall be designated “Resi-

dent License” and shall authorize the licensee to serve as a resident, intern, or graduate student only, under the supervision of a licensed practitioner, in an institution approved for this purpose by the board. Such license shall be renewed at the discretion of the board. The fee for a resident license and the renewal fee shall be set by the board based upon the cost of issuance of the license. The board shall determine in each instance those eligible for a resident license, whether or not examinations shall be given, and the type of examination. None of the requirements for regular permanent licensure are mandatory for resident licensure except as specifically designated by the board. The issuance of a resident license shall not in any way indicate that the person so licensed is necessarily eligible for regular licensure or that the board is obligated to so license the person. The board may revoke a resident license at any time it shall determine either that the caliber of work done by a licensee or the type of supervision being given such licensee does not conform to reasonable standards established by the board.

2007 Acts, ch 10, §135  
Section amended

### 153.33 Powers of board.

Subject to the provisions of this chapter, any provision of this subtitle to the contrary notwithstanding, the board shall exercise the following powers:

1. To initiate investigations of and conduct hearings on all matters or complaints relating to the practice of dentistry, dental hygiene, or dental assisting or pertaining to the enforcement of any provision of this chapter, to provide for mediation of disputes between licensees or registrants and their patients when specifically recommended by the board, to revoke or suspend licenses or registrations, or the renewal thereof, issued under this or any prior chapter, to provide for restitution to patients, and to otherwise discipline licensees and registrants.

Subsequent to an investigation by the board, the board may appoint a disinterested third party to mediate disputes between licensees or registrants and patients. Referral of a matter to mediation shall not preclude the board from taking disciplinary action against the affected licensee or registrant.

2. To appoint investigators, who shall not be members of the board, to administer and aid in the enforcement of the provisions of law relating to those persons licensed to practice dentistry and dental hygiene, and persons registered as dental assistants. The amount of compensation for the investigators shall be determined pursuant to chapter 8A, subchapter IV. Investigators authorized by the board have the powers and status of peace officers when enforcing this chapter and chapters 147 and 272C.

3. All employees needed to administer this

chapter shall be appointed pursuant to the merit system.

4. To initiate in its own name or cause to be initiated in a proper court appropriate civil proceedings against any person to enforce the provisions of this chapter or this subtitle relating to the practice of dentistry, and the board may have the benefit of counsel in connection therewith. Any such judicial proceeding as may be initiated by the board shall be commenced and prosecuted in the same manner as any other civil action and injunctive relief may be granted therein without proof of actual damage sustained by any person but such injunctive relief shall not relieve the person so enjoined from criminal prosecution by the attorney general or county attorney for violation of any provision of this chapter or this subtitle relating to the practice of dentistry.

5. In any investigation made or hearing conducted by the board on its own motion, or upon written complaint filed with the board by any person, pertaining to any alleged violation of this chapter or the accusation against any licensee or registrant, the following procedure and rules so far as material to such investigation or hearing shall obtain:

a. The accusation of such person against any licensee or registrant shall be reduced to writing, verified by some person familiar with the facts therein stated, and three copies thereof filed with the board.

b. If the board shall deem the charges sufficient, if true, to warrant suspension or revocation of license or registration, it shall make an order fixing the time and place for hearing thereon and requiring the licensee or registrant to appear and answer thereto, such order, together with a copy of the charges so made to be served upon the accused at least twenty days before the date fixed for hearing, either personally or by certified or registered mail, sent to the licensee's or registrant's last known post office address as shown by the records of the board.

c. At the time and place fixed in said notice for said hearing, or at any time and place to which the said hearing shall be adjourned, the board shall hear the matter and may take evidence, administer oaths, take the deposition of witnesses, including the person accused, in the manner provided by law in civil cases, compel the appearance of witnesses before it in person the same as in civil cases by subpoena issued over the signature of the chairperson of the board and in the name of the state of Iowa, require answers to interrogatories and compel the production of books, papers, accounts, documents and testimony pertaining to the matter under investigation or relating to the hearing.

d. In all such investigations and hearings pertaining to the suspension or revocation of licenses or registrations, the board and any person affected thereby may have the benefit of counsel, and upon the request of the licensee or registrant or the li-



censee's or registrant's counsel the board shall issue subpoenas for the attendance of such witnesses in behalf of the licensee or registrant, which subpoenas when issued shall be delivered to the licensee or registrant or the licensee's or registrant's counsel. Such subpoenas for the attendance of witnesses shall be effective if served upon the person named therein anywhere within this state, provided, that at the time of such service the fees now or hereafter provided by law for witnesses in civil cases in district court shall be paid or tendered to such person.

*e.* In case of disobedience of a subpoena lawfully served hereunder, the board or any party to such hearing aggrieved thereby may invoke the aid of the district court in the county where such hearing is being conducted to require the attendance and testimony of such witnesses. Such district court of the county within which the hearing is being conducted may, in case of contumacy or refusal to obey such subpoena, issue an order requiring such person to appear before said board, and if so ordered give evidence touching the matter involved in the hearing. Any failure to obey such order of the court may be punished by such court as a contempt thereof.

*f.* If the licensee or registrant pleads guilty, or after hearing shall be found guilty by the board of any of the charges made, it may suspend for a limited period or revoke the license or registration, and the last renewal thereof, and shall enter the order on its records and notify the accused of the revocation or suspension of the person's license or registration, as the case may be, who shall thereupon forthwith surrender that license or registration to the board. Any such person whose license or registration has been so revoked or suspended shall not thereafter and while such revocation or suspension is in force and effect practice dentistry, dental hygiene, or dental assisting within this state.

*g.* The findings of fact made by the board acting within its power shall, in the absence of fraud, be conclusive, but the district court shall have power to review questions of law involved in any final decision or determination of the board; provided, that application is made by the aggrieved party within thirty days after such determination by certiorari, mandamus or such other method of review or appeal permitted under the laws of this state, and to make such further orders in respect thereto as justice may require.

*h.* Pending the review and final disposition thereof by the district court, the action of the board suspending or revoking such license or registration shall not be stayed.

6. To adopt rules regarding infection control in dental practice which are consistent with standards of the federal Occupational Safety and Health Act of 1970, 29 U.S.C. § 651-678, and recommendations of the centers for disease control.

7. To promulgate rules as may be necessary to implement the provisions of this chapter.

2007 Acts, ch 10, §136  
Merit system, see chapter 8A, subchapter IV  
Subsection 2 amended

### 153.33A Dental hygiene committee.

1. A three-member dental hygiene committee of the board is created, consisting of the two dental hygienist members of the board and one dentist member of the board. The dentist member of the committee must have supervised and worked in collaboration with a dental hygienist for a period of at least three years immediately preceding election to the committee. The dentist member shall be elected to the committee annually by a majority vote of board members.

2. The committee shall have the authority to adopt recommendations regarding the practice, discipline, education, examination, and licensure of dental hygienists, subject to subsection 3, and shall carry out duties as assigned by the board. The committee shall have no regulatory or disciplinary authority with regard to dentists, dental assistants, dental lab technicians, or any other auxiliary dental personnel.

3. The board shall ratify recommendations of the committee at the first meeting of the board following adoption of the recommendations by the committee, or at a meeting of the board specifically called for the purpose of board review and ratification of committee recommendations. The board shall decline to ratify committee recommendations only if the board makes a specific finding that a recommendation exceeds the jurisdiction or expands the scope of the committee beyond the authority granted in subsection 2, creates an undue financial impact on the board, or is not supported by the record. The board shall pay the necessary expenses of the committee and of the board in implementing committee recommendations ratified by the board.

4. This section shall not be construed as impacting or changing the scope of practice of the profession of dental hygiene or authorizing the independent practice of dental hygiene.

2007 Acts, ch 10, §137  
Subsection 1 amended

### 153.34 Discipline.

The board may issue an order to discipline a licensed dentist or dental hygienist, or registered dental assistant, for any of the grounds set forth in this chapter, chapter 272C, or Title IV. Notwithstanding section 272C.3, licensee or registrant discipline may include a civil penalty not to exceed ten thousand dollars. Pursuant to this section, the board may discipline a licensee or registrant for any of the following reasons:

1. For fraud or deceit in procuring the license or registration or the renewal thereof to practice dentistry, dental hygiene, or dental assisting.

2. For being guilty of willful and gross malpractice or willful and gross neglect in the practice of dentistry, dental hygiene, or dental assisting.

3. For fraud in representation as to skill or ability.

4. For willful or repeated violations of this chapter, this subtitle, or the rules of the board.

5. For obtaining any fee by fraud or misrepresentation.

6. For having failed to pay license or registration fees as provided herein.

7. For gross immorality or dishonorable or unprofessional conduct in the practice of dentistry, dental hygiene, or dental assisting.

8. For failure to maintain a reasonably satisfactory standard of competency in the practice of dentistry, dental hygiene, or dental assisting.

9. For the conviction of a felony in the courts of this state or another state, territory, or country. Conviction as used in this subsection includes a conviction of an offense which if committed in this state would be a felony without regard to its designation elsewhere, and includes a finding or verdict of guilt made or returned in a criminal proceeding even if the adjudication of guilt is withheld or not entered. A certified copy of the final order or judgment of conviction or plea of guilty in this state or in another state constitutes conclusive evidence of the conviction.

10. For a violation of a law of this state, another state, or the United States, without regard to its designation as either a felony or misdemeanor, which law relates to the practice of dentistry, dental hygiene, or dental assisting. A certified copy of the final order or judgment of conviction or plea of guilty in this state or in another state constitutes conclusive evidence of the conviction.

11. The revocation or suspension of a license or registration to practice dentistry, dental hygiene, or dental assisting or other disciplinary action taken by a licensing authority of another state, territory, or country. A certified copy of the record or order of suspension, revocation, or disciplinary action is conclusive or prima facie evidence.

12. Knowingly aiding, assisting, procuring, or advising a person to unlawfully practice dentistry, dental hygiene, or dental assisting.

13. For an adjudication of mental incompetence by a court of competent jurisdiction. Such adjudication shall automatically suspend a license or registration for the duration of the license or registration unless the board orders otherwise.

14. Inability to practice dentistry, dental hygiene, or dental assisting with reasonable skill and safety by reason of illness, drunkenness, or habitual or excessive use of drugs, intoxicants, narcotics, chemicals, or other types of materials or as a result of a mental or physical condition. At reasonable intervals following suspension or revocation under this subsection, a dentist, dental hy-

gienist, or dental assistant shall be afforded an opportunity to demonstrate that the dentist, dental hygienist, or dental assistant can resume the competent practice of dentistry, dental hygiene, or dental assisting with reasonable skill and safety to patients.

15. For being a party to or assisting in any violation of any provision of this chapter.

2007 Acts, ch 10, §138  
Subsection 4 amended

### 153.36 Exceptions to other statutes.

1. Sections 147.44 to 147.71, except section 147.57, and sections 147.87 to 147.92 shall not apply to the practice of dentistry.

2. In addition to the provisions of section 272C.2, subsection 4, a person licensed by the board shall also be deemed to have complied with continuing education requirements of this state if, during periods that the person practiced the profession in another state or district, the person met all of the continuing education and other requirements of that state or district for the practice of the occupation or profession.

3. Notwithstanding the panel composition provisions in section 272C.6, subsection 1, the board's disciplinary hearing panels shall be comprised of three board members, at least two of which are licensed in the profession.

2007 Acts, ch 10, §139  
Subsections 2 and 3 amended

### 153.37 Dental college and dental hygiene program faculty permits.

The board may issue a faculty permit entitling the holder to practice dentistry or dental hygiene within a college of dentistry or a dental hygiene program and affiliated teaching facilities as an adjunct to the faculty member's teaching position, associated responsibilities, and functions. The dean of the college of dentistry or chairperson of a dental hygiene program shall certify to the board those bona fide members of the college's or a dental hygiene program's faculty who are not licensed and registered to practice dentistry or dental hygiene in Iowa. Any faculty member so certified shall, prior to commencing the member's duties in the college of dentistry or a dental hygiene program, make written application to the board for a permit. The permit shall be for a period determined by the board and may be renewed at the discretion of the board. The fee for the faculty permit and the renewal shall be set by the board based upon the administrative cost of issuance of the permit. The fee shall be deposited in the same manner as fees provided for in section 147.82. The faculty permit shall be valid during the time the holder remains a member of the faculty and shall subject the holder to all provisions of this chapter.

2007 Acts, ch 10, §140  
Section amended

**153.38 Dental assistants — scope of practice.**

A registered dental assistant may perform those services of assistance to a licensed dentist as determined by the board by rule. Such services shall be performed under supervision of a licensed dentist in a dental office, a public or private school, public health agencies, hospitals, and the armed forces, but shall not be construed to authorize a dental assistant to practice dentistry or dental hygiene. Every licensed dentist who utilizes the services of a registered dental assistant for the purpose of assistance in the practice of dentistry shall be responsible for acts delegated to the registered dental assistant. A dentist shall delegate to a registered dental assistant only those acts which are authorized to be delegated to registered dental assistants by the board.

2007 Acts, ch 10, §141  
Section amended

**153.39 Dental assistants — registration requirements, renewal, revocation, or suspension.**

1. A person shall not practice on or after July 1, 2001, as a dental assistant unless the person has registered with the board and received a certificate of registration pursuant to this chapter.

2. A person shall be registered upon the successful completion of education and examination requirements pursuant to paragraph “a” or “b”. Education requirements shall be determined by the board by rule, according to standards to be de-

termined by the board.

a. Successful completion of a course of study and examination approved by the board and sponsored by a board-approved postsecondary school.

b. Successful completion of on-the-job training and examination consisting of all of the following:

(1) Completion of on-the-job training as specified in rule.

(2) Successful completion of an examination process approved by the board. A written examination may be waived by the board pursuant to section 17A.9A, in practice situations where the written examination is deemed to be unnecessary or detrimental to the dentist’s practice.

The education requirements in paragraphs “a” and “b” may include possession of a valid certificate in a nationally recognized course in cardiopulmonary resuscitation. Successful passage of an examination administered by the board under paragraph “a” or “b”, which shall include sections regarding infection control, hazardous materials, and jurisprudence, shall also be required. The board shall establish continuing education requirements as a condition of renewing registration as a registered dental assistant, as well as standards for the suspension or revocation of registration.

3. A person employed as a dental assistant after July 1, 2005, shall have a twelve-month period following the person’s first date of employment after July 1, 2005, to comply with the provisions of subsection 1.

2007 Acts, ch 22, §39  
Subsection 3 amended

## CHAPTER 154

### OPTOMETRY

**154.1 Board defined — optometry — diagnostically certified licensed optometrists — therapeutically certified optometrists.**

1. As used in this chapter, “board” means the board of optometry created under chapter 147.

2. For the purpose of this subtitle, the following classes of persons shall be deemed to be engaged in the practice of optometry:

a. Persons employing any means other than the use of drugs, medicine, or surgery for the measurement of the visual power and visual efficiency of the human eye; persons engaged in the prescribing and adapting of lenses, prisms, and contact lenses; and persons engaged in the using or employing of visual training or ocular exercise for the aid, relief, or correction of vision.

b. Persons who allow the public to use any mechanical device for a purpose described in paragraph “a”.

c. Persons who publicly profess to be optome-

trists and to assume the duties incident to the profession.

3. Diagnostically certified licensed optometrists may employ cycloplegics, mydriatics, and topical anesthetics as diagnostic agents topically applied to determine the condition of the human eye for proper optometric practice or referral for treatment to a person licensed under chapter 148, 150, or 150A. A diagnostically certified licensed optometrist is an optometrist who is licensed to practice optometry in this state and who is certified by the board to use diagnostic agents.

4. Therapeutically certified optometrists may employ all diagnostic and therapeutic pharmaceutical agents for the purpose of diagnosis and treatment of conditions of the human eye and adnexa pursuant to this subsection, excluding the use of injections other than to counteract an anaphylactic reaction, and notwithstanding section 147.107, may without charge supply any of the above phar-

maceuticals to commence a course of therapy. Therapeutically certified optometrists may prescribe oral steroids for a period not to exceed fourteen days without consultation with a physician. Therapeutically certified optometrists shall not prescribe oral Imuran or oral Methotrexate. Therapeutically certified optometrists may be authorized, where reasonable and appropriate, by rule of the board, to employ new diagnostic and therapeutic pharmaceutical agents approved by the United States food and drug administration on or after July 1, 2002, for the diagnosis and treatment of the human eye and adnexa. The board shall not be required to adopt rules relating to topical pharmaceutical agents, oral antimicrobial agents, oral antihistamines, oral antiglaucoma agents, and oral analgesic agents. Superficial foreign bodies may be removed from the human eye and adnexa. The therapeutic efforts of a therapeutically certified optometrist are intended for the purpose of examination, diagnosis, and treatment of visual defects, abnormal conditions, and diseases of the human eye and adnexa, for proper optometric practice or referral for consultation or treatment to persons licensed under chapter 148, 150, or 150A. A therapeutically certified optometrist is an optometrist who is licensed to practice optometry in this state and who is certified by the board to use the agents and procedures authorized pursuant to this subsection.

2007 Acts, ch 10, §142; 2007 Acts, ch 159, §1; 2007 Acts, ch 215, §251  
See Code editor's note to §29A.28  
Section amended

### 154.3 License.

Every applicant for a license to practice optometry shall:

1. Be a graduate of an accredited school of optometry and meet requirements as established by

rules of the board.

2. Present an official transcript issued by an accredited school of optometry.

3. Pass an examination as determined by the board by rule.

2007 Acts, ch 10, §143; 2007 Acts, ch 159, §2; 2007 Acts, ch 215, §252  
See Code editor's note to §29A.28  
Section amended

**154.4 Revocation.** Repealed by 2007 Acts, ch 159, § 4.

**154.5 Approved school.** Repealed by 2007 Acts, ch 159, § 4.

With respect to proposed amendments to this section by 2007 Acts, ch 10, §144, see Code editor's note to §29A.28

**154.6 Expiration and renewal of licenses.** Repealed by 2007 Acts, ch 159, § 4.

**154.7 Notice of expiration.** Repealed by 2007 Acts, ch 159, § 4.

### 154.10 Standard of care.

1. A diagnostically certified licensed optometrist employing diagnostic pharmaceutical agents as authorized by section 154.1 shall be held to the same standard of care in the use of such agents and in diagnosis as is common to persons licensed under chapter 148, 150, or 150A in this state.

2. A therapeutically certified optometrist employing pharmaceutical agents as authorized by section 154.1 shall be held to the same standard of care in the use of such agents and in diagnosis and treatment as is common to persons licensed under chapter 148, 150, or 150A in this state.

2007 Acts, ch 159, §3  
Section amended

## CHAPTER 154A

### HEARING AIDS

#### 154A.1 Definitions.

As used in this chapter, unless the context requires otherwise:

1. *"Board"* means the board of hearing aid dispensers.

2. *"Department"* means the Iowa department of public health.

3. *"Dispense"* or *"sell"* means a transfer of title or of the right to use by lease, bailment, or any other means, but excludes a wholesale transaction with a distributor or dispenser, and excludes the temporary, charitable loan or educational loan of a hearing aid without remuneration.

4. *"Hearing aid"* means a wearable instrument or device designed for or offered for the purpose of aiding or compensating for impaired hu-

man hearing, and any parts, attachments, or accessories, including earmold, but excluding batteries and cords.

5. *"Hearing aid dispenser"* means any person engaged in the fitting, dispensing, and the sale of hearing aids and providing hearing aid services or maintenance, by means of procedures stipulated by this chapter or the board.

6. *"Hearing aid fitting"* means the measurement of human hearing by any means for the purpose of selections, adaptations, and sales of hearing aids, and the instruction and counseling pertaining thereto, and demonstration of techniques in the use of hearing aids, and the making of earmold impressions as part of the fitting of hearing aids.

7. “*License*” means a license issued by the state under this chapter to hearing aid dispensers.

8. “*Person*” means a natural person.

9. “*Temporary permit*” means a permit issued while the applicant is in training to become a licensed hearing aid dispenser.

2007 Acts, ch 10, §145  
Subsection 1 amended

**154A.22 Receipt of fees.** Repealed by 2006 Acts, ch 1155, § 13, 15.

2006 repeal of this section is effective July 1, 2007; 2006 Acts, ch 1155, §15

**154A.24 Suspension or revocation.**

The board may revoke or suspend a license or temporary permit permanently or for a fixed period for any of the following causes:

1. Conviction of a felony. The record of conviction, or a certified copy, shall be conclusive evidence of conviction.

2. Procuring a license or temporary permit by fraud or deceit.

3. Unethical conduct in any of the following forms:

a. Obtaining a fee or making a sale by fraud or misrepresentation.

b. Knowingly employing, directly or indirectly, any suspended or unregistered person to perform any work covered by this chapter.

c. Using or causing or promoting the use of any advertising matter, promotional literature, testimonial, guarantee, warranty, label, brand, insignia or any other representation, however disseminated or published, which is misleading, deceptive, or untruthful.

d. Advertising a particular model or type of hearing aid for sale when purchasers or prospective purchasers responding to the advertisement cannot purchase the advertised model or type, if it is established that the purpose of the advertisement is to obtain prospects for the sale of a different model or type than that advertised.

e. Representing that the service or advice of a person licensed to practice medicine, or one who is certificated as a clinical audiologist by the board of speech pathology and audiology or its equivalent, will be used or made available in the fitting or selection, adjustment, maintenance, or repair of hearing aids when that is not true, or using the words “doctor”, “clinic”, “clinical audiologist”, “state approved”, or similar words, abbreviations, or symbols which tend to connote the medical or other professions, except where the title “certified hearing aid audiologist” has been granted by the national hearing aid society, or that the hearing aid dispenser has been recommended by this state or the board when such is not accurate.

f. Habitual intemperance.

g. Permitting another person to use the license or temporary permit.

h. Advertising a manufacturer’s product or us-

ing a manufacturer’s name or trademark to imply a relationship with the manufacturer that does not exist.

i. Directly or indirectly giving or offering to give, or permitting or causing to be given, money or anything of value to a person who advises another in a professional capacity, as an inducement to influence the person or cause the person to influence others to purchase or contract to purchase products sold or offered for sale by a hearing aid dispenser, or to influence others to refrain from dealing in the products of competitors.

j. Conducting business while suffering from a contagious or infectious disease.

k. Engaging in the fitting or selection and sale of hearing aids under a false name or alias, with fraudulent intent.

l. Selling a hearing aid to a person who has not been given tests utilizing appropriate established procedures and instrumentation in fitting or selection of hearing aids, except in cases of selling replacement hearing aids of the same make or model within one year of the original sale.

m. Gross incompetence or negligence in fitting or selection and selling of hearing aids.

n. Using an advertisement or other representation which has the effect of misleading or deceiving purchasers or prospective purchasers into the belief that any hearing aid or device, or part or accessory thereof, is a new invention or involves a new mechanical or scientific principle when such is not the fact.

o. Representing, directly or by implication, that a hearing aid utilizing bone conduction has certain specified features, such as the absence of anything in the ear or leading to the ear, or the like, without disclosing clearly and conspicuously that the instrument operates on the bone conduction principle, and that in many cases of hearing loss, this type of instrument may not be suitable.

p. Stating or implying that the use of a hearing aid will restore normal hearing or preserve hearing or prevent or retard progressions of hearing impairment or any other false or misleading claim regarding the use or benefit of a hearing aid.

q. Representing or implying that a hearing aid is or will be “custom-made”, “made to order”, “prescription made”, or in any other sense especially fabricated for an individual person when such is not the case.

r. Violating any of the provisions of section 714.16.

s. Failure to place in an advertisement, if an advertisement does not include the words “hearing aid” in the title of the business which is advertising, the qualifying words in the same size type, “for the purpose of fitting, selection, adaptation, and sale of hearing aids”. However, the qualifying words are not required if the advertisement includes the words, “hearing test”, “hearing evaluation”, “free hearing test”, “free hearing evalua-

tion”, “hearing measurement”, or “free hearing measurement”, and the title of the business which is advertising appears in the advertisement and includes the words “hearing aid”.

*t.* Such other acts or omissions as the board may determine to be unethical conduct.

2007 Acts, ch 10, §146  
Subsection 3, paragraph e amended

## CHAPTER 154B

### PSYCHOLOGY

#### 154B.6 Requirements for licensure.

1. Except as provided in this section, an applicant for licensure as a psychologist shall meet the following requirements in addition to those specified in chapter 147:

*a.* Except as provided in this section, after July 1, 1985, a new applicant for licensure as a psychologist shall possess a doctoral degree in psychology from an institution approved by the board and shall have completed at least one year of supervised professional experience under the supervision of a licensed psychologist.

*b.* Have passed an examination administered by the board to assure the applicant’s professional competence. The examination of any of its divi-

sions may be given by the board at any time after the applicant has met the degree requirements of this section.

*c.* Have not failed the examination required in paragraph “*b*” within sixty days preceding the date of the subsequent examination.

2. The examinations required in this section may, at the discretion of the board, be waived for holders by examination of licenses or certificates from states whose requirements are substantially equivalent to those of this chapter, and for holders by examination of specialty diplomas from the American board of professional psychology.

2007 Acts, ch 22, §40  
Section amended

## CHAPTER 154C

### SOCIAL WORK

#### 154C.1 Definitions.

As used in this chapter unless the context otherwise requires:

1. “*Board*” means the board of social work established in chapter 147.

2. “*Licensee*” means a person licensed to practice social work.

3. “*Practice of social work*” means the professional activity of licensees which is directed at enhancing or restoring people’s capacity for social functioning, whether impaired by environmental, emotional, or physical factors, with particular attention to the person-in-situation configuration. The social work profession represents a body of knowledge requiring progressively more sophisticated analytic and intervention skills, and includes the application of psychosocial theory methods to individuals, couples, families, groups, and communities. The practice of social work does not include the making of a medical diagnosis, or the treatment of conditions or disorders of biological etiology except treatment of conditions or disorders which involve psychosocial aspects and conditions. The practice of social work for each of the categories of social work licensure includes the following:

*a.* Bachelor social workers provide psychosocial assessment and intervention through direct

contact with clients or referral of clients to other qualified resources for assistance, including but not limited to performance of social histories, problem identification, establishment of goals and monitoring of progress, interviewing techniques, counseling, social work administration, supervision, evaluation, interdisciplinary consultation and collaboration, and research of service delivery including development and implementation of organizational policies and procedures in program management.

*b.* Master social workers are qualified to perform the practice of bachelor social workers and provide psychosocial assessment, diagnosis, and treatment, including but not limited to performance of psychosocial histories, problem identification and evaluation of symptoms and behavior, assessment of psychosocial and behavioral strengths and weaknesses, effects of the environment on behavior, psychosocial therapy with individuals, couples, families, and groups, establishment of treatment goals and monitoring progress, differential treatment planning, and interdisciplinary consultation and collaboration.

*c.* Independent social workers are qualified to perform the practice of master social workers as a private practice.

4. “*Private practice*” means social work prac-

tice conducted only by an independent social worker who is either self-employed or a member of a partnership or of a group practice providing diagnosis and treatment of mental and emotional disorders or conditions.

5. “*Supervision*” means the direction of social work practice in face-to-face sessions.

2007 Acts, ch 10, §147  
Subsection 1 amended

**154C.3 Requirements to obtain license or reciprocal license — license renewal — continuing education.**

1. *License requirements.* An applicant for a license as a bachelor social worker, master social worker, or independent social worker shall meet the following requirements in addition to paying all fees required by the board:

a. *Bachelor social worker.* An applicant for a license as a bachelor social worker shall present evidence satisfactory to the board that the applicant:

(1) Possesses a bachelor’s degree in social work from an accredited college or university approved by the board.

(2) Has passed an examination given by the board.

(3) Will conduct all professional activities as a bachelor social worker in accordance with standards for professional conduct established by the board.

b. *Master social worker.* An applicant for a license as a master social worker shall present evidence satisfactory to the board that the applicant:

(1) Possesses a master’s or doctoral degree in social work from an accredited college or university approved by the board.

(2) Has passed an examination given by the board.

(3) Will conduct all professional activities as a master social worker in accordance with standards for professional conduct established by the board.

c. *Independent social worker.* An applicant for a license as an independent social worker shall present evidence satisfactory to the board that the applicant:

(1) Possesses a master’s or doctoral degree in social work from an accredited college or university approved by the board.

(2) Has passed an examination given by the board.

(3) Will conduct all professional activities as a social worker in accordance with standards for professional conduct established by the board.

(4) Has engaged in the practice of social work, under supervision, for at least two years as a full-time employee or for four thousand hours prior to taking the examination given by the board.

(5) Supervision shall be provided in any of the following manners:

(a) By a social worker licensed at least at the level of the social worker being supervised and qualified under this section to practice without supervision.

(b) By another qualified professional, if the board determines that supervision by a social worker as defined in subparagraph subdivision (a) is unobtainable or in other situations considered appropriate by the board.

Additional standards for supervision shall be determined by the board.

2. *Reciprocal license.* The board shall issue an appropriate license to an applicant licensed to practice social work in another state which imposes licensure requirements similar or equal to those imposed under subsection 1.

3. *License renewal and continuing education.* Licenses shall be renewed biennially, and licensees shall pay a fee for renewal as determined by the board and shall present evidence satisfactory to the board that the licensee has satisfied continuing education requirements as determined by the board.

2007 Acts, ch 10, §148  
Subsection 1, paragraph c, subparagraph (5) amended

## CHAPTER 154D

### BEHAVIORAL SCIENCE

#### 154D.1 Definitions.

As used in this chapter, unless the context otherwise requires:

1. “*Board*” means the board of behavioral science established in chapter 147.

2. “*Licensed marital and family therapist*” means a person licensed to practice marital and family therapy under chapter 147 and this chapter.

3. “*Licensed mental health counselor*” means a person licensed to practice mental health counseling under chapter 147 and this chapter.

4. “*Licensee*” includes a licensed marital and family therapist and a licensed mental health counselor.

5. “*Marital and family therapy*” means the application of counseling techniques in the assessment and resolution of emotional conditions. This includes the alteration and establishment of attitudes and patterns of interaction relative to marriage, family life, and interpersonal relationships.

6. “*Mental health counseling*” means the provision of counseling services involving assessment, referral, consultation, and the application of

counseling, human development principles, learning theory, group dynamics, and the etiology of maladjustment and dysfunctional behavior to individuals, families, and groups.

2007 Acts, ch 10, §149  
Subsection 1 amended

#### 154D.6 Transition provisions.

1. An applicant for a license to practice marital and family therapy or mental health counseling, applying prior to July 1, 2000, shall not be required respectively to meet the examination requirement contained in section 154D.2, subsection 1, paragraph “c”, or subsection 2, paragraph “c”, if one of the following is met:

a. The applicant meets the requirements contained in section 154D.2, subsection 1, paragraphs “a” and “b”, or subsection 2, paragraphs “a” and “b”, respectively.

b. The applicant meets the requirements contained in section 154D.2, subsection 1, paragraph “a”, or subsection 2, paragraph “a”, and has four thousand hours of employment experience in the practice of marital and family therapy or mental health counseling, respectively.

2. Penalty fees otherwise incurred pursuant to section 147.10, and continuing education requirements applicable to the period prior to license reinstatement, shall be waived by the board for any previously licensed marital and family therapist or mental health counselor whose license has lapsed prior to July 1, 1998. Applicants with a lapsed license applying for reinstatement shall be required to complete a reinstatement application and pay a renewal fee and reinstatement fee pursuant to section 147.11 and section 147.80, subsection 1, paragraphs “t” and “u”.

3. The department of public health may retain any renewal fees generated by 1998 Iowa Acts, ch. 1050 which exceed the department’s revenue projections for fee generation relating to marital and family therapy and mental health counseling under chapters 147 and 154D established prior to the enactment of 1998 Iowa Acts, ch. 1050, during the fiscal year beginning July 1, 1998, and ending June 30, 1999. The department may use the retained fees to pay any administrative expenses directly resulting from the provisions of 1998 Iowa Acts, ch. 1050.

Section not amended; internal reference change applied

## CHAPTER 154E

### INTERPRETERS AND TRANSLITERATORS

2004 enactment of this chapter is effective July 1, 2005; transition provisions relating to the provisional establishment of the board and to temporary licensure of interpreters; 2004 Acts, ch 1175, §432, 433; 2006 Acts, ch 1184, §122

#### 154E.1 Definitions.

As used in this chapter, unless the context otherwise requires:

1. “*Board*” means the board of sign language interpreters and transliterators established in chapter 147.

2. “*Consumer*” means an individual utilizing interpreting services who uses spoken English, American sign language, or a manual form of English.

3. “*Department*” means the Iowa department of public health.

4. “*Interpreter training program*” means a postsecondary education program training individuals to interpret or transliterate.

5. “*Interpreting*” means facilitating communication between individuals who communicate via American sign language and individuals who communicate via spoken English.

6. “*Licensee*” means any person licensed to practice interpreting or transliterating for deaf, hard-of-hearing, and hearing individuals in the state of Iowa.

7. “*Transliterating*” means facilitating com-

munication between individuals who communicate via a manual form of English and individuals who communicate via spoken English.

2007 Acts, ch 10, §150  
Subsection 1 amended

#### 154E.2 Duties of the board.

The board shall administer this chapter. The board’s duties shall include, but are not limited to, the following:

1. Adopt rules consistent with this chapter and with chapter 147 which are necessary for the performance of its duties.

2. Act on matters concerning licensure and the process of applying for, granting, suspending, imposing supervisory or probationary conditions upon, reinstating, and revoking a license.

3. Administer the provisions of this chapter regarding documentation required to demonstrate competence as an interpreter, and the processing of applications for licenses and license renewals.

4. Establish and maintain as a matter of public record a registry of interpreters licensed pursu-



ant to this chapter.

5. Develop continuing education requirements as a condition of license renewal.

6. Evaluate requirements for licensure in other states to determine if reciprocity may be granted.

2006 Acts, ch 1155, §12, 15

Nonreversion of unencumbered or unobligated funds appropriated or received as fees or repayment receipts for the fiscal period beginning July 1, 2006, and ending July 1, 2007, until the close of the next succeeding fiscal year; 2006 Acts, ch 1155, §14, 15

2006 amendment striking subsection 3 takes effect July 1, 2007; 2006 Acts, ch 1155, §15

Subsection 3 stricken and former subsections 4 – 7 renumbered as 3 – 6

#### 154E.4 Exceptions.

1. A person shall not practice interpreting or transliterating, or represent that the person is an interpreter, unless the person is licensed under this chapter.

2. This chapter does not prohibit any of the following:

a. Any person residing outside of the state of

Iowa holding a current license from another state that meets the state of Iowa's requirements from providing interpreting or transliterating services in this state for up to fourteen days per calendar year without a license issued pursuant to this chapter.

b. Any person from interpreting or transliterating solely in a religious setting with the exception of those working in schools that receive government funding.

c. Volunteers working without compensation, including emergency situations, until a licensed interpreter is obtained.

d. Any person working as a substitute for a licensed interpreter in an early childhood, elementary, or secondary education setting for no more than thirty school days in a calendar year.

e. Students enrolled in a school of interpreting from interpreting only under the direct supervision of a permanently licensed interpreter as part of the student's course of study.

2007 Acts, ch 22, §41

Section amended

## CHAPTER 155

### NURSING HOME ADMINISTRATION

#### 155.1 Definitions.

For the purposes of this chapter, and as used herein:

1. "Board" means the board of nursing home administrators established in chapter 147.

2. "Nursing home administrator" means a person who administers, manages, supervises, or is in general administrative charge of a nursing home whether or not such individual has an ownership interest in such home and whether or not the individual's functions and duties are shared with one or more individuals. A member of a board of directors, unless also serving in a supervisory or managerial capacity, shall not be considered a nursing home administrator.

3. "Nursing home" means an institution or facility, or part of an institution or facility, whether proprietary or nonprofit, licensed as a nursing facility, but not including an intermediate care facility for persons with mental retardation or an intermediate care facility for persons with mental illness, defined as such for licensing purposes under state law or administrative rule adopted pursuant to section 135C.2, including but not limited to, a nursing home owned or administered by the federal or state government or an agency or political subdivision of government.

2007 Acts, ch 10, §151

Subsection 1 amended

#### 155.2 Composition of board.

1. There is established a board of nursing

home administrators which shall consist of nine members appointed by the governor subject to confirmation by the senate as follows:

a. Four members shall be licensed nursing home administrators, one of whom shall be an administrator of a nonproprietary nursing home.

b. Three members shall be persons who are licensed members of any of the professions concerned with the care and treatment of chronically ill or elderly patients, who are not nursing home administrators or nursing home owners.

c. Two members who are not licensed nursing home administrators or are not licensed persons under chapter 147 and who shall represent the general public. The members shall be interested in the problems of elderly patients and nursing home care, but shall have no financial interest in any nursing home.

2. The board shall be within the Iowa department of public health for administrative purposes. The department shall furnish the board with the necessary facilities and employees to perform the duties required by this chapter, but shall be reimbursed for all costs incurred from funds appropriated to the board.

3. A licensed member shall be actively engaged in the practice of the member's profession and shall have been so engaged for five years preceding the appointment, the last two of which shall have been in Iowa. Professional societies composed of licensed members may recommend the names of potential board members to the gov-

error, but the governor shall not be bound by the recommendations.

4. A board member shall not be required to be a member of any professional association or society composed of nursing home administrators or any licensed profession.

5. Appointments shall be for three-year terms and shall commence and end as provided in section 69.19. Vacancies shall be filled for the unexpired term by appointment of the governor and are subject to senate confirmation. Members shall serve no more than three terms or nine years,

whichever is least.

2007 Acts, ch 10, §152

Confirmation, see §2.32

Unnumbered paragraph 1 amended and editorially designated as subsection 1

Former subsections 1 – 3 editorially redesignated as paragraphs a – c of subsection 1

Former unnumbered paragraphs 2 – 5 editorially designated as subsections 2 – 5

**155.6 Receipt of fees.** Repealed by 2006 Acts, ch 1155, § 13, 15.

2006 repeal of this section is effective July 1, 2007; 2006 Acts, ch 1155, §15

## CHAPTER 155A

### PHARMACY

Enforcement, §147.94 – 147.99

Licensing board, support staff exception;  
location and powers; see §135.11A, 135.31

#### 155A.3 Definitions.

As used in this chapter, unless the context otherwise requires:

1. “*Administer*” means the direct application of a prescription drug, whether by injection, inhalation, ingestion, or any other means, to the body of a patient or research subject by one of the following:

a. A practitioner or the practitioner’s authorized agent.

b. The patient or research subject at the direction of a practitioner.

2. “*Authorized agent*” means an individual designated by a practitioner who is under the supervision of the practitioner and for whom the practitioner assumes legal responsibility.

3. “*Board*” means the board of pharmacy.

4. “*Brand name*” or “*trade name*” means the registered trademark name given to a drug product or ingredient by its manufacturer, labeler, or distributor.

5. “*College of pharmacy*” means a school, university, or college of pharmacy that satisfies the accreditation standards of the accreditation council for pharmacy education to the extent those standards are adopted by the board, or that has degree requirements which meet the standards of accreditation adopted by the board.

6. “*Controlled substance*” means a drug substance, immediate precursor, or other substance listed in division II of chapter 124.

7. “*Controlled substances Act*” means chapter 124.

8. “*Deliver*” or “*delivery*” means the actual, constructive, or attempted transfer of a prescription drug or device or controlled substance from one person to another, whether or not for a consid-

eration.

9. “*Demonstrated bioavailability*” means the rate and extent of absorption of a drug or drug ingredient from a specified dosage form, as reflected by the time-concentration curve of the drug or drug ingredient in the systemic circulation.

10. “*Device*” means an instrument, apparatus, implement, machine, contrivance, implant, in vitro reagent, or other similar or related article, including any component part or accessory, that is required under federal or state law to be ordered or prescribed by a practitioner.

11. “*Dispense*” means to deliver a prescription drug, device, or controlled substance to an ultimate user or research subject by or pursuant to the lawful prescription drug order or medication order of a practitioner, including the prescribing, administering, packaging, labeling, or compounding necessary to prepare the substance for that delivery.

12. “*Distribute*” means the delivery of a prescription drug or device.

13. “*Drug*” means one or more of the following:

a. A substance recognized as a drug in the current official United States Pharmacopoeia and National Formulary, official Homeopathic Pharmacopoeia, or other drug compendium or any supplement to any of them.

b. A substance intended for use in the diagnosis, cure, mitigation, treatment, or prevention of disease in humans or other animals.

c. A substance, other than food, intended to affect the structure or any function of the body of humans or other animals.

d. A substance intended for use as a component of any substance specified in paragraph “a”, “b”, or “c”.

e. A controlled substance.

14. “*Drug product selection*” means the act of selecting the source of supply of a drug product.

15. “*Drug sample*” means a drug that is distributed without consideration to a pharmacist or practitioner.

16. “*Electronic order*” or “*electronic prescription*” means an order or prescription which is transmitted by a computer device in a secure manner, including computer-to-computer transmission and computer-to-facsimile transmission.

17. “*Electronic signature*” means a confidential personalized digital key, code, or number used for secure electronic transmissions which identifies and authenticates the signatory.

18. “*Facsimile order*” or “*facsimile prescription*” means an order or prescription which is transmitted by a device which sends an exact image to the receiver.

19. “*Generic name*” means the official title of a drug or drug ingredient published in the current official United States Pharmacopoeia and National Formulary, official Homeopathic Pharmacopoeia, or other drug compendium published by the United States pharmacopoeial convention or any supplement to any of them.

20. “*Internship*” means a practical experience program approved by the board for persons training to become pharmacists.

21. “*Label*” means written, printed, or graphic matter on the immediate container of a drug or device.

22. “*Labeling*” means the process of preparing and affixing a label including information required by federal or state law or regulation to a drug or device container. The term does not include the labeling by a manufacturer, packer, or distributor of a nonprescription drug or commercially packaged prescription drug or device or unit dose packaging.

23. “*Limited drug and device distributor*” means a person operating or maintaining, either within or outside this state, a location at which limited noncontrolled prescription drugs, prescription devices, and medical gases, are distributed to patients in this state pursuant to a prescription drug order; or a person operating or maintaining a location at which limited quantities of drugs, devices, or medical gases are distributed at wholesale in this state. A “*limited drug and device distributor*” does not include a pharmacy licensed pursuant to this chapter or a drug wholesaler providing prescription drugs to patients in this state pursuant to a drug manufacturer’s prescription drug assistance program.

24. “*Logistics provider*” means an entity that provides or coordinates warehousing, distribution, or other services on behalf of a manufacturer or other owner of a drug, but does not take title to the drug or have general responsibility to direct its

sale or other disposition.

25. “*Medical gas*” means a gas or liquid oxygen intended for human consumption.

26. “*Medication order*” means a written order from a practitioner or an oral order from a practitioner or the practitioner’s authorized agent for administration of a drug or device.

27. “*Pedigree*” means a recording of each distribution of any given drug or device, from the sale by the manufacturer through acquisition and sale by any wholesaler, pursuant to rules adopted by the board.

28. “*Pharmacist*” means a person licensed by the board to practice pharmacy.

29. “*Pharmacist in charge*” means the pharmacist designated on a pharmacy license as the pharmacist who has the authority and responsibility for the pharmacy’s compliance with laws and rules pertaining to the practice of pharmacy.

30. “*Pharmacist-intern*” means an undergraduate student enrolled in the professional sequence of a college of pharmacy approved by the board, or a graduate of a college of pharmacy, who is participating in a board-approved internship under the supervision of a preceptor.

31. “*Pharmacy*” means a location where prescription drugs are compounded, dispensed, or sold by a pharmacist and where prescription drug orders are received or processed in accordance with the pharmacy laws.

32. “*Pharmacy license*” means a license issued to a pharmacy or other place where prescription drugs or devices are dispensed to the general public pursuant to a prescription drug order.

33. “*Pharmacy technician*” means a person registered by the board who is in a technician training program or who is employed by a pharmacy under the responsibility of a licensed pharmacist to assist in the technical functions of the practice of pharmacy.

34. “*Practice of pharmacy*” is a dynamic patient-oriented health service profession that applies a scientific body of knowledge to improve and promote patient health by means of appropriate drug use and related drug therapy.

35. “*Practitioner*” means a physician, dentist, podiatric physician, veterinarian, or other person licensed or registered to distribute or dispense a prescription drug or device in the course of professional practice in this state or a person licensed by another state in a health field in which, under Iowa law, licensees in this state may legally prescribe drugs.

36. “*Preceptor*” means a pharmacist in good standing licensed in this state to practice pharmacy and approved by the board to supervise and be responsible for the activities and functions of a pharmacist-intern in the internship program.

37. “*Prescription drug*” means any of the following:

a. A substance for which federal or state law requires a prescription before it may be legally dispensed to the public.

b. A drug or device that under federal law is required, prior to being dispensed or delivered, to be labeled with one of the following statements:

(1) Caution: Federal law prohibits dispensing without a prescription.

(2) Caution: Federal law restricts this drug to use by or on the order of a licensed veterinarian.

(3) Caution: Federal law restricts this device to sale by, or on the order of, a physician.

(4) Rx only.

c. A drug or device that is required by any applicable federal or state law or regulation to be dispensed on prescription only, or is restricted to use by a practitioner only.

38. “*Prescription drug order*” means a written, electronic, or facsimile order from a practitioner or an oral order from a practitioner or the practitioner’s authorized agent who communicates the practitioner’s instructions for a prescription drug or device to be dispensed.

39. “*Proprietary medicine*” or “*over-the-counter medicine*” means a nonnarcotic drug or device that may be sold without a prescription and that is labeled and packaged in compliance with applicable state or federal law.

40. “*Ultimate user*” means a person who has lawfully obtained and possesses a prescription drug or device for the person’s own use or for the use of a member of the person’s household or for administering to an animal owned by the person or by a member of the person’s household.

41. “*Unit dose packaging*” means the packaging of individual doses of a drug in containers which preserve the identity and integrity of the drug from the point of packaging to administration and which are properly labeled pursuant to rules of the board.

42. “*Wholesaler*” means a person operating or maintaining, either within or outside this state, a manufacturing plant, wholesale distribution center, wholesale business, or any other business in which prescription drugs or devices, medicinal chemicals, medicines, or poisons are sold, manufactured, compounded, dispensed, stocked, exposed, distributed from, or offered for sale at wholesale in this state. “*Wholesaler*” does not include those wholesalers who sell only proprietary or over-the-counter medicines. “*Wholesaler*” also does not include a commercial carrier that temporarily stores prescription drugs or devices, medicinal chemicals, medicines, or poisons while in transit.

43. “*Wholesale salesperson*” or “*manufacturer’s representative*” means an individual who takes purchase orders on behalf of a wholesaler for prescription drugs, medicinal chemicals, medicines, or poisons. “*Wholesale salesperson*” or “*manufacturer’s representative*” does not include

an individual who sells only proprietary medicines.

2007 Acts, ch 10, §153; 2007 Acts, ch 19, §1, 2

Subsections 3 and 5 amended

NEW subsection 23 and former subsection 23 renumbered as 24

NEW subsection 25 and former subsections 24 – 41 renumbered as 24

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#### **155A.4 Prohibition against unlicensed persons dispensing or distributing prescription drugs — exceptions.**

1. A person shall not dispense prescription drugs unless that person is a licensed pharmacist or is authorized by section 147.107 to dispense or distribute prescription drugs.

2. Notwithstanding subsection 1, it is not unlawful for:

a. A wholesaler to distribute prescription drugs or devices as provided by state or federal law.

b. A practitioner, licensed by the appropriate state board, to dispense prescription drugs to patients as incident to the practice of the profession, except with respect to the operation of a pharmacy for the retailing of prescription drugs.

c. A practitioner, licensed by the appropriate state board, to administer drugs to patients. This chapter does not prevent a practitioner from delegating the administration of a prescription drug to a nurse, intern, or other qualified individual or, in the case of a veterinarian, to an orderly or assistant, under the practitioner’s direction and supervision.

d. A person to sell at retail a proprietary medicine, an insecticide, a fungicide, or a chemical used in the arts, if properly labeled.

e. A person to procure prescription drugs for lawful research, teaching, or testing and not for resale.

f. A pharmacy to distribute a prescription drug to another pharmacy or to a practitioner.

g. A qualified individual authorized to administer prescription drugs and employed by a home health agency or hospice to obtain, possess, and transport emergency prescription drugs as provided by state or federal law or by rules of the board.

h. A limited drug and device distributor, licensed by the board, to distribute limited noncontrolled prescription drugs, prescription devices, and medical gases, to patients in this state pursuant to rules adopted by the board.

2007 Acts, ch 19, §3

Subsection 2, NEW paragraph h

#### **155A.6 Pharmacist internship program.**

1. A program of pharmacist internships is established. Each internship is subject to approval by the board.

2. A person desiring to be a pharmacist-intern in this state shall apply to the board for registration. The application must be on a form prescribed by the board. A pharmacist-intern shall be regis-

tered during internship training and thereafter pursuant to rules adopted by the board.

3. The board shall establish standards for pharmacist-intern registration and may deny, suspend, or revoke a pharmacist-intern registration for failure to meet the standards or for any violation of the laws of this state, another state, or the United States relating to prescription drugs, controlled substances, or nonprescription drugs, or for any violation of this chapter or chapter 124, 124A, 124B, 126, 147, or 205, or any rule of the board.

4. The board shall adopt rules in accordance with chapter 17A on matters pertaining to pharmacist-intern registration standards, registration fees, conditions of registration, termination of registration, and approval of preceptors.

2007 Acts, ch 20, §1  
Subsections 5 – 8 stricken

#### **155A.6A Pharmacy technician registration.**

1. A registration program for pharmacy technicians is established for the purpose of establishing technician competency and for the purposes of identification, tracking, and disciplinary action for the violation of federal drug laws or regulations, state drug or pharmacy laws, or board rules. The ultimate responsibility for the actions of a pharmacy technician working under a licensed pharmacist's supervision shall remain with the licensed pharmacist.

2. A person who is or desires to be a pharmacy technician in this state shall apply to the board for registration. The application shall be submitted on a form prescribed by the board. A pharmacy technician must be registered pursuant to rules adopted by the board. Except as provided in subsection 3, beginning July 1, 2010, all applicants for a new pharmacy technician registration or for a pharmacy technician renewal shall provide proof of current certification by a national technician certification authority approved by the board. Notwithstanding section 272C.2, subsection 1, a pharmacy technician registration shall not require continuing education for renewal.

3. Beginning July 1, 2009, a person who is in the process of acquiring national certification as a pharmacy technician and who is in training to become a pharmacy technician shall register with the board as a pharmacy technician. The registration shall be issued for a period not to exceed one year and shall not be renewable.

4. The board shall adopt rules in accordance with chapter 17A on matters pertaining to pharmacy technician registration, application, forms, renewals, fees, termination of registration, national certification, training, and any other relevant matters.

5. The board may deny, suspend, or revoke the registration of, or otherwise discipline, a registered pharmacy technician for any violation of the

laws of this state, another state, or the United States relating to prescription drugs, controlled substances, or nonprescription drugs, or for any violation of this chapter or chapter 124, 124A, 124B, 126, 147, 205, or 272C, or any rule of the board.

2007 Acts, ch 20, §2  
NEW section

#### **155A.9 Approved colleges — graduates of foreign colleges.**

1. A college of pharmacy shall not be approved by the board unless the college is accredited by the accreditation council for pharmacy education.

2. An applicant who is a graduate of a school or college of pharmacy located outside the United States but who is otherwise qualified to apply for a pharmacist license in this state may be deemed to have satisfied the requirements of section 155A.8, subsection 1, by verification to the board of the applicant's academic record and graduation and by meeting other requirements established by rule of the board. The board may require the applicant to pass an examination or examinations given or approved by the board to establish proficiency in English and equivalency of education as a prerequisite for taking the licensure examination required in section 155A.8, subsection 3.

2007 Acts, ch 19, §4  
Subsection 1 amended

#### **155A.21 Unlawful possession of prescription drug or device — penalty.**

1. A person found in possession of a drug or device limited to dispensation by prescription, unless the drug or device was so lawfully dispensed, commits a serious misdemeanor.

2. Subsection 1 does not apply to a licensed pharmacy, licensed wholesaler, physician, veterinarian, dentist, podiatric physician, therapeutically certified optometrist, advanced registered nurse practitioner, physician assistant, a nurse acting under the direction of a physician, or the board of pharmacy, its officers, agents, inspectors, and representatives, or to a common carrier, manufacturer's representative, or messenger when transporting the drug or device in the same unbroken package in which the drug or device was delivered to that person for transportation.

2007 Acts, ch 10, §154  
Subsection 2 amended

#### **155A.24 Penalties.**

1. Except as otherwise provided in this section, a person who violates a provision of section 155A.23 or who sells or offers for sale, gives away, or administers to another person any prescription drug or device in violation of this chapter commits a public offense and shall be punished as follows:

a. If the prescription drug is a controlled substance, the person shall be punished pursuant to chapter 124, division IV.

b. If the prescription drug is not a controlled substance, the person, upon conviction of a first offense, is guilty of a serious misdemeanor. For a second offense, or if in case of a first offense the offender previously has been convicted of any violation of the laws of the United States or of any state, territory, or district thereof relating to prescription drugs or devices, the offender is guilty of an aggravated misdemeanor. For a third or subsequent offense or if in the case of a second offense the offender previously has been convicted two or more times in the aggregate of any violation of the laws of the United States or of any state, territory, or district thereof relating to prescription drugs or devices, the offender is guilty of a class “D” felony.

2. A person who violates any provision of this chapter by selling, giving away, or administering any prescription drug or device to a minor is guilty of a class “C” felony.

3. A wholesaler who, with intent to defraud or deceive, fails to deliver to another person, when required by rules of the board, complete and accurate pedigree concerning a drug prior to transferring the drug to another person is guilty of a class “C” felony.

4. A wholesaler who, with intent to defraud or deceive, fails to acquire, when required by rules of the board, complete and accurate pedigree concerning a drug prior to obtaining the drug from another person is guilty of a class “C” felony.

5. A wholesaler who knowingly destroys, alters, conceals, or fails to maintain, as required by rules of the board, complete and accurate pedigree concerning any drug in the person’s possession is guilty of a class “C” felony.

6. A wholesaler who is in possession of pedigree documents required by rules of the board, and who knowingly fails to authenticate the matters contained in the documents as required, and who nevertheless distributes or attempts to further distribute drugs is guilty of a class “C” felony.

7. A wholesaler who, with intent to defraud or deceive, falsely swears or certifies that the person has authenticated any documents related to the wholesale distribution of drugs or devices is guilty of a class “C” felony.

8. A wholesaler who knowingly forges, counterfeits, or falsely creates any pedigree, who falsely represents any factual matter contained in any pedigree, or who knowingly fails to record material information required to be recorded in a pedigree is guilty of a class “C” felony.

9. A wholesaler who knowingly purchases or receives drugs or devices from a person not authorized to distribute drugs or devices in wholesale distribution is guilty of a class “C” felony.

10. A wholesaler who knowingly sells, barter, brokers, or transfers a drug or device to a person not authorized to purchase the drug or device under the jurisdiction in which the person receives the drug or device in a wholesale distribution is

guilty of a class “C” felony.

11. A person who knowingly manufactures, sells, or delivers, or who possesses with intent to sell or deliver, a counterfeit, misbranded, or adulterated drug or device is guilty of the following:

a. If the person manufactures or produces a counterfeit, misbranded, or adulterated drug or device; or if the quantity of a counterfeit, misbranded, or adulterated drug or device being sold, delivered, or possessed with intent to sell or deliver exceeds one thousand units or dosages; or if the violation is a third or subsequent violation of this subsection, the person is guilty of a class “C” felony.

b. If the quantity of a counterfeit, misbranded, or adulterated drug or device being sold, delivered, or possessed with intent to sell or deliver exceeds one hundred units or dosages but does not exceed one thousand units or dosages; or if the violation is a second or subsequent violation of this subsection, the person is guilty of a class “D” felony.

c. All other violations of this subsection shall constitute an aggravated misdemeanor.

12. A person who knowingly forges, counterfeits, or falsely creates any label for a drug or device or who falsely represents any factual matter contained on any label of a drug or device is guilty of a class “C” felony.

13. A person who knowingly possesses, purchases, or brings into the state a counterfeit, misbranded, or adulterated drug or device is guilty of the following:

a. If the quantity of a counterfeit, misbranded, or adulterated drug or device being possessed, purchased, or brought into the state exceeds one hundred units or dosages; or if the violation is a second or subsequent violation of this subsection, the person is guilty of a class “D” felony.

b. All other violations of this subsection shall constitute an aggravated misdemeanor.

14. This section does not prevent a licensed practitioner of medicine, dentistry, podiatry, nursing, veterinary medicine, optometry, or pharmacy from acts necessary in the ethical and legal performance of the practitioner’s profession.

15. Subsections 1 and 2 shall not apply to a parent or legal guardian administering, in good faith, a prescription drug or device to a child of the parent or a child for whom the individual is designated a legal guardian.

2007 Acts, ch 22, §42  
Subsection 8 amended

#### **155A.26 Enforcement — agents as peace officers.**

The board, its officers, agents, inspectors, and representatives, and all peace officers within the state, and all county attorneys shall enforce all provisions of this chapter, except those specifically delegated, and shall cooperate with all agencies charged with the enforcement of the laws of the

United States, of this state, and of all other states relating to prescription drugs. Officers, agents, inspectors, and representatives of the board shall have the powers and status of peace officers when enforcing the provisions of this chapter.

2007 Acts, ch 10, §155  
Section amended

#### 155A.29 Prescription refills.

1. Except as specified in subsection 2, a prescription for any prescription drug or device which is not a controlled substance shall not be filled or refilled more than eighteen months after the date on which the prescription was issued and a prescription which is authorized to be refilled shall not be refilled more than twelve times.

2. A pharmacist may exercise professional judgment by refilling a prescription without prescriber authorization if all of the following are true:

*a.* The pharmacist is unable to contact the prescriber after reasonable effort.

*b.* Failure to refill the prescription might result in an interruption of therapeutic regimen or create patient suffering.

*c.* The pharmacist informs the patient or the patient's representative at the time of dispensing, and the practitioner at the earliest convenience that prescriber reauthorization is required.

3. Prescriptions may be refilled once pursuant to subsection 2 for a period of time reasonably necessary for the pharmacist to secure prescriber authorization.

2007 Acts, ch 19, §5  
Subsection 1 amended

#### 155A.39 Programs to aid impaired pharmacists, pharmacist-interns, or pharmacy technicians — reporting, confidentiality, immunity, funding.

1. A person or pharmaceutical peer review committee may report relevant facts to the board relating to the acts of a pharmacist in this state, a pharmacist-intern as defined in section 155A.3, subsection 30, or a pharmacy technician in this state if the person or peer review committee has knowledge relating to the pharmacist, pharmacist-intern, or pharmacy technician which, in the opinion of the person or pharmaceutical peer review committee, might impair competency due to chemical abuse, chemical dependence, or mental or physical illness, or which might endanger the public health and safety, or which provide grounds for disciplinary action as specified in this chapter and in the rules of the board.

2. A committee of a professional pharmaceutical organization, its staff, or a district or local intervenor participating in a program established to aid pharmacists, pharmacist-interns, or pharmacy technicians impaired by chemical abuse, chemical dependence, or mental or physical illness may

report in writing to the board the name of the impaired pharmacist, pharmacist-intern, or pharmacy technician together with pertinent information relating to the impairment. The board may report to a committee of a professional pharmaceutical organization or the organization's designated staff information which the board receives with regard to a pharmacist, pharmacist-intern, or pharmacy technician who may be impaired by chemical abuse, chemical dependence, or mental or physical illness.

3. Upon determination by the board that a report submitted by a peer review committee or a professional pharmaceutical organization committee is without merit, the report shall be expunged from the pharmacist's, pharmacist-intern's, or pharmacy technician's individual record in the board's office. A pharmacist, pharmacist-intern, pharmacy technician, or an authorized representative of the pharmacist, pharmacist-intern, or pharmacy technician shall be entitled on request to examine the peer review committee report or the pharmaceutical organization committee report submitted to the board and to place into the record a statement of reasonable length of the pharmacist's, pharmacist-intern's, or pharmacy technician's view with respect to any information existing in the report.

4. Notwithstanding other provisions of the Code, the records and proceedings of the board, its authorized agents, a peer review committee, or a pharmaceutical organization committee as set out in subsections 1 and 2 shall be privileged and confidential and shall not be considered public records or open records unless the affected pharmacist, pharmacist-intern, or pharmacy technician so requests and shall not be subject to a subpoena or to a discovery proceeding. The board may disclose the records and proceedings only as follows:

*a.* In a criminal proceeding.

*b.* In a disciplinary hearing before the board or in a subsequent trial or appeal of a board action or order.

*c.* To the pharmacist licensing or disciplinary authorities of other jurisdictions.

*d.* To the pharmacy technician registering, licensing, or disciplinary authorities of other jurisdictions.

*e.* Pursuant to an order of a court of competent jurisdiction.

*f.* Pursuant to subsection 11.

*g.* As otherwise provided by law.

5. An employee or a member of the board, a peer review committee member, a professional pharmaceutical organization committee member, a professional pharmaceutical organization district or local intervenor, or any other person who furnishes information, data, reports, or records in good faith for the purpose of aiding the impaired pharmacist, pharmacist-intern, or pharmacy technician, shall be immune from civil liability.

This immunity from civil liability shall be liberally construed to accomplish the purpose of this section and is in addition to other immunity provided by law.

6. An employee or member of the board or a committee or intervenor program is presumed to have acted in good faith. A person alleging a lack of good faith has the burden of proof on that issue.

7. The board may contract with professional pharmaceutical associations or societies to provide a program for pharmacists, pharmacist-interns, and pharmacy technicians who are impaired by chemical abuse, chemical dependence, or mental or physical illness. Such programs shall include, but not be limited to, education, intervention, and posttreatment monitoring. A contract with a professional pharmaceutical association or society shall include the following requirements:

a. Periodic reports to the board regarding education, intervention, and treatment activities.

b. Immediate notification to the board's executive secretary or director or the executive secretary's or director's designee of the identity of the pharmacist, pharmacist-intern, or pharmacy technician who is participating in a program to aid impaired pharmacists, pharmacist-interns, or pharmacy technicians.

c. Release to the board's executive secretary or director or the executive secretary's or director's designee upon written request of all treatment records of a participant.

d. Quarterly reports to the board, by case number, regarding each participant's diagnosis, prognosis, and recommendations for continuing care, treatment, and supervision which maintain the anonymity of the participant.

e. Immediate reporting to the board of the name of an impaired pharmacist, pharmacist-intern, or pharmacy technician who the treatment organization believes to be an imminent danger to either the public or to the pharmacist, pharmacist-intern, or pharmacy technician.

f. Reporting to the board, as soon as possible, the name of a participant who refuses to cooperate with the program, who refuses to submit to treatment, or whose impairment is not substantially alleviated through intervention and treatment.

g. Immediate reporting to the board of the name of a participant where additional information is evident that known distribution of controlled substances or legend drugs to other individuals has taken place.

8. The board may add a surcharge of not more than ten percent of the applicable fee to a pharmacist license fee, pharmacist license renewal fee, pharmacist-intern registration fee, pharmacy technician registration fee, or pharmacy technician registration renewal fee authorized under this chapter to fund programs to aid impaired pharmacists, pharmacist-interns, or pharmacy

technicians.

9. The board may accept, transfer, and expend funds made available by the federal or state government or by another public or private source to be used in programs authorized by this section. The board may contract to provide funding on an annual basis to a professional pharmaceutical association or society for expenses incurred in management and operation of a program to aid impaired pharmacists, pharmacist-interns, or pharmacy technicians. Documentation of the use of these funds shall be provided to the board not less than annually for review and comment.

10. Funds and surcharges collected under this section shall be deposited in an account and may be used by the board to administer programs authorized by this section, including the provision of education, intervention, and posttreatment monitoring to an impaired pharmacist, pharmacist-intern, or pharmacy technician and to pay the administrative costs incurred by the board in connection with that funding and appropriate oversight, but not for costs incurred for a participant's initial evaluation, referral services, treatment, or rehabilitation subsequent to intervention.

11. The board may disclose that the license of a pharmacist, the registration of a pharmacist-intern, or the registration of a pharmacy technician who is the subject of an order of the board that is confidential pursuant to subsection 4 is suspended, revoked, canceled, restricted, or retired; or that the pharmacist, pharmacist-intern, or pharmacy technician is in any manner otherwise limited in the practice of pharmacy; or other relevant information pertaining to the pharmacist, pharmacist-intern, or pharmacy technician which the board deems appropriate.

12. The board may adopt rules necessary for the implementation of this section.

Section not amended; internal reference change applied

#### **155A.42 Limited drug and device distributor license.**

1. A person shall not act as a limited drug and device distributor without a license. The license shall be identified as a limited drug and device distributor license.

2. The board shall establish, by rule, standards for limited drug and device distributors and may define specific types of limited drug and device distributors. The board may identify, by rule, specific prescription drugs or classes of noncontrolled prescription drugs, which may be distributed by a limited drug and device distributor.

3. The board shall adopt rules pursuant to chapter 17A relating to the issuance of a limited drug and device distributor license. The rules shall provide for conditions of licensure, compliance standards, licensure fees, disciplinary action, and other relevant matters.



4. The board may deny, suspend, or revoke a limited drug and device distributor's license for failure to meet the applicable standards or for a violation of the laws of this state, another state, or the United States relating to prescription drugs or

controlled substances, or for a violation of this chapter, chapter 124, 124A, 124B, 126, 205, or 272C, or a rule of the board.

2007 Acts, ch 19, §6  
NEW section

## CHAPTER 156

### FUNERAL DIRECTING, MORTUARY SCIENCE, AND CREMATION

#### 156.1 Definitions.

As used in this chapter unless the context otherwise requires:

1. *"Board"* means the board of mortuary science.

2. *"Cremation"* means the technical process, using heat and flame, that reduces human remains to bone fragments. The reduction takes place through heat and evaporation. Cremation shall include the processing, and may include the pulverization, of the bone fragments.

3. *"Cremation establishment"* means a place of business as defined by the board which provides any aspect of cremation services.

4. *"Funeral director"* means a person licensed by the board to practice mortuary science.

5. *"Funeral establishment"* means a place of business as defined by the board devoted to providing any aspect of mortuary science.

6. *"Intern"* means a person registered by the board to practice mortuary science under the direct supervision of a preceptor certified by the board.

7. *"Mortuary science"* means the engaging in any of the following:

a. Preparing, for burial or disposal, or directing and supervising burial or disposal of dead human bodies except supervising cremations.

b. Making funeral arrangements or furnishing any funeral services in connection with disposition of dead human bodies or sale of any casket, vault, urn, or other burial receptacle.

c. Using the words *"funeral director"*, *"mortician"*, or any other title implying that the person is engaged as a funeral director as defined in this section.

d. Embalming dead human bodies, entire or in part, by the use of chemical substances, fluids, or gases in the body, or by the introduction of the same into the body by vascular injections, hypodermic injections, or by surface application into the organs or cavities for the purpose of preservation or disinfection.

2007 Acts, ch 10, §156; 2007 Acts, ch 159, §5, 6

Former unnumbered paragraph 2 editorially transferred to §156.1A in Code Supplement 2007

Subsections 1 and 6 amended

Subsection 7, paragraph d amended

#### 156.1A Provision of services.

Nothing contained in this chapter shall be construed as prohibiting the operation of any funeral home, funeral establishment, or cremation establishment by any person, heir, fiduciary, firm, cooperative burial association, or corporation. However, each such person, firm, cooperative burial association, or corporation shall ensure that all mortuary science services are provided by a funeral director, and shall keep the Iowa department of public health advised of the name of the funeral director.

Section transferred from §156.1, unnumbered paragraph 2, in Code Supplement 2007

Section and section history established

#### 156.4 Funeral directors.

1. The practice of a funeral director must be conducted from a funeral establishment licensed by the board. The board may specify criteria for exceptions to the requirement of this subsection in rules.

2. A person shall not engage in the practice of mortuary science unless licensed.

3. Applications for the examination for a funeral director's license shall be verified on a form furnished by the board.

4. Applicants shall pass an examination prescribed by the board, which shall include the subjects of funeral directing, burial or other disposition of dead human bodies, sanitary science, embalming, restorative art, anatomy, public health, transportation, business ethics, and such other subjects as the board may designate.

5. After the applicant has completed satisfactorily the course of instruction in mortuary science in an accredited school approved by the board, the applicant must pass the examination prescribed by the board as provided in section 147.34. The applicant may then receive an internship certificate and shall then complete a minimum one-year internship as determined by the board.

2007 Acts, ch 159, §7

Subsections 1 and 3 amended

#### 156.8A Student practicum.

The board, by rule, shall provide for practicums

in mortuary science for students available through any school accredited by the American board of funeral service education.

2007 Acts, ch 159, §8  
Section amended

**156.9 Revocation of license to practice mortuary science.**

1. Notwithstanding section 147.87 and in addition to the provisions of sections 147.58 through 147.71, the board may restrict, suspend, or revoke a license to practice mortuary science or place a licensee on probation. The board shall adopt rules of procedure pursuant to chapter 17A by which to restrict, suspend, or revoke a license. The board may also adopt rules pursuant to chapter 17A relating to conditions of license reinstatement.

2. In addition to the grounds stated in sections 147.55 and 272C.10, the board may revoke or suspend the license of, or otherwise discipline, a funeral director for any one of the following acts:

*a.* Knowingly misrepresenting any material matter to a prospective purchaser of funeral merchandise, furnishings, or services.

*b.* A violation of chapter 144 related to the practice of mortuary science.

*c.* Knowingly aiding, assisting, procuring, advising, or allowing a person to unlawfully practice mortuary science.

*d.* Willful or repeated violations of this chapter, or the rules adopted pursuant to this chapter.

*e.* Conviction of any crime related to the practice of mortuary science or implicating the licensee's competence to safely perform mortuary science services, including but not limited to a crime involving moral character, dishonesty, fraud, theft, embezzlement, extortion, or controlled substances, in a court of competent jurisdiction in this state, or in another state, territory, or district of the United States, or in a foreign jurisdiction. For purposes of this paragraph, "conviction" includes a guilty plea, deferred judgment, or other finding of guilt. A certified copy of the judgment is prima facie evidence of the conviction.

2007 Acts, ch 159, §9  
Subsection 2 amended

**156.10 Inspection.**

1. The director of public health shall inspect all places where dead human bodies are prepared or held for burial, entombment, or cremation, and shall adopt and enforce such rules and regulations in connection with the inspection as shall be neces-

sary for the preservation of the public health.

2. The Iowa department of public health shall assess an inspection fee for an inspection of a place where dead human bodies are prepared for burial or cremation. The fee shall be determined by the department by rule.

2007 Acts, ch 159, §10  
Section amended

**156.13 Certificate of national board in lieu of examination.** Repealed by 2007 Acts, ch 159, § 12.

**156.15 Funeral establishments and cremation establishments — license required — discipline, violations, and penalties.**

1. A funeral establishment or cremation establishment shall not be operated until a license or renewal certificate has been issued to the establishment by the board.

2. The board shall refuse to issue an establishment license when an applicant fails to meet the requirements of section 156.14. The board may refuse to issue or renew a license or may impose a penalty, not to exceed ten thousand dollars, issue a reprimand, or revoke, restrict, cancel, or suspend a license, and may place a licensee on probation, if the board finds that the applicant or licensee has done any of the following:

*a.* Been convicted of a felony or any crime related to the practice of mortuary science or implicating the establishment's ability to safely perform mortuary science services, or if the applicant is an association, joint stock company, partnership, or corporation, that a managing officer or owner has been convicted of such a crime, under the laws of this state, another state, or the United States.

*b.* Violated this chapter or any rule adopted under this chapter or that any owner or employee of the establishment has violated this chapter or any rule adopted under this chapter.

*c.* Knowingly aided, assisted, procured, advised, or allowed a person to unlawfully practice mortuary science.

*d.* Failed to engage in or ceased to engage in the business described in the application for a license.

*3.* Failed to keep and maintain records as required by this chapter or rules adopted under this chapter.

2007 Acts, ch 159, §11  
Subsection 2, paragraph a amended

## CHAPTER 157

## COSMETOLOGY

**157.1 Definitions.**

For purposes of this chapter:

1. “*Board*” means the board of cosmetology arts and sciences.
2. “*Certified laser product*” means a product which is certified by a manufacturer pursuant to the requirements of 21 C.F.R. pt. 1040 and as specified by rule.
3. “*Chemical exfoliation*” means the removal of surface epidermal cells of the skin by using only nonmedical strength cosmetic preparations consistent with labeled instructions and as specified by rule.
4. “*Cosmetologist*” means a person who performs the practice of cosmetology, or otherwise by the person’s occupation claims to have knowledge or skill particular to the practice of cosmetology. Cosmetologists shall not represent themselves to the public as being primarily in the practice of haircutting unless that function is, in fact, their primary specialty.
5. “*Cosmetology*” means all of the following practices:
  - a. Arranging, braiding, dressing, curling, waving, press and curl hair straightening, shampooing, cutting, singeing, bleaching, coloring, or similar works, upon the hair of any person, or upon a wig or hairpiece when done in conjunction with haircutting or hairstyling by any means.
  - b. Massaging, cleansing, stimulating, exercising, or beautifying the superficial epidermis of the scalp, face, neck, arms, hands, legs, feet, or upper body of any person with the hands or mechanical or electrical apparatus or appliances or with the use of cosmetic preparations, including cleansers, toners, moisturizers, or masques.
  - c. Removing superfluous hair from the face or body of a person with the use of depilatories, wax, sugars, or tweezing.
  - d. Applying makeup or eyelashes, tinting of lashes or brows, or lightening of hair on the face or body.
  - e. Cleansing, shaping, or polishing the fingernails, applying sculptured nails, nail extensions, wraps, overlays, nail art, or any other nail technique to the fingernails or toenails of a person.
6. “*Cosmetology arts and sciences*” means any or all of the following disciplines, performed with or without compensation by a licensee:
  - a. Cosmetology.
  - b. Electrology.
  - c. Esthetics.
  - d. Nail technology.
  - e. Manicuring and pedicuring.
7. “*Department*” means the Iowa department of public health.
8. “*Depilatory*” means an agent used for the temporary removal of superfluous hair by dissolving it at the epidermal surface.
9. “*Electrologist*” means a person who performs the practice of electrology.
10. “*Electrology*” means the removal of superfluous hair of a person by the use of an electric needle or other electronic process.
11. “*Esthetician*” means a person who performs the practice of esthetics.
12. “*Esthetics*” means the following:
  - a. Beautifying, massaging, cleansing, stimulating, or hydrating the skin of a person, except the scalp, by the use of cosmetic preparations, including cleansers, antiseptics, tonics, lotions, creams, exfoliants, masques, and essential oils, to be applied with the hands or any device, electrical or otherwise, designed for the nonmedical care of the skin.
  - b. Applying makeup or eyelashes to a person, tinting eyelashes or eyebrows, or lightening hair on the body except the scalp.
  - c. Removing superfluous hair from the body of a person by the use of depilatories, waxing, sugaring, tweezers, or use of any certified laser products or intense pulsed light devices. This excludes the practice of electrology, whereby hair is removed with an electric needle.
  - d. The application of permanent makeup or cosmetic micropigmentation.
13. “*Exfoliation*” means the process whereby the superficial epidermal cells are removed from the skin.
14. “*General supervision*” means the supervising physician is not on site for laser procedures or use of an intense pulsed light device for hair removal conducted on minors, but is available for direct communication, either in person or by telephone, radio, radiotelephone, television, or similar means.
15. “*Instructor*” means a person licensed for the purpose of teaching cosmetology arts and sciences.
16. “*Intense pulsed light device*” means a device that uses incoherent light to destroy the vein of the hair bulb.
17. “*Laser*” means light amplification by the stimulated emission of radiation.
18. “*Manicuring*” means the practice of cleansing, shaping, or polishing the fingernails and massaging the hands and lower arms of a person. “*Manicuring*” does not include the application of sculptured nails or nail extensions to the fingernails or toenails of a person, and does not include the practice of pedicuring.
19. “*Manicurist*” means a person who performs the practice of manicuring.
20. “*Mechanical exfoliation*” means the physi-

cal removal of surface epidermal cells by means that include but are not limited to brushing machines, granulated scrubs, peel-off masques, peeling creams or drying preparations that are rubbed off, and microdermabrasion.

21. “*Microdermabrasion*” means mechanical exfoliation using an abrasive material or apparatus to remove surface epidermal cells with a machine which is specified by rule.

22. “*Minor*” means an unmarried person who is under the age of eighteen years.

23. “*Nail technologist*” means a person who performs the practice of nail technology.

24. “*Nail technology*” means all of the following:

a. Applying sculptured nails, nail extensions, wraps, overlays, nail art, or any other nail technique to the fingernails and toenails of a person.

b. Massaging the hands, arms, ankles, and feet of a person.

c. Removing superfluous hair from hands, arms, feet, or legs of a person by the use of wax or a tweezer.

d. Manicuring the nails of a person.

25. “*Physician*” means a person licensed in Iowa to practice medicine and surgery, osteopathic medicine and surgery, or osteopathy.

26. “*Salon*” means a fixed establishment or place where one or more persons engage in the practice of cosmetology arts and sciences, including, but not limited to, a retail establishment where cosmetologists engage in the practice of cosmetology arts and sciences.

27. “*School of cosmetology arts and sciences*” means an establishment licensed for the purpose of teaching cosmetology arts and sciences.

2007 Acts, ch 10, §157, 158

Subsection 1 amended

Subsection 6, paragraph e amended

## CHAPTER 158

### BARBERING

#### 158.1 Definitions.

For the purpose of this chapter:

1. “*Barbering*” means practices listed in this subsection performed with or without compensation. The practices include but are not limited to the following practices performed upon the upper part of the human body of any person for cosmetic purposes and not for the treatment of disease or physical or mental ailments:

a. Shaving or trimming the beard or cutting the hair.

b. Giving facial and scalp massages or treatments with oils, creams, lotions, or other preparations either by hand, or by electrical or mechanical appliances.

c. Singeing, shampooing, hair body processing, arranging, dressing, curling, blow waving, hair relaxing, bleaching or coloring the hair, or applying hair tonics.

d. Applying cosmetic preparations, antiseptics, powders, oils, clays, or lotions to scalp, face, or neck.

e. Styling, cutting or shampooing hairpieces or wigs when done in conjunction with haircutting or hairstyling.

Barbers shall not represent themselves to the public as being primarily engaged in practices other than haircutting unless the functions are in fact their primary function or specialty.

2. “*Barber*” means a person who performs practices of barbering or otherwise by the person’s occupation claims to have knowledge or skill peculiar to the practice of barbering.

3. “*Barbershop*” means an establishment in a fixed location where one or more persons engage in the practice of barbering.

4. “*Barber school*” means an establishment operated by a person for the purpose of teaching barbering.

5. “*Board*” means the board of barbering.

6. “*Department*” means the Iowa department of public health.

2007 Acts, ch 10, §159

Subsection 5 amended

## CHAPTER 159

### DEPARTMENT OF AGRICULTURE AND LAND STEWARDSHIP

#### 159.5 Powers and duties.

The secretary of agriculture is the head of the department of agriculture and land stewardship which shall:

1. Carry out the objects for which the depart-

ment is created and maintained.

2. Establish and maintain such divisions in the department as are necessary for the proper enforcement of the laws administered by it.

3. Consolidate the inspection service of the

state in respect to the laws administered by the department so as to eliminate duplication of inspection insofar as practicable.

4. Maintain a weather division which shall, in cooperation with the national weather service, collect and disseminate weather and phenological statistics and meteorological data, and promote knowledge of meteorology, phenology and climatology of the state. The division shall be headed by the state climatologist who shall be appointed by the secretary of agriculture, and shall be an officer of the national weather service, if one is detailed for that purpose by the federal government.

5. Establish volunteer weather stations in one or more places in each county, appoint observers thereat, supervise such stations, receive reports of meteorological events and tabulate the same for permanent record.

6. Issue weekly weather and crop bulletins from April 1 to October 1 of each year, and edit and cause to be published monthly weather reports, containing meteorological matter in its relationship to agriculture, transportation, commerce and the general public.

7. Maintain a division of agricultural statistics, which shall, in cooperation with the United States department of agriculture statistical reporting service, gather, compile, and publish statistical information concerning the condition and progress of crops, the production of crops, livestock, livestock products, poultry, and other such related agricultural statistics, as will generally promote knowledge of the agricultural industry in the state of Iowa. The statistics, when published, constitute official agricultural statistics for the state of Iowa. The division is in the charge of an administrator, who shall be appointed by the secretary of agriculture and who shall be an officer of the United States department of agriculture statistical reporting service, if one is detailed for that purpose by the federal government.

8. Establish and maintain a marketing news service division in the department which shall, in cooperation with the federal market news and grading division of the United States department of agriculture, collect and disseminate data and information relative to the market prices and conditions of agricultural products raised, produced, and handled in the state. The division is in the charge of an administrator, who shall be appointed by the secretary of agriculture and shall be an officer of the federal market news and grading division of the United States department of agriculture, if one is detailed for that purpose by the federal government.

9. Inspect and supervise all meat, poultry, or

dairy producing or distributing establishments including the furniture, fixtures, utensils, machinery, and other equipment so as to prevent the production, preparation, packing, storage, or transportation of meat, poultry, or dairy products in a manner detrimental to the character or quality of those products.

10. Approve all methods of probing for foreign material content of any type of grain.

11. Establish, publish, and enforce rules not inconsistent with law for the enforcement of the provisions of subtitles 1 through 3 of this title, excluding chapters 161A through 161C, and for the enforcement of the various laws, the administration and supervision of which are imposed upon the department.

12. Establish a swine tuberculosis eradication program including, but not limited to:

a. The inspection of swine herds in this state when the department finds that an animal from a swine herd has, or is believed to have, tuberculosis;

b. Ear tagging or otherwise physically marking all swine reacting positively to tests for tuberculosis;

c. Condemning any swine which has tuberculosis;

d. Depopulating any swine herd where tuberculosis is found to be generally present; and

e. Compensate the owners of condemned swine as provided under section 165.18, following the general procedures for filing claims and paying indemnities as provided in chapter 165.

If the department finds that the source of the tuberculosis in a swine herd is from another species of animal, except bovine, located on or near the premises on which the affected swine herd is located, the department may destroy those animals and indemnify the owners of the condemned animals as provided in chapter 163.

13. Establish and maintain a division of soil conservation. The division administrator shall be appointed by the secretary from a list of names of persons recommended by the soil conservation committee, pursuant to section 161A.4, subsection 2, and shall serve at the pleasure of the secretary.

14. Establish and administer programs for the inspection and control of disease among livestock as defined in section 717.1.

15. In the administration of programs relating to water quality improvement and watershed improvements, cooperate with the department of natural resources in order to maximize the receipt of federal funds.

2007 Acts, ch 211, §36  
NEW subsection 15

## CHAPTER 161A

## SOIL AND WATER CONSERVATION

**161A.4 Soil conservation division — committee.**

1. The soil conservation division is established within the department to perform the functions conferred upon it in this chapter and chapters 161C, 161E, 161F, 207, and 208. The division shall be administered in accordance with the policies of the state soil conservation committee, which shall advise the division and which shall approve administrative rules proposed by the division for the administration of this chapter and chapters 161C, 161E, 161F, 207, and 208 before the rules are adopted pursuant to section 17A.5. If a difference exists between the committee and secretary regarding the content of a proposed rule, the secretary shall notify the chairperson of the committee of the difference within thirty days from the committee's action on the rule. The secretary and the committee shall meet to resolve the difference within thirty days after the secretary provides the committee with notice of the difference.

The state soil conservation committee consists of a chairperson and eight other voting members. The following shall serve as ex officio nonvoting members of the committee: the director of the Iowa cooperative extension service in agriculture and home economics, or the director's designee; and the director of the department of natural resources or the director's designee. Nine voting members shall be appointed by the governor subject to confirmation by the senate. Six of the appointive members shall be persons engaged in actual farming operations, one of whom shall be a resident of each of six geographic regions in the state, including northwest, southwest, north central, south central, northeast, and southeast Iowa, and no more than one of whom shall be a resident of any one county. The boundaries of the geographic regions shall be established by rule. The seventh, eighth, and ninth appointive members shall be chosen by the governor from the state at large with one appointed to be a representative of cities, one appointed to be a representative of the mining industry, and one appointee who is a farmer actively engaged in tree farming. The committee may invite the secretary of agriculture of the United States to appoint one person to serve with the other members, and the president of the Iowa county engineers association may designate a member of the association to serve in the same manner, but these persons have no vote and shall serve in an advisory capacity only. The committee may perform acts, hold public hearings, and propose and approve rules pursuant to chapter 17A as necessary for the execution of its functions.

2. The committee shall recommend three persons to the secretary of agriculture who shall ap-

point from the persons recommended an administrative director to head the division who shall serve at the pleasure of the secretary. After reviewing the names submitted, the secretary may request the soil conservation committee to submit additional names for consideration. The committee shall recommend to the secretary each year a budget for the division. The secretary, at the earliest opportunity and prior to formulating a budget, shall meet with representatives of the committee to discuss the committee's recommendation. The committee or division may call upon the attorney general of the state for necessary legal services. The committee may delegate to its chairperson, to one or more of its members, or to one or more agents or employees, powers and duties as it deems proper. Upon request of the committee, for the purpose of carrying out any of the functions assigned the committee or the department by law, the supervising officer of any state agency, or of any state institution of learning shall, insofar as possible under available appropriations, and having due regard to the needs of the agency to which the request is directed, assign or detail the request to the staff or personnel of the agency or institution of learning, and make the special reports, surveys, or studies as the committee requests.

3. The committee shall designate its chairperson, and may change the designation. The members appointed by the governor shall serve for a period of six years. Members shall be appointed in each odd-numbered year to succeed members whose terms expire as provided by section 69.19. Appointments may be made at other times and for other periods as necessary to fill vacancies on the committee. Members shall not be appointed to serve more than two complete six-year terms. Members designated to represent the director of the department of natural resources and the director of the Iowa cooperative extension service in agriculture and home economics shall serve at the pleasure of the officer making the designation. A majority of the voting members of the committee constitutes a quorum, and the concurrence of a majority of the voting members of the committee in any matter within their duties is required for its determination. Members are entitled to actual expenses necessarily incurred in the discharge of their duties as members of the committee. The expenses paid to the committee members shall be paid from funds appropriated to the department. Each member of the committee may also be eligible to receive compensation as provided in section 7E.6. The committee shall provide for the execution of surety bonds for all employees and officers who are entrusted with funds or property, shall provide for the keeping of a full and accurate rec-

ord of all proceedings and of all resolutions and orders issued or adopted, and shall provide for an annual audit of the accounts of receipts and disbursements.

4. In addition to other duties and powers conferred upon the division of soil conservation, the division has the following duties and powers:

*a.* To offer assistance as appropriate to the commissioners of soil and water conservation districts in carrying out any of their powers and programs.

*b.* To take notice of each district's long-range resource conservation plan established under section 161A.7, in order to keep the commissioners of each of the several districts informed of the activities and experience of all other districts, and to facilitate an interchange of advice and experience between such districts and cooperation between them.

*c.* To coordinate the programs of the soil and water conservation districts so far as this may be done by advice and consultation.

*d.* To secure the cooperation and assistance of the United States and any of its agencies, and of agencies of this state, in the work of such districts.

*e.* To disseminate information throughout the state concerning the activities and program of the soil and water conservation districts.

*f.* To render financial aid and assistance to soil and water conservation districts for the purpose of carrying out the policy stated in this chapter.

*g.* To assist each soil and water conservation district in developing a district soil and water resource conservation plan as provided under section 161A.7. The plan shall be developed according to rules adopted by the division to preserve and protect the public interest in the soil and water resources of this state for future generations and for this purpose to encourage, promote, facilitate, and where such public interest requires, to mandate the conservation and proper control of and use of the soil and water resources of this state, by measures including, but not limited to, the control of floods, the control of erosion by water or by wind, the preservation of the quality of water for its optimum use for agricultural, irrigation, recreational, industrial, and domestic purposes, all of which shall be presumed to be conducive to the public health, convenience, and welfare, both present and future.

*h.* To file the district soil and water resource conservation plans as part of a state soil and water resource conservation plan. The state plan shall contain on a statewide basis the information required for a district plan under this section.

*i.* To establish a position of state drainage coordinator for drainage districts and drainage and levee districts which will keep the management of those districts informed of the activities and experience

of all other such districts and facilitate an interchange of advice, experience and cooperation among the districts, coordinate by advice and consultation the programs of the districts, secure the cooperation and assistance of the United States and its agencies and of the agencies of this state and other states in the work of the districts, disseminate information throughout the state concerning the activities and programs of the districts and provide other appropriate assistance to the districts.

5. The division, in consultation with the commissioners of the soil and water conservation districts, shall conduct a biennial review to survey the availability of private soil and water conservation control contractors in each district. A report containing the results of the review shall be prepared and posted on the department's internet site.

2007 Acts, ch 22, §43  
Confirmation, see §2.32  
Subsection 1, unnumbered paragraph 1 amended

#### **161A.23 Agreement by fifty percent of landowners.**

1. After obtaining agreements to carry out recommended soil conservation measures and proper farm plans from owners of not less than fifty percent of the lands situated in the subdistrict, the governing body of the subdistrict shall have the authority to establish a special tax for the purpose of organization, construction, repair, alteration, enlargement, extension, and operation of present and future works of improvement within the boundaries of said subdistrict.

2. The governing body shall appoint three appraisers to assess benefits and classify the land affected by such improvements. One of such appraisers shall be a competent licensed professional engineer and two of them shall be resident landowners of the county or counties in which the subdistrict is located but not living within nor owning or operating any lands included in said subdistrict.

3. The appraisers shall take and subscribe an oath of their qualifications and to perform the duties of classification of said lands, fix the percentages, benefits and apportion and assess the costs and expenses of construction of the said improvement according to law and their best judgment, skill, and ability. If said appraisers or any of them fail or neglect to act or perform the duties in the time and as required of them by law, the governing body of the subdistrict shall appoint others with like qualifications to take their places and perform said duties.

2007 Acts, ch 126, §38  
Unnumbered paragraph 1 amended and editorially designated as subsections 1 and 2

Former unnumbered paragraph 2 editorially designated as subsection 3

## CHAPTER 161D

### LOESS HILLS AND SOUTHERN IOWA DEVELOPMENT AND CONSERVATION

#### **161D.1 Loess hills development and conservation authority created — membership and duties.**

1. A loess hills development and conservation authority is created. The counties of Adams, Adair, Audubon, Carroll, Cass, Cherokee, Crawford, Fremont, Guthrie, Harrison, Ida, Lyon, Mills, Monona, Montgomery, Page, Plymouth, Pottawattamie, Sac, Shelby, Sioux, Taylor, and Woodbury, are entitled to one voting member each on the authority, but membership or participation in projects of the authority is not required. Each member of the authority shall be appointed by the respective board of supervisors for a term to be determined by each board of supervisors, but the term shall not be for less than one year. An appointee shall serve without compensation, but an appointee may be reimbursed for actual expenses incurred while performing the duties of the authority as determined by each board of supervisors. The authority shall meet, organize, and adopt rules of procedures as deemed necessary to carry out its duties. The authority may appoint working committees that include other individuals in addition to voting members.

2. The mission of the authority is to develop and coordinate plans for projects related to the unique natural resource, rural development, and infrastructure problems of counties in the deep loess region of western Iowa. The erosion and degradation of stream channels in the deep loess soils has occurred due to historic channelization of the Missouri river and straightening stream channels of its tributaries. This erosion of land has damaged the rural infrastructure of this area, destroyed public roads and bridges, adversely impacted stream water quality and riparian habitat, and affected other public and private improvements. Stabilization of stream channels is necessary to protect the rural infrastructure in the deep loess soils area of the state. The authority shall cooperate with the division of soil conservation of the

department of agriculture and land stewardship, the affected soil and water conservation districts, the department of natural resources, and the state department of transportation in carrying out its mission and duties. The authority shall also cooperate with appropriate federal agencies, including the United States environmental protection agency, the United States department of interior, and the United States department of agriculture natural resources conservation service. The authority shall make use of technical resources available through member counties and cooperating agencies.

3. The authority shall administer the loess hills development and conservation fund created under section 161D.2 and shall deposit and expend moneys in the fund for the planning, development, and implementation of development and conservation activities or measures in the member counties.

4. A hungry canyons alliance is created. The hungry canyons alliance shall be governed by a board of directors appointed as provided in its by-laws and the board shall carry out its responsibilities under the general direction of the loess hills development and conservation authority. The by-laws of the hungry canyons alliance are subject to review and approval of the loess hills development and conservation authority.

5. This subchapter is not intended to affect the authority of the department of natural resources in its acquisition, development, and management of public lands within the counties represented by the authority.

6. In matters relating to the conservation, preservation, or development of the loess hills, state agencies shall coordinate, cooperate, and consult with the loess hills development and conservation authority and its associated alliances.

2007 Acts, ch 211, §43  
Subsection 1 amended

## CHAPTER 165

### ERADICATION OF BOVINE TUBERCULOSIS

#### **165.18 Brucellosis and tuberculosis eradication fund.**

1. A brucellosis and tuberculosis eradication fund is created in the office of the secretary of agriculture, to be used together with state and federal funds available to pay:

a. The indemnity and other expenses provided in this chapter.

b. The indemnity as set out in section 164.21 and other expenses provided in chapter 164.

c. The expenses of the inspection and testing program provided in chapter 163A, but only to the



extent that the moneys in the fund are not required for expenses incurred under chapter 164 or this chapter.

*d.* Indemnities as provided in section 159.5, subsection 12, but only to the extent that the moneys in the fund are not required to pay expenses under chapter 163A, chapter 164, or this chapter.

2. If it appears to the secretary of agriculture that the balance in the fund on January 20 is insufficient to carry on the work in the state for the following fiscal year, the secretary shall notify the board of supervisors of each county to levy an amount sufficient to pay the expenses estimated

to be incurred under subsection 1 for the following fiscal year, subject to a maximum levy of thirty-three and three-fourths cents per thousand dollars of assessed value of all taxable property in the county.

3. Not later than December 15 or June 15 of a year in which the tax is collected, the county treasurer shall transmit the amount of the tax levied and collected to the treasurer of state, who shall credit it to the brucellosis and tuberculosis eradication fund.

2007 Acts, ch 22, §44  
Subsection 1, paragraphs c and d amended

## CHAPTER 169C

### TRESPASSING OR STRAY LIVESTOCK

#### 169C.1 Definitions.

As used in this chapter, unless the context otherwise requires:

1. “*Aggrieved party*” means a landowner or a local authority.

2. “*Fence*” means a fence as described in chapter 359A which is lawful and tight as provided in that chapter, including but not limited to a partition fence. For purposes of this chapter, “*fence*” includes a fence bordering a public road.

3. “*Landowner*” means a person who holds an interest in land, including a titleholder or tenant.

4. “*Livestock*” means an animal belonging to the bovine, caprine, equine, ovine, or porcine species; ostriches, rheas, or emus; farm deer as defined in section 170.1; or poultry.

5. “*Livestock care provider*” means a person designated by a local authority to provide care to livestock which is distrained by a local authority.

6. “*Livestock owner*” means the person who holds title to livestock or who is primarily responsible for the care and feeding of the livestock as provided by the titleholder.

7. “*Local authority*” means a city as defined in section 362.2 or a county as provided in chapter 331.

8. “*Maintenance*” means the provision of shelter, food, water, or a nutritional formulation as required pursuant to chapter 717.

9. “*Public road*” means a thoroughfare and its right-of-way, whether reserved by public ownership or easement, for use by the traveling public.

2007 Acts, ch 64, §1  
NEW subsection 2 and former subsections 2 – 7 renumbered as 3 – 8  
NEW subsection 9

#### 169C.6 Habitual trespass.

A habitual trespass occurs when livestock trespasses from the land where the livestock are kept onto the land of a neighboring landowner or strays from the land where the livestock are kept onto a public road, and on three or more separate occa-

sions within the prior twelve-month period the same or different livestock kept on that land have trespassed onto the land of the same neighboring landowner or strayed from the land where the livestock are kept onto the same public road.

1. The local authority upon its own initiative or upon receipt of a complaint shall determine whether livestock are trespassing or straying from the land where the livestock are kept onto a public road, and make a record of its findings.

2. *a.* Once a habitual trespass occurs, a neighboring landowner may request that the responsible landowner of the land where the trespassing or stray livestock are kept erect or maintain a fence on the land. The neighboring landowner shall make the request to the responsible landowner in writing. The responsible landowner may compel an adjacent landowner to contribute to the erection or maintenance of the fence as provided in chapter 359A.

*b.* If the responsible landowner does not erect or maintain a fence within thirty days after receiving the request, the neighboring landowner may apply to the fence viewers as provided in chapter 359A as if the matter were a controversy between the responsible landowner and an adjacent landowner, and the matter shall be resolved by an order issued by the fence viewers, subject to appeal, as provided in chapter 359A. The neighboring landowner shall be a party to the controversy as if the neighboring party were an adjacent landowner. The neighboring landowner is not liable for erecting or maintaining the fence, unless the neighboring landowner is an adjacent landowner who is otherwise required to make a contribution under chapter 359A.

3. If the fence is not erected or maintained as required in section 359A.6, and upon the written request of the board of township trustees, the board of supervisors of the county where the fence is to be erected or maintained shall act in the same

manner as the board of township trustees under that section, including by erecting or maintaining the fence, ordering payment from a defaulted party, and certifying an amount due to the county auditor. The amount due shall include the total costs required to erect or maintain the fence and a pen-

alty equal to five percent of the total costs. The amount shall be placed upon the tax books, and collected with interest and penalties after due, in the same manner as other unpaid property taxes.

2007 Acts, ch 64, §2  
NEW section

## CHAPTER 174

### COUNTY AND DISTRICT FAIRS

#### 174.2 Powers of a fair.

A fair may annually conduct a fair event to further interest in agriculture and to encourage the improvement of agricultural commodities and products, livestock, articles of domestic industry, implements, and other mechanical devices. It may offer and award such premiums as will induce general competition.

In addition to the powers granted in this chapter, a fair shall have the powers of a corporation not for pecuniary profit under the laws of this state and those powers enumerated in its articles of incorporation, such powers to be exercised before and after the holding of a fair event.

No salary or compensation of any kind shall be

paid to the president, vice president, treasurer, or to a director of the fair for such duties. However, the president, vice president, treasurer, or a director of the fair may be reimbursed for actual expenses incurred by carrying out duties under this chapter or chapter 173, including, but not limited to attending the convention provided under section 173.2. A person claiming expenses under this paragraph shall be reimbursed to the same extent that a state employee is entitled to be reimbursed for expenses.

2007 Acts, ch 126, §39  
Nonprofit corporations, see chapter 504  
Unnumbered paragraph 3 amended

## CHAPTER 175

### AGRICULTURAL DEVELOPMENT

#### 175.3 Establishment of authority.

1. *a.* The agricultural development authority is constituted as a public instrumentality and agency of the state exercising public and essential governmental functions.

*b.* The authority is established to undertake programs which assist beginning farmers in purchasing agricultural land and agricultural improvements and depreciable agricultural property for the purpose of farming, and programs which provide financing to farmers for permanent soil and water conservation practices on agricultural land within the state or for the acquisition of conservation farm equipment, and programs to assist farmers within the state in financing operating expenses and cash flow requirements of farming. The authority shall also develop programs to assist qualified agricultural producers within the state with financing other capital requirements or operating expenses.

*c.* The powers of the authority are vested in and exercised by a board of ten members with nine members appointed by the governor subject to confirmation by the senate. The treasurer of state or the treasurer's designee shall serve as an ex officio nonvoting member. No more than five ap-

pointed members shall belong to the same political party. As far as possible the governor shall include within the membership persons who represent financial institutions experienced in agricultural lending, the real estate sales industry, farmers, beginning farmers, average taxpayers, local government, soil and water conservation district officials, agricultural educators, and other persons specially interested in family farm development.

2. The appointed members of the authority shall be appointed by the governor for terms of six years except that, of the first appointments, three members shall be appointed for terms of two years and three members shall be appointed for a term of four years. A person appointed to fill a vacancy shall serve only for the unexpired portion of the term. A member is eligible for reappointment. An appointed member of the authority may be removed from office by the governor for misfeasance, malfeasance or willful neglect of duty or other just cause, after notice and hearing, unless the notice and hearing is expressly waived in writing. An appointed member of the authority may also serve as a member of the Iowa finance authority.

3. Five voting members of the authority constitute a quorum and the affirmative vote of a ma-

majority of the voting members is necessary for any substantive action taken by the authority. The majority shall not include any member who has a conflict of interest and a statement by a member that the member has a conflict of interest is conclusive for this purpose. A vacancy in the membership does not impair the right of a quorum to exercise all rights and perform all duties of the authority.

4. The appointed members of the authority are entitled to receive a per diem as specified in section 7E.6 for each day spent in performance of duties as members, and shall be reimbursed for all actual and necessary expenses incurred in the performance of duties as members.

5. The appointed members of the authority and the executive director shall give bond as required for public officers in chapter 64.

6. Meetings of the authority shall be held at the call of the chairperson or whenever two members so request.

7. The appointed members shall elect a chairperson and vice chairperson annually, and other officers as they determine, but the executive director shall serve as secretary to the authority.

8. The net earnings of the authority, beyond that necessary for retirement of its notes, bonds, or other obligations or to implement the public purposes and programs authorized, shall not inure to the benefit of any person other than the state. Upon termination of the existence of the authority, title to all property owned by the authority including any net earnings shall vest in the state.

2007 Acts, ch 215, §§89, 90  
Confirmation, see §2.32  
Subsection 1, paragraph a amended  
Subsection 7 amended

#### 175.7 Executive director — staff.

1. The governor, subject to confirmation by the senate, shall appoint an executive director of the authority, who shall serve at the pleasure of the governor. The executive director shall be selected primarily for administrative ability and knowledge in the field, without regard to political affiliation.

2. The executive director shall not, directly or indirectly, exert influence to induce any other officers or employees of the state to adopt a political view, or to favor a political candidate for office.

3. The executive director shall advise the authority on matters relating to agricultural land and property and agricultural finance, and carry out all directives from the authority, and shall hire and supervise the authority's staff pursuant to its directions and under the merit system provisions of chapter 8A, subchapter IV, except that principal administrative assistants with responsibilities in beginning farm loan programs, accounting, mortgage loan processing, and investment portfolio management are exempt from the merit system.

4. The executive director, as secretary of the

authority, shall be custodian of all books, documents and papers filed with the authority and of its minute book and seal. The executive director may cause to be made copies of all minutes and other records and documents of the authority and give certificates under the seal of the authority to the effect that the copies are true copies and all persons dealing with the authority may rely upon the certificates.

2007 Acts, ch 215, §91  
Confirmation, see §2.32  
Subsection 1 stricken and rewritten

#### 175.8 Annual report — annual audit.

1. The authority shall submit to the governor and to the members of the general assembly as request it, not later than January 15 of each year, a complete and economically designed and reproduced report setting forth:

a. Its operations and accomplishments.

b. Its receipts and expenditures during the fiscal year, in accordance with the classifications it establishes for its operating and capital accounts.

c. Its assets and liabilities at the end of its fiscal year and the status of reserve, special and other funds.

d. A schedule of its bonds and notes outstanding at the end of its fiscal year, together with a statement of the amounts redeemed and issued during its fiscal year.

e. A statement of its proposed and projected activities.

f. Recommendations to the general assembly, as it deems necessary.

g. An analysis of beginning farmer needs in the state.

2. The annual report shall identify performance goals of the authority, and clearly indicate the extent of progress during the reporting period, in attaining the goals. Where possible, results shall be expressed in terms of number of loans and acres of agricultural land.

3. For fiscal years beginning on or after July 1, 2007, the auditor of state shall conduct an annual audit of the agricultural development authority to be paid from resources of the authority notwithstanding any other audit conducted on behalf of the authority's board of directors. The auditor of state may acquire the services of an outside audit firm, if necessary, to conduct the audit as required in this subsection.

2007 Acts, ch 215, §92  
NEW subsection 3

#### 175.37 Agricultural assets transfer tax credit — agreement.

1. An agricultural assets transfer tax credit is allowed under this section. The tax credit is allowed against the taxes imposed in chapter 422, division II, as provided in section 422.11M, and in chapter 422, division III, as provided in section 422.33, to facilitate the transfer of agricultural as-

sets from a taxpayer to a beginning farmer.

2. In order to qualify for the tax credit, the taxpayer must meet qualifications established by rules adopted by the authority. At a minimum, the taxpayer must comply with all of the following:

*a.* Be a person who may acquire or otherwise obtain or lease agricultural land in this state pursuant to chapter 9H or 9I. However, the taxpayer must not be a person who may acquire or otherwise obtain or lease agricultural land exclusively because of an exception provided in one of those chapters or in a provision of another chapter of this Code including but not limited to chapter 10, 10C, 10D, or 501, or section 15E.207.

*b.* Execute an agricultural assets transfer agreement with a beginning farmer as provided in this section.

3. An individual may claim a tax credit under this section of a partnership, limited liability company, S corporation, estate, or trust electing to have income taxed directly to the individual. The amount claimed by the individual shall be based upon the pro rata share of the individual's earnings from the partnership, limited liability company, S corporation, estate, or trust.

4. The tax credit is allowed only for agricultural assets that are subject to an agricultural assets transfer agreement. The agreement shall provide for the lease of agricultural land including any improvements and may provide for the rental of agricultural equipment as defined in section 322F.1.

*a.* The agreement may be made on a cash basis or on a commodity share basis which includes a share of the crops or livestock produced on the agricultural land. The agreement must be in writing.

*b.* The agreement shall be for at least two years, but not more than five years. The agreement or that part of the agreement providing for the lease may be renewed by the beginning farmer for a term of at least two years, but not more than five years. An agreement does not include a lease or the rental of equipment intended as a security.

5. The tax credit shall be calculated based on the gross amount paid to the taxpayer under the agricultural assets transfer agreement.

*a.* Except as provided in paragraph "b", the tax credit shall equal five percent of the amount paid to the taxpayer under the agreement.

*b.* The tax credit shall equal fifteen percent of the amount paid to the taxpayer from crops or animals sold under an agreement in which the payment is exclusively made from the sale of crops or animals.

6. In order to qualify as a beginning farmer, a person must be eligible to receive financial assistance under section 175.12.

7. A tax credit in excess of the taxpayer's liability for the tax year may be credited to the tax liability for the following five years or until depleted, whichever is earlier. A tax credit shall not be car-

ried back to a tax year prior to the tax year in which the taxpayer redeems the tax credit. A tax credit shall not be transferable to any other person other than the taxpayer's estate or trust upon the taxpayer's death.

8. A taxpayer shall not claim a tax credit under this section unless a tax credit certificate issued by the authority is attached to the taxpayer's tax return for the tax year for which the tax credit is claimed. The authority must review and approve an application for a tax credit as provided by rules adopted by the authority. The application must include a copy of the agricultural assets transfer agreement. The authority may approve an application and issue a tax credit certificate to a taxpayer who has previously been allowed a tax credit under this section. The authority may require that the parties to an agricultural assets transfer agreement provide additional information as determined relevant by the authority. The authority shall review an application for a tax credit which includes the renewal of an agricultural assets transfer agreement to determine that the parties to the renewed agreement meet the same qualifications as required for an original application. However, the authority shall not approve an application or issue a certificate to a taxpayer if any of the following applies:

*a.* The taxpayer is at fault for terminating a prior agricultural assets transfer agreement as determined by the authority.

*b.* The taxpayer is any of the following:

(1) A party to a pending administrative or judicial action, including a contested case proceeding under chapter 17A, relating to an alleged violation involving an animal feeding operation as regulated by the department of natural resources, regardless of whether the pending action is brought by the department or the attorney general.

(2) Classified as a habitual violator for a violation of state law involving an animal feeding operation as regulated by the department of natural resources.

*c.* The beginning farmer is responsible for managing or maintaining agricultural land and other agricultural assets that are greater than necessary to adequately support a beginning farmer as determined by the authority according to rules which shall be adopted by the authority.

*d.* The agricultural assets are being leased or rented at a rate which is substantially higher or lower than the market rate for similar agricultural assets leased or rented within the same community, as determined by the authority.

9. A taxpayer or the beginning farmer may terminate an agricultural assets transfer agreement as provided in the agreement or by law. The taxpayer must immediately notify the authority of the termination.

*a.* If the authority determines that the taxpayer is not at fault for the termination, the authority

shall not issue a tax credit certificate to the taxpayer for a subsequent tax year based on the approved application. Any prior tax credit is allowed as provided in this section. The taxpayer may apply for and be issued another tax credit certificate for the same agricultural assets as provided in this section for any remaining tax years for which a certificate was not issued.

b. If the authority determines that the taxpayer is at fault for the termination, any prior tax

credit allowed under this section is disallowed. The tax credit shall be recaptured and the amount of the tax credit shall be immediately due and payable to the department of revenue. If a taxpayer does not immediately notify the authority of the termination, the taxpayer shall be conclusively deemed at fault for the termination.

2007 Acts, ch 22, §45  
Section takes effect January 1, 2007, and applies to tax years beginning on or after that date; 2006 Acts, ch 1161, §7  
Subsection 9, paragraph a amended

## CHAPTER 175A

### GRAPE AND WINE DEVELOPMENT

#### 175A.5 Grape and wine development fund.

1. A grape and wine development fund is created in the state treasury under the control of the department. The fund is composed of moneys appropriated by the general assembly and moneys available to and obtained or accepted by the department from the United States or private sources for placement in the fund.

2. Moneys in the fund are appropriated to the department exclusively to carry out grape and wine development programs as provided in sec-

tion 175A.4, including contracting with a viticulturist or oenologist to provide technical assistance and to provide financial assistance to growers and winemakers as provided in that section.

3. Section 8.33 shall not apply to moneys in the fund. Notwithstanding section 12C.7, moneys earned as income or interest from the fund shall remain in the fund until expended as provided in this section.

2007 Acts, ch 211, §42  
Subsection 1 amended

## CHAPTER 175B

### IOWA FARMERS' MARKET NUTRITION PROGRAM

#### 175B.1 Short title.

This chapter shall be known and may be cited as the "Iowa Farmers' Market Nutrition Program Act".

2007 Acts, ch 84, §1  
NEW section

#### 175B.2 Definitions.

As used in this chapter, unless the context otherwise requires:

1. "Department" means the department of agriculture and land stewardship.

2. "Federal program" means the WIC farmers' market nutrition program and the senior farmers' market nutrition program.

3. "Iowa farmers' market nutrition program" means one or both of the federal programs as established and administered by the department pursuant to section 175B.3.

4. "Senior farmers' market nutrition program" means the federal senior farmers' market nutrition program as authorized by the federal Farm Security and Rural Investment Act of 2002, 7

U.S.C. § 3007, and provided for in 7 C.F.R. pt. 249.

5. "WIC farmers' market nutrition program" means the federal women, infants, and children farmers' market nutrition program as authorized by the federal Child Nutrition Act of 1966, 42 U.S.C. § 1786, and as regulated by 7 C.F.R. pt. 248.

2007 Acts, ch 84, §2  
NEW section

#### 175B.3 Iowa farmers' market nutrition program — establishment and administration.

An Iowa farmers' market nutrition program is established.

1. The department shall administer the Iowa farmers' market nutrition program as a state agency approved by the United States department of agriculture to participate in the federal programs. The department may apply to and submit a state plan for approval by the United States department of agriculture as required to administer the Iowa farmers' market nutrition program.

2. The department and any other state agency,

local government agency, or nonprofit entity participating in the federal programs shall cooperate as necessary in order to carry out the federal programs, including by entering into written agreements. The department and any other state agency shall cooperate under the auspices of the governor.

2007 Acts, ch 84, §3  
NEW section

**175B.4 Other programs.**

Nothing in this chapter restricts the department from providing for programs which promote

the purposes of the federal programs.

2007 Acts, ch 84, §4  
NEW section

**175B.5 Administrative rules.**

The department shall adopt rules in order to administer the Iowa farmers' market nutrition program. If another state agency is involved in the administration of this chapter, the other state agency shall cooperate with the department in adopting its rules.

2007 Acts, ch 84, §5  
Licensing of vendors at farmers' markets, see chapter 137F  
NEW section

**CHAPTER 185C**

**CORN PROMOTION BOARD**

**185C.29 Remission of excess funds.**

1. After the direct and indirect costs incurred by the secretary and the costs of elections, referendums, necessary board expenses, and administrative costs have been paid, at least seventy-five percent of the remaining moneys from a state assessment deposited in the corn promotion fund shall be used to carry out the purposes of this chapter as provided in section 185C.11.

2. The Iowa corn promotion board shall not expend any funds on political activity, and it shall be a condition of any allocation of funds that any organization receiving funds shall not expend the funds on political activity or on any attempt to influence legislation.

2007 Acts, ch 126, §40  
Unnumbered paragraph 1 amended and editorially designated as subsection 1  
Unnumbered paragraph 2 editorially designated as subsection 2

**CHAPTER 190A**

**FARM-TO-SCHOOL PROGRAM**

**190A.1 Farm-to-school program.**

A farm-to-school program is established to encourage and promote the purchase of locally and regionally produced or processed food in order to improve child nutrition and strengthen local and regional farm economies.

2007 Acts, ch 215, §93  
NEW section

**190A.2 Farm-to-school council.**

1. A farm-to-school council is established and made up of seven members representing the following associations or state departments:

- a. One member representing the Iowa school nutrition association.
- b. One member representing the Iowa association for health, physical education, recreation and dance with expertise in health.
- c. One Iowa fruit or vegetable producer.
- d. One Iowa organic meat producer.
- e. The director of the Leopold center or the director's designee.

f. The director of the department of agriculture and land stewardship or the director's designee.

g. The director of the department of education or the director's designee.

2. The members listed under subsection 1, paragraphs "a" through "d", shall be selected by the governor without senate confirmation and shall serve at the pleasure of the governor.

2007 Acts, ch 215, §94  
NEW section

**190A.3 Goals and strategies.**

1. The program seeks to link elementary and secondary public and nonpublic schools in this state with Iowa farms to provide schools with fresh and minimally processed food for inclusion in school meals and snacks, encourage children to develop healthy eating habits, and provide Iowa farmers access to consumer markets.

2. The farm-to-school program may include ac-

tivities that provide students with hands-on learning opportunities, such as farm visits, cooking demonstrations, and school gardening and composting programs.

3. The farm-to-school council shall seek to establish partnerships with public agencies and nonprofit organizations to implement a structure to facilitate communication between farmers and schools.

4. The farm-to-school council shall actively seek financial or in-kind contributions from orga-

nizations or persons to support the program.

2007 Acts, ch 215, §95  
NEW section

**190A.4 Agency cooperation.**

The department of agriculture and land stewardship and the department of education shall provide information regarding the Iowa farm-to-school program in an electronic format on the department's internet website.

2007 Acts, ch 215, §96  
NEW section

**CHAPTER 190B**

RESERVED

**CHAPTER 191**

LABELING FOODS

**191.6 Standards for oleomargarine.**

The department may prescribe and establish standards for oleo, oleomargarine, or margarine manufactured or sold in this state and may adopt the standards set up by now existing regulations of the federal security administration or agency as found in 1949, Code of Federal Regulations,

Title 21, Part 45, § 45.0, or any amendments thereto. Any standards so established shall not be contrary to or inconsistent with the provisions of section 190.1, subsection 6, entitled "*Oleomargarine*".

2007 Acts, ch 22, §46  
Section amended

**CHAPTER 196**

EGG HANDLERS

**196.3 Egg handler's license and fee.**

1. Every egg handler shall obtain an annual license from the department. The fee for the license shall be determined on the basis of the total number of eggs purchased or handled during the preceding month of April in each calendar year as follows:

- a. Less than one hundred twenty-five cases ..... \$20.20
- b. One hundred twenty-five cases or more but less than two hundred fifty cases ..... \$47.25
- c. Two hundred fifty cases or more but less than one thousand cases ..... \$67.50
- d. One thousand cases or more but less than five thousand cases ..... \$135.00

- e. Five thousand cases or more but less than ten thousand cases ..... \$236.25
- f. Ten thousand cases or more ..... \$337.50

2. The license shall expire one year after its date of issue. For the purpose of determining fees, a case shall be thirty dozen eggs. All fees collected shall be remitted to the treasurer of state for deposit in the general fund of the state.

3. If an egg handler is not operating during the month of April, the department shall estimate the volume of eggs purchased or handled, or both, and may revise the fee based on three months of operation.

2007 Acts, ch 215, §218  
Section amended

## CHAPTER 203

## GRAIN DEALERS

**203.1 Definitions.**

As used in this chapter, unless the context otherwise requires:

1. *“Bond”* means a bond issued by a surety company or an irrevocable letter of credit issued by a financial institution described in subsection 7.

2. *“Check”* means a paper instrument used for ordering, instructing, or authorizing a financial institution to make payment or credit a presenter’s account and debit the issuer’s account. *“Check”* includes instruments commonly referred to as a check, draft, share draft, or other negotiable instrument for the payment of money. An instrument may be a check even though it is described on its face by another term, such as “money order”.

3. *“Credit-sale contract”* means a contract for the sale of grain pursuant to which the sale price is to be paid more than thirty days after the delivery of the grain to the buyer, or a contract which is titled as a credit-sale contract, including but not limited to those contracts commonly referred to as deferred-payment contracts, deferred-pricing contracts, and price-later contracts.

4. *“Custom livestock feeder”* means a person who buys grain for the sole purpose of feeding it to livestock owned by another person in a feedlot as defined in section 172D.1, subsection 6, or a confinement building owned or operated by the custom livestock feeder and located in this state.

5. *“Department”* means the department of agriculture and land stewardship.

6. *“Electronic funds transfer”* means a remote electronic transmission used for ordering, instructing, or authorizing a financial institution to pay money to or credit the account of the payee and debit the account of the payer. The remote electronic transmission may be initiated by telephone, terminal, computer, or similar device.

7. *“Financial institution”* means a bank or savings and loan association authorized by the state of Iowa or by the laws of the United States, which is a member of the federal deposit insurance corporation or the federal savings and loan insurance corporation, respectively; or the national bank for cooperatives established in the Agricultural Credit Act, Pub. L. No. 100-233.

8. *“Good cause”* means that the department has cause to believe that the net worth or current asset to current liability ratio of a grain dealer presents a danger to sellers with whom the grain dealer does business, based on evidence of any of the following:

a. The making of a payment by use of a check or electronic funds transfer, and a financial institution refuses payment because of insufficient

moneys in a grain dealer’s account.

b. A violation of recordkeeping requirements provided in this chapter or rules adopted pursuant to this chapter by the department.

c. A substantial risk of loss to the grain depositors and sellers indemnity fund caused by the possible insolvency of the grain dealer based on a statistical model provided in section 203.22.

9. *“Grain”* means any grain for which the United States department of agriculture has established standards including, but not limited to, corn, wheat, oats, soybeans, rye, barley, grain sorghum, flaxseeds, sunflower seed, spelt (emmer), and field peas.

10. *“Grain dealer”* means a person who cumulatively purchases at least one thousand bushels of grain from producers during any calendar month, if such grain is delivered within or into this state for purposes of resale, milling, or processing in this state. However, *“grain dealer”* does not include any of the following:

a. A producer of grain who is buying grain for the producer’s own use as seed or feed.

b. A person solely engaged in buying grain future contracts on the board of trade.

c. A person who purchases grain only for sale in a feed regulated under chapter 198.

d. A person who purchases grain only from grain dealers licensed under this chapter.

e. A person engaged in the business of selling agricultural seeds regulated by chapter 199.

f. A person buying grain only as a farm manager.

g. An executor, administrator, trustee, guardian, or conservator of an estate.

h. A custom livestock feeder.

i. A cooperative organized under chapter 501 or 501A, if the cooperative only purchases grain from its members who are producers or from a licensed grain dealer, and the cooperative does not resell that grain.

j. A limited liability company as defined in section 490A.102 that meets all of the following requirements:

(1) The majority of voting rights in the limited liability company are held by its members who are producers.

(2) The purpose of the limited liability company is to produce renewable fuel as defined in section 214A.1.

(3) The limited liability company only purchases grain from its members who are producers or from a licensed grain dealer.

(4) The limited liability company does not resell grain that it purchases.

11. *“Person”* means the same as defined in section 4.1 and includes a business association as de-



fined in section 202B.102 or joint or common venture regardless of whether it is organized under a chapter of the Code.

12. “*Producer*” means the owner, tenant, or operator of land in this state who has an interest in and receives all or a part of proceeds from the sale of grain produced on that land.

13. “*Seller*” means a person who sells grain which the person has produced or caused to be produced to a licensed grain dealer, and includes a person who executes a credit-sale contract as a seller.

2007 Acts, ch 22, §47  
Subsection 10, paragraph j, subparagraph (2) amended

### 203.5 License.

1. Upon the filing of the application and compliance with the terms and conditions of this chapter and rules of the department, the department shall issue a license to the applicant. The license shall terminate at the end of the third calendar month following the close of the grain dealer’s fiscal year. A grain dealer’s license may be renewed annually by the filing of a renewal fee and a renewal application on a form prescribed by the department. An application for renewal shall be received by the department on or before the end of the third calendar month following the close of the grain dealer’s fiscal year. A grain dealer license which has terminated may be reinstated by the department upon receipt of a proper renewal application,

the renewal fee, and the reinstatement fee as provided in section 203.6 if filed within thirty days from the date of termination of the grain dealer license. The department may cancel a license upon request of the licensee unless a complaint or information is filed against the licensee alleging a violation of a provision of this chapter. Fees for licenses issued for less than a full year shall be prorated from the date of the application.

2. If an applicant has had a license under this chapter or chapter 203C revoked for cause within the past three years, or has been convicted of a felony involving violations of this chapter or chapter 203C, or is owned or controlled by a person who has had a license so revoked or who has been so convicted, the department may deny a license to the applicant.

3. The department may deny a license to an applicant if any of the following apply:

a. The applicant has caused liability to the Iowa grain depositors and sellers indemnity fund in regard to a license issued under this chapter or chapter 203C, and the liability has not been discharged, settled, or satisfied.

b. The applicant is owned or controlled by a person who has caused liability to the fund through operations under a license issued under this chapter or chapter 203C and the liability has not been discharged, settled, or satisfied.

2007 Acts, ch 22, §48  
Section amended

## CHAPTER 203C

### WAREHOUSES FOR AGRICULTURAL PRODUCTS

#### 203C.6 Issuance of license and financial responsibility.

1. The department, upon application to it, may issue to a warehouse operator or to a person about to become a warehouse operator a license for the operation of a warehouse in accordance with this chapter and the rules adopted by the department under section 203C.5. A single license to operate two or more warehouses located anywhere within the state may be issued.

2. The type of license required shall be determined as follows:

a. A class 1 license is required if the storage capacity of a warehouse is more than one hundred thousand bushels.

b. A class 2 license is required for a warehouse that is not required to have a class 1 license.

3. An application for a warehouse license shall be accompanied by a complete financial statement of the applicant setting forth the assets, liabilities and net worth of the applicant. The financial statement must be prepared according to generally accepted accounting principles. Assets shall be

shown at original cost less depreciation. Upon written request, the department may allow asset valuations in accordance with a competent appraisal. Unpriced contracts shall be shown as a liability and valued at the applicable current market price of grain as of the date the financial statement is prepared.

4. In order to receive and retain a class 1 license, the following conditions must be satisfied:

a. The warehouse operator shall have and maintain a net worth of at least twenty-five cents per bushel of warehouse capacity, or maintain a deficiency bond or an irrevocable letter of credit in the amount of two thousand dollars for each one thousand dollars or fraction thereof of net worth deficiency. However, a person shall not be licensed as a class 1 warehouse operator if the person has a net worth of less than twenty-five thousand dollars.

b. The warehouse operator shall submit, as required by the department, a financial statement that is accompanied by an unqualified opinion based upon an audit performed by a certified pub-

lic accountant licensed in this state. However, the department may accept a qualification in an opinion that is unavoidable by any audit procedure that is permitted under generally accepted accounting principles. An opinion that is qualified because of a limited audit procedure or because the scope of an audit is limited shall not be accepted by the department. The department shall not require that a warehouse operator submit more than one such unqualified opinion per year. The warehouse operator may elect, however, to submit a financial statement that is accompanied by the report of a certified public accountant licensed in this state that is based upon a review performed by the certified public accountant in lieu of the audited financial statement specified in this paragraph. However, at any time the department may require a financial statement that is accompanied by the report of a certified public accountant licensed in this state that is based upon a review performed by a certified public accountant if the department has good cause.

5. In order to receive and maintain a class 2 license, the following conditions must be satisfied:

a. The warehouse operator shall have and maintain a net worth of at least twenty-five cents per bushel of warehouse capacity, or maintain a deficiency bond or an irrevocable letter of credit in the amount of two thousand dollars for each one thousand dollars or fraction thereof of net worth deficiency. However, a person shall not be licensed as a class 2 warehouse operator if the person has a net worth of less than ten thousand dollars.

b. The warehouse operator shall submit, as required by the department, a financial statement that is accompanied by an unqualified opinion based upon an audit performed by a certified public accountant licensed in this state. However, the department may accept a qualification in an opinion that is unavoidable by any audit procedure that is permitted under generally accepted accounting principles. An opinion that is qualified because of a limited audit procedure or because the scope of an audit is limited shall not be accepted by the department. The department shall not require that a warehouse operator submit more than one such unqualified opinion per year. The warehouse operator may elect, however, to submit a financial statement that is accompanied by the report of a certified public accountant licensed in this state that is based upon a review performed by the certified public accountant in lieu of the audited financial statement specified in this paragraph. However, at any time the department may require a financial statement that is accompanied by the report of a certified public accountant licensed in this state that is based upon a review performed by a certified public accountant if the department has good cause.

6. The department may adopt rules governing the timing and form of financial statements to be

submitted to it. The department may require additional information or verification with respect to the financial resources of the applicant or licensee and the applicant's or licensee's ability to maintain the quantity and quality of stored grain.

7. If an applicant has had a license under chapter 203 or this chapter revoked for cause within the past three years, or has been convicted of a felony involving violations of chapter 203 or this chapter, or is owned or controlled by a person who has had a license so revoked or who has been so convicted, the department may deny a license to the applicant.

8. The department may deny a license to an applicant if any of the following apply:

a. The applicant has caused liability to the Iowa grain depositors and sellers indemnity fund through operations under a license issued under this chapter or chapter 203, and the liability has not been discharged, settled, or satisfied.

b. The applicant is owned or controlled by a person who has caused liability to the fund through operations under a license issued under this chapter or chapter 203, and the liability has not been discharged, settled, or satisfied.

9. A deficiency bond or irrevocable letter of credit filed with the department pursuant to this section shall not be canceled by the issuer on less than one hundred twenty days' notice by certified mail to the department and the principal.

2007 Acts, ch 22, §49  
Subsection 7 amended

### **203C.17 Receiving bulk grain at licensed and unlicensed warehouses.**

1. Any grain which has been received at any licensed warehouse for which the actual sale price is not fixed and proper documentation made or payment made shall be construed to be grain held for storage within the meaning of this chapter. Grain may be held in open storage or placed on warehouse receipt. A warehouse receipt shall be issued for all grain held in open storage within one year from the date of delivery to the warehouse, unless the depositor has signed a statement that the depositor does not desire a warehouse receipt. A warehouse receipt shall be issued upon request by the depositor. The warehouse operator's tariff shall apply for any grain that is retained in open storage or under warehouse receipt.

2. Bulk grain deposited with a licensed warehouse operator for processing, cleaning, drying, shipping for the account of the depositor or any other purpose shall be removed within thirty days or such grain shall be determined as stored grain and the warehouse operator's tariff charges shall apply.

3. Grain received on a scale ticket which fails to have the price fixed and properly documented on the records of the warehouse operator shall be construed to be in open storage.

4. All bulk grain whether open storage or having been placed on warehouse receipt is covered by the grain depositors and sellers indemnity fund created in chapter 203D.

5. Any grain which has been received at any unlicensed warehouse and for which the actual sale price has not been fixed and payment made within thirty days from receipt of the grain, unless covered by a credit-sale contract, shall be construed to be unlawful storage within the meaning of this chapter. Bulk grain received at any unlicensed warehouse for any other purpose must either be returned to the depositor or disposed of by order of the depositor within thirty days from date of actual deposit of the bulk grain.

6. If the depositor of bulk grain in an unlicensed warehouse fails to sell the grain or orders other disposition of the grain, the warehouse operator may purchase the grain, if otherwise allowed by law, on the thirtieth day after deposit at not less than the local market price at the close of business on the thirtieth day or return the grain to the depositor by the thirtieth day.

7. A licensed warehouse operator who does not have a sufficient quantity or quality of grain to satisfy the warehouse operator's obligations based on an examination by the department shall not purchase grain on credit-sale contract to correct the shortage of grain. A licensed warehouse operator shall not issue a warehouse receipt for purposes of providing collateral, if the grain which is the subject of the warehouse receipt was purchased by credit-sale contract and is unpaid for by the warehouse operator.

8. Every licensed warehouse operator shall, on or before July 1 of each year, send a statement for each holder of a warehouse receipt covering grain held for more than one year at that warehouse to the holder's last known address. The statement shall show the amount of all grain held pursuant to warehouse receipt for such warehouse receipt holder and the amount of any storage charges held by the licensed warehouse operator against that grain. However, a licensed warehouse operator need not prepare this annual statement for a holder of a warehouse receipt, if the licensed warehouse operator prepares such statements monthly, quarterly or for any other period more frequent than annually. The failure to prepare a statement required by this subsection is a simple misdemeanor.

Violation of this section shall not constitute grounds for suspension, revocation, or modification of the license of anyone licensed under this chapter.

2007 Acts, ch 30, §45, 46, 80

See §203.15

2007 amendment to subsection 1 applies to a document of title issued or a bailment that arises on or after July 1, 2007; for law governing a document of title issued or a bailment that arose prior to July 1, 2007, see Code 2007; 2007 Acts, ch 30, §45, 46

Subsection 1 amended

### **203C.18 Warehouse receipts — issuance, printing, and electronic filing.**

1. For all agricultural products that become storage in a licensed warehouse, warehouse receipts signed by the licensed warehouse operator or the operator's authorized agent shall be issued by the licensed warehouse operator. Such warehouse receipts shall be in the form required or permitted by uniform commercial code, sections 554.7202 and 554.7204, provided, however, that each receipt issued for agricultural products, in addition to the matters specified in uniform commercial code, section 554.7202, shall embody in its written or printed terms:

a. The receiving and loadout charges which will be made by the warehouse operator.

b. The grade or other class of the agricultural products received and the standard or description in accordance with which such classification has been made; provided that such grade or other class shall be stated according to the official standard of the United States applicable to such agricultural products as the same may be fixed and promulgated; provided, further, that until such official standards of the United States for any agricultural product or products have been fixed and promulgated, the grade or other class thereof may be stated in accordance with any recognized standard or in accordance with such rules and regulations not inconsistent herewith as may be prescribed by the secretary of agriculture of the United States.

c. A statement that the receipt is issued subject to the Iowa warehouse Act and the rules and regulations prescribed pursuant to the Act.

d. Such other terms and conditions as may be required by rules of the department.

2. Warehouses that are not licensed pursuant to this chapter or by the United States government shall not issue warehouse receipts for agricultural products.

3. Forms for warehouse receipts shall only be printed by a person approved by the department. A form for a warehouse receipt shall be printed in accordance with specifications set forth by the department. A form for a warehouse receipt that is unused at the time that a warehouse operator's license is canceled, suspended, revoked, or terminated shall be surrendered to the department.

4. The department may adopt rules to allow for the issuance of electronic warehouse receipts by a provider who is a person approved by the department to maintain a secure electronic central filing system of electronic records including warehouse receipts and who is independent of an outside influence or bias in action or appearance.

2007 Acts, ch 30, §45, 46, 81

2007 amendment to this section applies to a document of title issued or a bailment that arises on or after July 1, 2007; for law governing a document of title issued or a bailment that arose prior to July 1, 2007, see Code 2007; 2007 Acts, ch 30, §45, 46

Section amended

**203C.19 Rights and obligations with respect to warehouse receipts — lost receipts.**

1. Insofar as not inconsistent with the provisions of this chapter, original or duplicate receipts issued by licensed warehouse operators shall be deemed to have been issued under the provisions of uniform commercial code, chapter 554, article 7.

2. Duplicates and releases for lost, destroyed,

or stolen warehouse receipts may be issued only in accordance with the provisions of sections 554.7601 and 554.7601A.

2007 Acts, ch 30, §45, 46, 82

2007 amendment to this section applies to a document of title issued or a bailment that arises on or after July 1, 2007; for law governing a document of title issued or a bailment that arose prior to July 1, 2007, see Code 2007; 2007 Acts, ch 30, §45, 46

Section amended

## CHAPTER 205

### SALE AND DISTRIBUTION OF POISONS

**205.6 Poison register.**

It shall be unlawful for any pharmacist to sell at retail any of the poisons enumerated in section 205.5 unless the pharmacist ascertains that the purchaser is aware of the character of the drug and the purchaser represents that it is to be used for a proper purpose and every sale of any poison enumerated in section 205.5 shall be entered in a book kept for that purpose, to be known as a “Poison Register” and the same shall show the date of the sale, the name and address of the purchaser, the name of the poison, the purpose for which it was represented to be purchased, and the name of the natural person making the sale, which book or books shall be open for inspection by the board of pharmacy, or any magistrate or peace officer of this state, and preserved for at least five years after the date of the last sale therein recorded.

2007 Acts, ch 10, §160

Section amended

**205.11 Enforcement.**

The provisions of this chapter and chapters 124 and 126 shall be administered and enforced by the board of pharmacy. In discharging any duty or exercising any power under those chapters, the board of pharmacy shall be governed by all the provisions of chapter 189, which govern the depart-

ment of agriculture and land stewardship when discharging a similar duty or exercising a similar power with reference to any of the articles dealt with in this subtitle, to the extent that chapter 189 is not inconsistent with this chapter and chapters 124 and 126.

2007 Acts, ch 10, §161

Section amended

**205.12 Chemical analysis of drugs.**

Any chemical analysis deemed necessary by the board of pharmacy in the enforcement of this chapter and chapters 124 and 126 shall be made by the department of agriculture and land stewardship when requested by the board of pharmacy.

2007 Acts, ch 10, §162

Section amended

**205.13 Applicability of other statutes.**

Insofar as applicable, the provisions of chapter 189 shall apply to the articles dealt with in this chapter and chapters 124 and 126. The powers vested in the department of agriculture and land stewardship by chapter 189 shall be deemed for the purpose of this chapter and chapters 124 and 126 to be vested in the board of pharmacy.

2007 Acts, ch 10, §163

Section amended

## CHAPTER 210

### STANDARD WEIGHTS AND MEASURES

**210.12 Sale of fruits and vegetables in baskets.**

Grapes, other fruits, and vegetables may be sold in climax baskets; but when said commodities are sold in such manner and the containers are labeled with the net weight of the contents in accor-

dance with the provisions of section 189.9, all the provisions of chapter 191 shall be deemed to have been complied with.

2007 Acts, ch 126, §41

Section amended

## CHAPTER 214

### COMMERCIAL WEIGHING AND MEASURING DEVICES — MOTOR FUEL PUMPS

#### 214.6 Oath of weighmasters.

All persons keeping a commercial weighing and measuring device, before entering upon their duties as weighmasters, shall be sworn before some person having authority to administer oaths, to

keep their device correctly balanced, to make true weights, and to render a correct account to the person having weighing done.

2007 Acts, ch 126, §42  
Section amended

## CHAPTER 214A

### MOTOR FUEL

#### 214A.2B Laboratory for motor fuel and biofuels.

A laboratory for motor fuel and biofuels is established at a merged area school which is engaged in biofuels testing on July 1, 2007, and which testing includes but is not limited to B20 biodiesel testing for motor trucks and the ability of biofuels to meet A.S.T.M. international standards. The laboratory shall conduct testing of motor fuel sold in this state and biofuel which is blended in motor fuel in this state to ensure that the motor fuel or biofuels meet the requirements in section 214A.2.

2007 Acts, ch 215, §97  
NEW section

#### 214A.9 Poster showing analysis.

Any retail dealer who sells or holds for sale motor fuel, as defined in section 214A.1, may post upon any container or pump from which such motor fuel is being sold, a statement or notice in form to be prescribed by the department, showing the results of the tests of such motor fuel then being sold from such pumps or other containers.

2007 Acts, ch 22, §50  
Section amended

## CHAPTER 215

### INSPECTION OF WEIGHTS AND MEASURES

#### 215.26 Definitions.

As used in this chapter:

1. “*Commercial weighing and measuring device*” means a weight or measure or weighing or measuring device used to establish size, quantity, area or other quantitative measurement of a commodity sold by weight or measurement, or where the price to be paid for producing the commodity is based upon the weight or measurement of the commodity. The term includes an accessory attached to or used in connection with a commercial weighing or measuring device when the accessory is so designed or installed that its operation may affect the accuracy of the device. “*Commercial weighing and measuring device*” includes a public scale.

2. “*Liquefied petroleum gas*” means liquids that do not remain in a liquid state at atmospheric pressures and temperatures composed predominantly of any of the following hydrocarbons, or mixtures of hydrocarbons: propane, propylene, butanes including normal butane or isobutane,

and butylenes.

3. “*Packer*” means a person engaged in the business of any of the following:

- a. Buying livestock in commerce for purposes of slaughter;
- b. Manufacturing or preparing meats or meat food products for sale or shipment in commerce;
- c. Marketing meats, meat food products, or livestock products in an unmanufactured form acting as a wholesale broker, dealer, or distributor in commerce.

4. “*Service agency*” means an individual, firm or corporation which holds itself out to the public as having servicers available to install, service or repair a weighing or measuring device for hire.

5. “*Servicer*” means an individual employed by a service agency who installs, services or repairs a commercial weighing or measuring device for hire, commission or salary.

2007 Acts, ch 126, §43  
Subsection 1 amended

## CHAPTER 216

### CIVIL RIGHTS COMMISSION

#### 216.2 Definitions.

When used in this chapter, unless the context otherwise requires:

1. “*Commission*” means the Iowa state civil rights commission created by this chapter.

2. “*Commissioner*” means a member of the commission.

3. “*Court*” means the district court in and for any judicial district of the state of Iowa or any judge of the court if the court is not in session at that time.

4. “*Covered multifamily dwelling*” means any of the following:

a. A building consisting of four or more dwelling units if the building has one or more elevators.

b. The ground floor units of a building consisting of four or more dwelling units.

5. “*Disability*” means the physical or mental condition of a person which constitutes a substantial disability, and the condition of a person with a positive human immunodeficiency virus test result, a diagnosis of acquired immune deficiency syndrome, a diagnosis of acquired immune deficiency syndrome-related complex, or any other condition related to acquired immune deficiency syndrome. The inclusion of a condition related to a positive human immunodeficiency virus test result in the meaning of “*disability*” under the provisions of this chapter does not preclude the application of the provisions of this chapter to conditions resulting from other contagious or infectious diseases.

6. “*Employee*” means any person employed by an employer.

7. “*Employer*” means the state of Iowa or any political subdivision, board, commission, department, institution, or school district thereof, and every other person employing employees within the state.

8. “*Employment agency*” means any person undertaking to procure employees or opportunities to work for any other person or any person holding itself to be equipped to do so.

9. “*Familial status*” means one or more individuals under the age of eighteen domiciled with one of the following:

a. A parent or another person having legal custody of the individual or individuals.

b. The designee of the parent or the other person having custody of the individual or individuals, with the written permission of the parent or other person.

c. A person who is pregnant or is in the process of securing legal custody of the individual or individuals.

“*Familial status*” also means a person who is pregnant or who is in the process of securing legal

custody of an individual who has not attained the age of eighteen years.

10. “*Gender identity*” means a gender-related identity of a person, regardless of the person’s assigned sex at birth.

11. “*Labor organization*” means any organization which exists for the purpose in whole or in part of collective bargaining, of dealing with employers concerning grievances, terms, or conditions of employment, or of other mutual aid or protection in connection with employment.

12. “*Person*” means one or more individuals, partnerships, associations, corporations, legal representatives, trustees, receivers, and the state of Iowa and all political subdivisions and agencies thereof.

13. “*Public accommodation*” means each and every place, establishment, or facility of whatever kind, nature, or class that caters or offers services, facilities, or goods for a fee or charge to nonmembers of any organization or association utilizing the place, establishment, or facility, provided that any place, establishment, or facility that caters or offers services, facilities, or goods to the nonmembers gratuitously shall be deemed a public accommodation if the accommodation receives governmental support or subsidy. Public accommodation shall not mean any bona fide private club or other place, establishment, or facility which is by its nature distinctly private, except when such distinctly private place, establishment, or facility caters or offers services, facilities, or goods to the nonmembers for fee or charge or gratuitously, it shall be deemed a public accommodation during such period.

“*Public accommodation*” includes each state and local government unit or tax-supported district of whatever kind, nature, or class that offers services, facilities, benefits, grants or goods to the public, gratuitously or otherwise. This paragraph shall not be construed by negative implication or otherwise to restrict any part or portion of the pre-existing definition of the term “*public accommodation*”.

14. “*Sexual orientation*” means actual or perceived heterosexuality, homosexuality, or bisexuality.

15. “*Unfair practice*” or “*discriminatory practice*” means those practices specified as unfair or discriminatory in sections 216.6, 216.7, 216.8, 216.8A, 216.9, 216.10, 216.11, and 216.11A.

2007 Acts, ch 191, §1  
NEW subsection 10 and former subsections 10 – 12 renumbered as 11 – 13

NEW subsection 14 and former subsection 13 renumbered as 15

#### 216.5 Powers and duties.

The commission shall have the following powers

and duties:

1. To prescribe the duties of a director and appoint and prescribe the duties of such investigators and other employees and agents as the commission shall deem necessary for the enforcement of this chapter.

2. To receive, investigate, mediate, and finally determine the merits of complaints alleging unfair or discriminatory practices.

3. To investigate and study the existence, character, causes, and extent of discrimination in public accommodations, employment, apprenticeship programs, on-the-job training programs, vocational schools, credit practices, and housing in this state and to attempt the elimination of such discrimination by education and conciliation.

4. To seek a temporary injunction against a respondent when it appears that a complainant may suffer irreparable injury as a result of an alleged violation of this chapter. A temporary injunction may only be issued ex parte, if the complaint filed with the commission alleges discrimination in housing. In all other cases a temporary injunction may be issued only after the respondent has been notified and afforded the opportunity to be heard.

5. To hold hearings upon any complaint made against a person, an employer, an employment agency, or a labor organization, or the employees or members thereof, to subpoena witnesses and compel their attendance at such hearings, to administer oaths and take the testimony of any person under oath, and to compel such person, employer, employment agency, or labor organization, or employees or members thereof to produce for examination any books and papers relating to any matter involved in such complaint. The commission shall issue subpoenas for witnesses in the same manner and for the same purposes on behalf of the respondent upon the respondent's request. Such hearings may be held by the commission, by any commissioner, or by any hearing examiner appointed by the commission. If a witness either fails or refuses to obey a subpoena issued by the commission, the commission may petition the district court having jurisdiction for issuance of a subpoena and the court shall in a proper case issue the subpoena. Refusal to obey such subpoena shall be subject to punishment for contempt.

6. To issue such publications and reports of investigations and research as in the judgment of the commission shall tend to promote goodwill among the various racial, religious, and ethnic groups of the state and which shall tend to minimize or eliminate discrimination in public accommodations, employment, apprenticeship and on-the-job training programs, vocational schools, or housing because of race, creed, color, sex, sexual orientation, gender identity, national origin, religion, ancestry, or disability.

7. To prepare and transmit to the governor and to the general assembly from time to time, but not less often than once each year, reports describing

its proceedings, investigations, hearings conducted and the outcome thereof, decisions rendered, and the other work performed by the commission.

8. To make recommendations to the general assembly for such further legislation concerning discrimination because of race, creed, color, sex, sexual orientation, gender identity, national origin, religion, ancestry, or disability as it may deem necessary and desirable.

9. To cooperate, within the limits of any appropriations made for its operation, with other agencies or organizations, both public and private, whose purposes are consistent with those of this chapter, and in the planning and conducting of programs designed to eliminate racial, religious, cultural, and intergroup tensions.

10. To adopt, publish, amend, and rescind regulations consistent with and necessary for the enforcement of this chapter.

11. To receive, administer, dispense and account for any funds that may be voluntarily contributed to the commission and any grants that may be awarded the commission for furthering the purposes of this chapter.

12. To defer a complaint to a local civil rights commission under commission rules promulgated pursuant to chapter 17A.

13. To issue subpoenas and order discovery as provided by this section in aid of investigations and hearings of alleged unfair or discriminatory housing or real property practices. The subpoenas and discovery may be ordered to the same extent and are subject to the same limitations as subpoenas and discovery in a civil action in district court.

14. To defer proceedings and refer a complaint to a local commission that has been recognized by the United States department of housing and urban development as having adopted ordinances providing fair housing rights and remedies that are substantially equivalent to those granted under federal law.

15. To utilize volunteers to aid in the conduct of the commission's business including case processing functions such as intake, screening, investigation, and mediation.

2007 Acts, ch 191, §2  
Subsections 6 and 8 amended

### **216.6 Unfair employment practices.**

1. It shall be an unfair or discriminatory practice for any:

a. Person to refuse to hire, accept, register, classify, or refer for employment, to discharge any employee, or to otherwise discriminate in employment against any applicant for employment or any employee because of the age, race, creed, color, sex, sexual orientation, gender identity, national origin, religion, or disability of such applicant or employee, unless based upon the nature of the occupation. If a person with a disability is qualified to perform a particular occupation, by reason of training or experience, the nature of that occupa-

tion shall not be the basis for exception to the unfair or discriminating practices prohibited by this subsection.

*b.* Labor organization or the employees, agents, or members thereof to refuse to admit to membership any applicant, to expel any member, or to otherwise discriminate against any applicant for membership or any member in the privileges, rights, or benefits of such membership because of the age, race, creed, color, sex, sexual orientation, gender identity, national origin, religion, or disability of such applicant or member.

*c.* Employer, employment agency, labor organization, or the employees, agents, or members thereof to directly or indirectly advertise or in any other manner indicate or publicize that individuals of any particular age, race, creed, color, sex, sexual orientation, gender identity, national origin, religion, or disability are unwelcome, objectionable, not acceptable, or not solicited for employment or membership unless based on the nature of the occupation. If a person with a disability is qualified to perform a particular occupation by reason of training or experience, the nature of that occupation shall not be the basis for exception to the unfair or discriminating practices prohibited by this subsection.

An employer, employment agency, or their employees, servants, or agents may offer employment or advertise for employment to only persons with disabilities, when other applicants are available to them other employment compatible with their ability which would not be available to persons with disabilities because of their disabilities. Any such employment or offer of employment shall not discriminate among persons with disabilities on the basis of race, color, creed, sex, sexual orientation, gender identity, or national origin.

*d.* Person to solicit or require as a condition of employment of any employee or prospective employee a test for the presence of the antibody to the human immunodeficiency virus or to affect the terms, conditions, or privileges of employment or terminate the employment of any employee solely as a result of the employee obtaining a test for the presence of the antibody to the human immunodeficiency virus. An agreement between an employer, employment agency, labor organization, or their employees, agents, or members and an employee or prospective employee concerning employment, pay, or benefits to an employee or prospective employee in return for taking a test for the presence of the antibody to the human immunodeficiency virus, is prohibited. The prohibitions of this paragraph do not apply if the state epidemiologist determines and the director of public health declares through the utilization of guidelines established by the center for disease control of the United States department of health and human services, that a person with a condition related to acquired immune deficiency syndrome poses

a significant risk of transmission of the human immunodeficiency virus to other persons in a specific occupation.

2. Employment policies relating to pregnancy and childbirth shall be governed by the following:

*a.* A written or unwritten employment policy or practice which excludes from employment applicants or employees because of the employee's pregnancy is a prima facie violation of this chapter.

*b.* Disabilities caused or contributed to by the employee's pregnancy, miscarriage, childbirth, and recovery therefrom are, for all job-related purposes, temporary disabilities and shall be treated as such under any health or temporary disability insurance or sick leave plan available in connection with employment. Written and unwritten employment policies and practices involving matters such as the commencement and duration of leave, the availability of extensions, the accrual of seniority, and other benefits and privileges, reinstatement, and payment under any health or temporary disability insurance or sick leave plan, formal or informal, shall be applied to a disability due to the employee's pregnancy or giving birth, on the same terms and conditions as they are applied to other temporary disabilities.

*c.* Disabilities caused or contributed to by legal abortion and recovery therefrom are, for all job-related purposes, temporary disabilities and shall be treated as such under any temporary disability or sick leave plan available in connection with employment. Written and unwritten employment policies and practices involving matters such as the commencement and duration of leave, the availability of extensions, the accrual of seniority, and other benefits and privileges, reinstatement, and payment under any temporary disability insurance or sick leave plan, formal or informal, shall be applied to a disability due to legal abortion on the same terms and conditions as they are applied to other temporary disabilities. The employer may elect to exclude health insurance coverage for abortion from a plan provided by the employer, except where the life of the mother would be endangered if the fetus were carried to term or where medical complications have arisen from an abortion.

*d.* An employer shall not terminate the employment of a person disabled by pregnancy because of the employee's pregnancy.

*e.* Where a leave is not available or a sufficient leave is not available under any health or temporary disability insurance or sick leave plan available in connection with employment, the employer of the pregnant employee shall not refuse to grant to the employee who is disabled by the pregnancy a leave of absence if the leave of absence is for the period that the employee is disabled because of the employee's pregnancy, childbirth, or related medical conditions, or for eight weeks, whichever is



less. However, the employee must provide timely notice of the period of leave requested and the employer must approve any change in the period requested before the change is effective. Before granting the leave of absence, the employer may require that the employee's disability resulting from pregnancy be verified by medical certification stating that the employee is not able to reasonably perform the duties of employment.

3. This section shall not prohibit discrimination on the basis of age if the person subject to the discrimination is under the age of eighteen years, unless that person is considered by law to be an adult.

4. Notwithstanding the provisions of this section, a state or federal program designed to benefit a specific age classification which serves a bona fide public purpose shall be permissible.

5. This section shall not apply to age discrimination in bona fide apprenticeship employment programs if the employee is over forty-five years of age.

6. This section shall not apply to:

a. Any employer who regularly employs less than four individuals. For purposes of this subsection, individuals who are members of the employer's family shall not be counted as employees.

b. The employment of individuals for work within the home of the employer if the employer or members of the employer's family reside therein during such employment.

c. The employment of individuals to render personal service to the person of the employer or members of the employer's family.

d. Any bona fide religious institution or its educational facility, association, corporation, or society with respect to any qualifications for employment based on religion, sexual orientation, or gender identity when such qualifications are related to a bona fide religious purpose. A religious qualification for instructional personnel or an administrative officer, serving in a supervisory capacity of a bona fide religious educational facility or religious institution, shall be presumed to be a bona fide occupational qualification.

2007 Acts, ch 191, §3, 4

Subsection 1, paragraphs a - c amended

Subsection 6, paragraph d amended

### **216.7 Unfair practices — accommodations or services.**

1. It shall be an unfair or discriminatory practice for any owner, lessee, sublessee, proprietor, manager, or superintendent of any public accommodation or any agent or employee thereof:

a. To refuse or deny to any person because of race, creed, color, sex, sexual orientation, gender identity, national origin, religion, or disability the accommodations, advantages, facilities, services, or privileges thereof, or otherwise to discriminate against any person because of race, creed, color, sex, sexual orientation, gender identity, national

origin, religion, or disability in the furnishing of such accommodations, advantages, facilities, services, or privileges.

b. To directly or indirectly advertise or in any other manner indicate or publicize that the patronage of persons of any particular race, creed, color, sex, sexual orientation, gender identity, national origin, religion, or disability is unwelcome, objectionable, not acceptable, or not solicited.

2. This section shall not apply to:

a. Any bona fide religious institution with respect to any qualifications the institution may impose based on religion, sexual orientation, or gender identity when such qualifications are related to a bona fide religious purpose.

b. The rental or leasing to transient individuals of less than six rooms within a single housing accommodation by the occupant or owner of such housing accommodation if the occupant or owner or members of that person's family reside therein.

2007 Acts, ch 191, §5, 6

Subsection 1, paragraphs a and b amended

Subsection 2, paragraph a amended

### **216.8 Unfair or discriminatory practices — housing.**

It shall be an unfair or discriminatory practice for any person, owner, or person acting for an owner, of rights to housing or real property, with or without compensation, including but not limited to persons licensed as real estate brokers or salespersons, attorneys, auctioneers, agents or representatives by power of attorney or appointment, or any person acting under court order, deed of trust, or will:

1. To refuse to sell, rent, lease, assign, sublease, refuse to negotiate, or to otherwise make unavailable, or deny any real property or housing accommodation or part, portion, or interest therein, to any person because of the race, color, creed, sex, sexual orientation, gender identity, religion, national origin, disability, or familial status of such person.

2. To discriminate against any person because of the person's race, color, creed, sex, sexual orientation, gender identity, religion, national origin, disability, or familial status, in the terms, conditions, or privileges of the sale, rental, lease assignment, or sublease of any real property or housing accommodation or any part, portion, or interest in the real property or housing accommodation or in the provision of services or facilities in connection with the real property or housing accommodation.

For purposes of this section, "person" means one or more individuals, corporations, partnerships, associations, labor organizations, legal representatives, mutual companies, joint stock companies, trusts, unincorporated organizations, trustees, trustees in cases under Title eleven of the United States Code, receivers, and fiduciaries.

3. To directly or indirectly advertise, or in any other manner indicate or publicize that the pur-

chase, rental, lease, assignment, or sublease of any real property or housing accommodation or any part, portion, or interest therein, by persons of any particular race, color, creed, sex, sexual orientation, gender identity, religion, national origin, disability, or familial status is unwelcome, objectionable, not acceptable, or not solicited.

4. To discriminate against the lessee or purchaser of any real property or housing accommodation or part, portion, or interest of the real property or housing accommodation, or against any prospective lessee or purchaser of the property or accommodation, because of the race, color, creed, religion, sex, sexual orientation, gender identity, disability, age, or national origin of persons who may from time to time be present in or on the lessee's or owner's premises for lawful purposes at the invitation of the lessee or owner as friends, guests, visitors, relatives, or in any similar capacity.

2007 Acts, ch 191, §7  
Subsections 1 – 4 amended

**216.8A Additional unfair or discriminatory practices — housing.**

1. A person shall not induce or attempt to induce another person to sell or rent a dwelling by representations regarding the entry or prospective entry into a neighborhood of a person of a particular race, color, creed, sex, sexual orientation, gender identity, religion, national origin, disability, or familial status.

2. A person shall not represent to a person of a particular race, color, creed, sex, sexual orientation, gender identity, religion, national origin, disability, or familial status that a dwelling is not available for inspection, sale, or rental when the dwelling is available for inspection, sale, or rental.

3. *a.* A person shall not discriminate in the sale or rental or otherwise make unavailable or deny a dwelling to a buyer or renter because of a disability of any of the following persons:

(1) That buyer or renter.

(2) A person residing in or intending to reside in that dwelling after it is sold, rented, or made available.

(3) A person associated with that buyer or renter.

*b.* A person shall not discriminate against another person in the terms, conditions, or privileges of sale or rental of a dwelling or in the provision of services or facilities in connection with the dwelling because of a disability of any of the following persons:

(1) That person.

(2) A person residing in or intending to reside in that dwelling after it is sold, rented, or made available.

(3) A person associated with that person.

*c.* For the purposes of this subsection only, discrimination includes any of the following circumstances:

(1) A refusal to permit, at the expense of the person with a disability, reasonable modifications of existing premises occupied or to be occupied by the person if the modifications are necessary to afford the person full enjoyment of the premises.

In the case of a rental, a landlord may, where reasonable to do so, condition permission for a modification on the renter's agreement to restore the interior of the premises to the condition that existed before the modification, reasonable wear and tear excepted.

(2) A refusal to make reasonable accommodations in rules, policies, practices, or services, when the accommodations are necessary to afford the person equal opportunity to use and enjoy a dwelling.

(3) In connection with the design and construction of covered multifamily dwellings for first occupancy after January 1, 1992, a failure to design and construct those dwellings in a manner that meets the following requirements:

(a) The public use and common use portions of the dwellings are readily accessible to and usable by persons with disabilities.

(b) All doors designed to allow passage into and within all premises within the dwellings are sufficiently wide to allow passage by persons with disabilities in wheelchairs.

(c) All premises within the dwellings contain the following features of adaptive design:

(i) An accessible route into and through the dwelling.

(ii) Light switches, electrical outlets, thermostats, and other environmental controls in accessible locations.

(iii) Reinforcements in bathroom walls to allow later installation of grab bars.

(iv) Usable kitchens and bathrooms so that a person in a wheelchair can maneuver about the space.

*d.* Compliance with the appropriate requirements of the American national standard for buildings and facilities providing accessibility and usability for persons with disabilities, commonly cited as "ANSI A 117.1", satisfies the requirements of paragraph "c", subparagraph (3), subparagraph subdivision (c).

*e.* Nothing in this subsection requires that a dwelling be made available to a person whose tenancy would constitute a direct threat to the health or safety of other persons or whose tenancy would result in substantial physical damage to the property of others.

4. *a.* A person whose business includes engaging in residential real estate related transactions shall not discriminate against a person in making a residential real estate related transaction available or in terms or conditions of a residential real estate related transaction because of race, color, creed, sex, sexual orientation, gender identity, religion, national origin, disability, or familial status.

b. For the purpose of this subsection, “*residential real estate related transaction*” means any of the following:

(1) To make or purchase loans or provide other financial assistance to purchase, construct, improve, repair, or maintain a dwelling, or to secure residential real estate.

(2) To sell, broker, or appraise residential real estate.

5. A person shall not deny another person access to, or membership or participation in, a multiple-listing service, real estate brokers’ organization or other service, organization, or facility relating to the business of selling or renting dwellings, or discriminate against a person in terms or conditions of access, membership, or participation in such organization because of race, color, creed, sex, sexual orientation, gender identity, religion, national origin, disability, or familial status.

2007 Acts, ch 191, §§ 8 – 10  
Subsections 1 and 2 amended  
Subsection 4, paragraph a amended  
Subsection 5 amended

#### 216.9 Unfair or discriminatory practices — education.

1. It is an unfair or discriminatory practice for any educational institution to discriminate on the basis of race, creed, color, sex, sexual orientation, gender identity, national origin, religion, or disability in any program or activity. Such discriminatory practices shall include but not be limited to the following practices:

a. Exclusion of a person or persons from participation in, denial of the benefits of, or subjection to discrimination in any academic, extracurricular, research, occupational training, or other program or activity except athletic programs;

b. Denial of comparable opportunity in intramural and interscholastic athletic programs;

c. Discrimination among persons in employment and the conditions of employment;

d. On the basis of sex, the application of any rule concerning the actual or potential parental, family or marital status of a person, or the exclusion of any person from any program or activity or employment because of pregnancy or related conditions dependent upon the physician’s diagnosis and certification.

2. For the purpose of this section, “*educational institution*” includes any preschool, elementary, secondary, or community college, area education agency, or postsecondary college or university and their governing boards. This section does not prohibit an educational institution from maintaining separate toilet facilities, locker rooms, or living facilities for the different sexes so long as comparable facilities are provided. Nothing in this section shall be construed as prohibiting any bona fide religious institution from imposing qualifications based on religion, sexual orientation, or gender identity when such qualifications are related to a

bona fide religious purpose or any institution from admitting students of only one sex.

2007 Acts, ch 191, §11, 12  
Unnumbered paragraph 1 amended and editorially designated as subsection 1, unnumbered paragraph 1

Former subsections 1 – 4 editorially redesignated as paragraphs a – d of subsection 1

Former unnumbered paragraph 2 amended and editorially designated as subsection 2

#### 216.10 Unfair credit practices.

1. It shall be an unfair or discriminatory practice for any:

a. Creditor to refuse to enter into a consumer credit transaction or impose finance charges or other terms or conditions more onerous than those regularly extended by that creditor to consumers of similar economic backgrounds because of age, color, creed, national origin, race, religion, marital status, sex, sexual orientation, gender identity, physical disability, or familial status.

b. Person authorized or licensed to do business in this state pursuant to chapter 524, 533, 534, 536, or 536A to refuse to loan or extend credit or to impose terms or conditions more onerous than those regularly extended to persons of similar economic backgrounds because of age, color, creed, national origin, race, religion, marital status, sex, sexual orientation, gender identity, physical disability, or familial status.

c. Creditor to refuse to offer credit life or health and accident insurance because of color, creed, national origin, race, religion, marital status, age, physical disability, sex, sexual orientation, gender identity, or familial status. Refusal by a creditor to offer credit life or health and accident insurance based upon the age or physical disability of the consumer shall not be an unfair or discriminatory practice if such denial is based solely upon bona fide underwriting considerations not prohibited by title XIII, subtitle 1.

2. The provisions of this section shall not be construed by negative implication or otherwise to narrow or restrict any other provisions of this chapter.

2007 Acts, ch 191, §13  
See also §507B.4 and 537.3311  
Section amended and editorially renumbered

#### 216.12 Exceptions.

1. The provisions of sections 216.8 and 216.8A shall not apply to:

a. Any bona fide religious institution with respect to any qualifications it may impose based on religion, sexual orientation, or gender identity, when the qualifications are related to a bona fide religious purpose unless the religious institution owns or operates property for a commercial purpose or membership in the religion is restricted on account of race, color, or national origin.

b. The rental or leasing of a dwelling in a building which contains housing accommodations for not more than two families living independently of each other, if the owner resides in one of the housing accommodations.

c. The rental or leasing of less than four rooms within a single dwelling by the occupant or owner of the dwelling, if the occupant or owner resides in the dwelling.

d. Discrimination on the basis of familial status involving dwellings provided under any state or federal program specifically designed and operated to assist elderly persons, as defined in the state or federal program that the commission determines to be consistent with determinations made by the United States secretary of housing and urban development, and housing for older persons. As used in this paragraph, “housing for older persons” means housing communities consisting of dwellings intended for either of the following:

(1) For eighty percent occupancy by at least one person fifty-five years of age or older per unit, and providing significant facilities and services specifically designed to meet the physical or social needs of the persons and the housing facility must publish and adhere to policies and procedures which demonstrate an intent by the owner or manager to provide housing for persons fifty-five years of age or older.

(2) For and occupied solely by persons sixty-two years of age or older.

e. The rental or leasing of a housing accommodation in a building which contains housing accommodations for not more than four families living independently of each other, if the owner resides in one of the housing accommodations for which the owner qualifies for the homestead tax credit under section 425.1.

f. Discrimination on the basis of sex involving the rental, leasing, or subleasing of a dwelling within which residents of both sexes would be forced to share a living area.

2. The exceptions to the requirements of sections 216.8 and 216.8A provided for dwellings specified in subsection 1, paragraphs “b”, “c”, and “e”, do not apply to advertising related to those dwellings.

2007 Acts, ch 191, §14  
 Unnumbered paragraph 1 editorially designated as subsection 1, unnumbered paragraph 1  
 Former subsection 1 amended and editorially redesignated as paragraph a of subsection 1  
 Former subsections 2 and 3 editorially redesignated as paragraphs b and c of subsection 1  
 Former subsection 4 and paragraphs a and b editorially redesignated as paragraph d, unnumbered paragraph 1 and subparagraphs (1) and (2)  
 Former subsections 5 and 6 editorially redesignated as paragraphs e and f of subsection 1  
 Unnumbered paragraph 2 editorially designated as subsection 2

**216.12A Additional housing exception.**

Sections 216.8 and 216.8A do not prohibit a person engaged in the business of furnishing appraisals of real estate from taking into consideration factors other than race, color, creed, sex, sexual orientation, gender identity, religion, national origin, disability, or familial status in appraising real estate.

2007 Acts, ch 191, §15  
 Section amended

**216.15 Complaint — hearing.**

1. Any person claiming to be aggrieved by a discriminatory or unfair practice may, in person or by an attorney, make, sign, and file with the commission a verified, written complaint which shall state the name and address of the person, employer, employment agency, or labor organization alleged to have committed the discriminatory or unfair practice of which complained, shall set forth the particulars thereof, and shall contain such other information as may be required by the commission. The commission, a commissioner, or the attorney general may in like manner make, sign, and file such complaint.

2. Any place of public accommodation, employer, labor organization, or other person who has any employees or members who refuse or threaten to refuse to comply with the provisions of this chapter may file with the commission a verified written complaint in triplicate asking the commission for assistance to obtain their compliance by conciliation or other remedial action.

3. a. After the filing of a verified complaint, a true copy shall be served within twenty days on the person against whom the complaint is filed. If the first named respondent on a complaint is not a governmental entity, service of a true copy on the respondent shall be by certified mail. An authorized member of the commission staff shall make a prompt investigation and shall issue a recommendation to an administrative law judge employed either by the commission or by the division of administrative hearings created by section 10A.801, who shall then issue a determination of probable cause or no probable cause.

b. For purposes of this chapter, an administrative law judge issuing a determination of probable cause or no probable cause under this section is exempt from section 17A.17.

c. If the administrative law judge concurs with the investigating official that probable cause exists regarding the allegations of the complaint, the staff of the commission shall promptly endeavor to eliminate the discriminatory or unfair practice by conference, conciliation, and persuasion. If the administrative law judge finds that no probable cause exists, the administrative law judge shall issue a final order dismissing the complaint and shall promptly mail a copy to the complainant and to the respondent. A finding of probable cause shall not be introduced into evidence in an action brought under section 216.16.

d. The commission staff must endeavor to eliminate the discriminatory or unfair practice by conference, conciliation, and persuasion for a period of thirty days following the initial conciliation meeting between the respondent and the commission staff after a finding of probable cause. After the expiration of thirty days, the director may order the conciliation conference and persuasion procedure provided in this section to be bypassed

when the director determines the procedure is unworkable by reason of past patterns and practices of the respondent, or a statement by the respondent that the respondent is unwilling to continue with the conciliation. The director must have the approval of a commissioner before bypassing the conciliation, conference and persuasion procedure. Upon the bypassing of conciliation, the director shall state in writing the reasons for bypassing.

4. The members of the commission and its staff shall not disclose the filing of a complaint, the information gathered during the investigation, or the endeavors to eliminate such discriminatory or unfair practice by mediation, conference, conciliation, and persuasion, unless such disclosure is made in connection with the conduct of such investigation.

5. When the director is satisfied that further endeavor to settle a complaint by conference, conciliation, and persuasion is unworkable and should be bypassed, and the thirty-day period provided for in subsection 3 has expired without agreement, the director with the approval of a commissioner, shall issue and cause to be served a written notice specifying the charges in the complaint as they may have been amended and the reasons for bypassing conciliation, if the conciliation is bypassed, and requiring the respondent to answer the charges of the complaint at a hearing before the commission, a commissioner, or a person designated by the commission to conduct the hearing, hereafter referred to as the administrative law judge, and at a time and place to be specified in the notice.

6. The case in support of such complaint shall be presented at the hearing by one of the commission's attorneys or agents. The investigating official shall not participate in the hearing except as a witness nor participate in the deliberations of the commission in such case.

7. The hearing shall be conducted in accordance with the provisions of chapter 17A for contested cases. The burden of proof in such a hearing shall be on the commission.

8. If upon taking into consideration all of the evidence at a hearing, the commission determines that the respondent has engaged in a discriminatory or unfair practice, the commission shall state its findings of fact and conclusions of law and shall issue an order requiring the respondent to cease and desist from the discriminatory or unfair practice and to take the necessary remedial action as in the judgment of the commission will carry out the purposes of this chapter. A copy of the order shall be delivered to the respondent, the complainant, and to any other public officers and persons as the commission deems proper.

*a.* For the purposes of this subsection and pursuant to the provisions of this chapter "remedial action" includes but is not limited to the following:

(1) Hiring, reinstatement or upgrading of em-

ployees with or without pay. Interim earned income and unemployment compensation shall operate to reduce the pay otherwise allowable.

(2) Admission or restoration of individuals to a labor organization, admission to or participation in a guidance program, apprenticeship training program, on-the-job training program or other occupational training or retraining program, with the utilization of objective criteria in the admission of individuals to such programs.

(3) Admission of individuals to a public accommodation or an educational institution.

(4) Sale, exchange, lease, rental, assignment or sublease of real property to an individual.

(5) Extension to all individuals of the full and equal enjoyment of the advantages, facilities, privileges, and services of the respondent denied to the complainant because of the discriminatory or unfair practice.

(6) Reporting as to the manner of compliance.

(7) Posting notices in conspicuous places in the respondent's place of business in form prescribed by the commission and inclusion of notices in advertising material.

(8) Payment to the complainant of damages for an injury caused by the discriminatory or unfair practice which damages shall include but are not limited to actual damages, court costs and reasonable attorney fees.

*b.* In addition to the remedies provided in the preceding provisions of this subsection, the commission may issue an order requiring the respondent to cease and desist from the discriminatory or unfair practice and to take such affirmative action as in the judgment of the commission will carry out the purposes of this chapter as follows:

(1) In the case of a respondent operating by virtue of a license issued by the state or a political subdivision or agency, if the commission, upon notice to the respondent with an opportunity to be heard, determines that the respondent has engaged in a discriminatory or unfair practice and that the practice was authorized, requested, commanded, performed or knowingly or recklessly tolerated by the board of directors of the respondent or by an officer or executive agent acting within the scope of the officer's or agent's employment, the commission shall so certify to the licensing agency. Unless the commission finding of a discriminatory or unfair practice is reversed in the course of judicial review, the finding of discrimination is binding on the licensing agency. If a certification is made pursuant to this subsection, the licensing agency may initiate licensee disciplinary procedures.

(2) In the case of a respondent who is found by the commission to have engaged in a discriminatory or unfair practice in the course of performing under a contract or subcontract with the state or political subdivision or agency, if the practice was authorized, requested, commanded, performed, or knowingly or recklessly tolerated by the board of

directors of the respondent or by an officer or executive agent acting within the scope of the officer's or agent's employment, the commission shall so certify to the contracting agency. Unless the commission's finding of a discriminatory or unfair practice is reversed in the course of judicial review, the finding of discrimination is binding on the contracting agency.

(3) Upon receiving a certification made under this subsection, a contracting agency may take appropriate action to terminate a contract or portion thereof previously entered into with the respondent, either absolutely or on condition that the respondent carry out a program of compliance with the provisions of this chapter; and assist the state and all political subdivisions and agencies thereof to refrain from entering into further contracts.

c. The election of an affirmative order under paragraph "b" of this subsection shall not bar the election of affirmative remedies provided in paragraph "a" of this subsection.

9. The terms of a conciliation or mediation agreement reached with the respondent may require the respondent to refrain in the future from committing discriminatory or unfair practices of the type stated in the agreement, to take remedial action as in the judgment of the commission will carry out the purposes of this chapter, and to consent to the entry in an appropriate district court of a consent decree embodying the terms of the conciliation or mediation agreement. Violation of such a consent decree may be punished as contempt by the court in which it is filed, upon a showing by the commission of the violation at any time within six months of its occurrence. At any time in its discretion, the commission may investigate whether the terms of the agreement are being complied with by the respondent.

Upon a finding that the terms of the conciliation or mediation agreement are not being complied

with by the respondent, the commission shall take appropriate action to assure compliance.

10. If, upon taking into consideration all of the evidence at a hearing, the commission finds that a respondent has not engaged in any such discriminatory or unfair practice, the commission shall issue an order denying relief and stating the findings of fact and conclusions of the commission, and shall cause a copy of the order dismissing the complaint to be served on the complainant and the respondent.

11. The commission shall establish rules to govern, expedite, and effectuate the procedures established by this chapter and its own actions thereunder.

12. Except as provided in section 614.8, a claim under this chapter shall not be maintained unless a complaint is filed with the commission within one hundred eighty days after the alleged discriminatory or unfair practice occurred.

13. The commission or a party to a complaint may request mediation of the complaint at any time during the commission's processing of the complaint. If the complainant and respondent participate in mediation, any mediation agreement may be enforced pursuant to this section. Mediation may be discontinued at the request of any party or the commission.

2007 Acts, ch 110, §1

2007 amendment to subsection 12 applies to all complaints, claims, and actions arising out of an alleged death, loss, or injury occurring on or after July 1, 2007; 2007 Acts, ch 110, §6

Subsection 12 amended

#### **216.18A Construction of chapter — marriage.**

This chapter shall not be construed to allow marriage between persons of the same sex, in accordance with chapter 595.

2007 Acts, ch 191, §16

NEW section

## CHAPTER 216A

### DEPARTMENT OF HUMAN RIGHTS

#### **216A.104 Energy utility assessment and resolution program.**

1. The general assembly finds that provision of assistance to prevent utility disconnections will also prevent the development of public health risks due to such disconnections. The division shall establish an energy utility assessment and resolution program administered by each community action agency for persons with low incomes who have or need a deferred payment agreement or are in need of an emergency fuel delivery to address home energy utility costs.

2. A person must meet all of the following requirements to be eligible for the program:

a. The person is eligible for the federal low-income home energy assistance program.

b. The person is a residential customer of an energy utility approved for the program by the division.

c. The person has or is in need of a deferred payment agreement to address the person's home energy utility costs.

d. The person is able to maintain or regain residential energy utility service in the person's own name.

e. The person provides the information necessary to determine the person's eligibility for the program.

f. The person complies with other eligibility requirements adopted in rules by the division.

3. The program components shall include but are not limited to all of the following:

a. Analysis of a program participant's current financial situation.

b. Review of a program participant's resource and money management options.

c. Skills development and assistance for a program participant in negotiating a deferred payment agreement with the participant's energy utility.

d. Development of a written household energy affordability plan.

e. Provision of energy conservation training and assistance.

f. A requirement that a program participant must make uninterrupted, regular utility payments while participating in the program.

4. The division shall implement accountability measures for the program and require regular reporting on the measures by the community action agencies.

5. The division shall implement the program statewide, subject to the funding made available for the program.

2007 Acts, ch 218, §136  
NEW section

**216A.105 through 216A.110** Reserved.

#### SUBCHAPTER 8

#### ABRAHAM LINCOLN BICENTENNIAL COMMISSION

#### **216A.121 Iowa Abraham Lincoln bicentennial commission.**

1. *Organization.* An Iowa Abraham Lincoln bicentennial commission is established in the department of human rights. The commission shall be chartered and shall operate as a nonprofit corporation within the state of Iowa according to the provisions of chapter 504.

2. *Purpose.* The purpose of the commission shall be to plan, coordinate, and administer activities and programs relating to the commemoration of the bicentennial of the birth of Abraham Lincoln in 2009.

3. *Membership.*

a. The commission shall consist of twenty-two members, including eighteen voting members and four nonvoting members.

(1) The voting members shall be as follows:

(a) The governor or the governor's designee.

(b) One member, appointed by the governor, who is an Iowa designated representative to the federal Abraham Lincoln bicentennial commission governors' council.

(c) One member appointed by the president of humanities Iowa.

(d) One member appointed by the director of the department of economic development.

(e) One member appointed by the administrator of the state historical society of Iowa.

(f) One member appointed by the executive director of the Iowa arts council.

(g) One member appointed by the executive director of the Iowa museum society.

(h) One member appointed by the president of the league of Iowa human rights agencies.

(i) One member appointed by the president of the Iowa league of cities.

(j) One member appointed by the executive director of the Iowa state association of counties.

(k) One member appointed by the director of the department of education.

(l) One member appointed by the chairperson of the state board of regents.

(m) One member appointed by the president of the Iowa library board.

(n) One member appointed by the chairperson of the Iowa state chapter of the national association for the advancement of colored people.

(o) Four public members, appointed by the governor, with a demonstrated interest in history and substantial knowledge and appreciation of Abraham Lincoln.

(2) The nonvoting members shall be two state representatives, one appointed by the speaker of the house of representatives and one by the minority leader of the house, and two state senators, one appointed by the majority leader of the senate and one by the minority leader of the senate.

b. Ten voting members of the board shall constitute a quorum. Persons making appointments shall consult with one another to ensure that the commission is balanced by gender, political affiliation, and geographic location and to ensure selection of members representing diverse interest groups. The provisions of chapters 21 and 22 shall apply to meetings and records of the commission.

c. The commission shall elect a chairperson and vice chairperson from the members of the commission. Commission members shall serve without compensation, but shall be reimbursed for actual and necessary expenses.

4. *Rulemaking authority.* The department, in cooperation with the commission, may adopt rules in accordance with chapter 17A in order to accomplish the purpose of the commission.

5. *Authority.* The commission may receive and make grants, receive and expend appropriations, contract for services, hold licenses and copyrights, and otherwise act as is necessary to accomplish the purpose of the commission.

6. *Fund established.* The Abraham Lincoln bicentennial fund is established as a separate fund in the state treasury under the control of the commission.

7. *Funds received.* All funds received by the commission, including but not limited to gifts,

transfers, endowments, moneys from the sale of mementos and products related to the purposes of the commission, and appropriations, shall be credited to the bicentennial fund and are appropriated to the commission to be invested or used to support the activities of the commission. Notwithstanding section 8.33, any balance in the fund on June 30 of any fiscal year shall not revert to the general fund of the state.

8. *Expiration.* The commission shall expire no later than June 30, 2010. Upon expiration, all fund balances from appropriations of state funds shall be returned to the general fund of the state, and all other assets shall be transferred to the Iowa historical foundation authorized pursuant to section 303.9, subsection 3, subject to any conditions or restrictions previously placed on the assets.

9. This section is repealed June 30, 2010.

2007 Acts, ch 99, §1; 2007 Acts, ch 215, §98  
NEW section

**216A.122 through 216A.130** Reserved.

**216A.132 Council established — terms — compensation.**

1. A criminal and juvenile justice planning advisory council is established consisting of twenty-two members.

a. The governor shall appoint seven members each for a four-year term beginning and ending as provided in section 69.19 and subject to confirmation by the senate as follows:

(1) Three persons, each of whom is a county supervisor, county sheriff, mayor, city chief of police, or county attorney.

(2) Two persons who represent the general

public and are not employed in any law enforcement, judicial, or corrections capacity.

(3) Two persons who are knowledgeable about Iowa's juvenile justice system.

b. The departments of human services, corrections, and public safety, the division on the status of African-Americans, the Iowa department of public health, the chairperson of the board of parole, the attorney general, the state public defender, and the chief justice of the supreme court shall each designate a person to serve on the council. The person appointed by the Iowa department of public health shall be from the departmental staff who administer the comprehensive substance abuse program under chapter 125.

c. The chief justice of the supreme court shall appoint two additional members currently serving as district judges. Two members of the senate and two members of the house of representatives shall be ex officio members and shall be appointed by the majority and minority leaders of the senate and the speaker and minority leader of the house of representatives pursuant to section 69.16. Members appointed pursuant to this paragraph shall serve for four-year terms beginning and ending as provided in section 69.19 unless the member ceases to serve as a district court judge or as a member of the senate or of the house of representatives.

2. Members of the council shall receive reimbursement from the state for actual and necessary expenses incurred in the performance of their official duties. Members may also be eligible to receive compensation as provided in section 7E.6.

2007 Acts, ch 22, §51  
Confirmation, see §2.32  
Section amended

## CHAPTER 216B

### DEPARTMENT FOR THE BLIND

**216B.3 Commission duties.**

The commission shall:

1. Prepare and maintain a complete register of the blind of the state which shall describe the condition, cause of blindness, ability to receive education and industrial training, and other facts the commission deems of value.

2. Assist in marketing of products of blind workers of the state.

3. Ameliorate the condition of the blind by promoting visits to them in their homes for the purpose of instruction and by other lawful methods as the commission deems expedient.

4. Make inquiries concerning the causes of blindness to ascertain what portion of cases are preventable, and cooperate with the other organized agents of the state in the adoption and enforcement of proper preventive measures.

5. Provide for suitable vocational training if the commission deems it advisable and necessary. The commission may establish workshops for the employment of the blind, paying suitable wages for work under the employment. The commission may provide or pay for, during their training period, the temporary lodging and support of persons receiving vocational training. The commission may use receipts or earnings that accrue from the operation of workshops as provided in this chapter, but a detailed statement of receipts or earnings and expenditures shall be made monthly to the director of the department of management.

6. Establish, manage, and control a special training, orientation, and adjustment center or centers for the blind. Training in the centers shall be limited to persons who are sixteen years of age or older, and the department shall not provide or



cause to be provided any academic education or training to children under the age of sixteen except that the commission may provide library services to these children. The commission may provide for the maintenance, upkeep, repair, and alteration of the buildings and grounds designated as centers for the blind including the expenditure of funds appropriated for that purpose. Nonresidents may be admitted to Iowa centers for the blind as space is available, upon terms determined by rule.

7. Establish and maintain offices for the department and commission.

8. Accept gifts, grants, devises, or bequests of real or personal property from any source for the use and purposes of the department. Notwithstanding sections 8.33 and 12C.7, the interest accrued from moneys received under this section shall not revert to the general fund of the state.

9. Provide library services to persons who are blind and persons with physical disabilities.

10. Act as a bureau of information and industrial aid for the blind, such as assisting the blind in finding employment.

11. Be responsible for the budgetary and personnel decisions for the department and commission.

12. Manage and control the property, both real and personal, belonging to the department. The commission shall, according to the schedule established in this subsection, when the price is reasonably competitive and the quality as intended, purchase soybean-based inks and plastic products with recycled content, including but not limited to plastic garbage can liners. For purposes of this subsection, "*recycled content*" means that the content of the product contains a minimum of thirty percent postconsumer material.

*a.* By July 1, 1991, one hundred percent of the purchases of inks which are used for newsprint paper for printing services performed internally or contracted for by the commission shall be soybean-based.

*b.* By July 1, 1995, a minimum of ten percent of the purchases of garbage can liners made by the commission shall be plastic garbage can liners with recycled content. The percentage purchased shall increase by ten percent annually until fifty percent of the purchases of garbage can liners are plastic garbage can liners with recycled content.

*c.* By July 1, 1993, one hundred percent of the purchases of inks, other than inks which are used for newsprint printing services, and which are used internally or contracted for by the commission, shall be soybean-based to the extent formulations for such inks are available.

*d.* The commission shall report to the general assembly on February 1 of each year, the following:

(1) A listing of plastic products which are regularly purchased by the commission for which recycled content product alternatives are available, in-

cluding the cost of the plastic products purchased and the cost of the recycled content product alternatives.

(2) Information relating to soybean-based inks and plastic garbage can liners with recycled content regularly purchased by the commission, including the cost of purchasing soybean-based inks and plastic garbage can liners with recycled content and the percentages of soybean-based inks and plastic garbage can liners with recycled content that have been purchased.

*e.* The department of natural resources shall review the procurement specifications currently used by the commission to eliminate, wherever possible, discrimination against the procurement of products manufactured with recycled content and soybean-based inks.

*f.* The department of natural resources shall assist the commission in locating suppliers of products with recycled content and soybean-based inks, and collecting data on recycled content and soybean-based ink purchases.

*g.* The commission, in conjunction with the department of natural resources, shall adopt rules to carry out the provisions of this section.

*h.* The department of natural resources shall cooperate with the commission in all phases of implementing this section.

13. The commission shall, whenever technically feasible, purchase and use degradable loose foam packing material manufactured from grain starches or other renewable resources, unless the cost of the packing material is more than ten percent greater than the cost of packing material made from nonrenewable resources. For the purposes of this subsection, "*packing material*" means material, other than an exterior packing shell, that is used to stabilize, protect, cushion, or brace the contents of a package.

14. Purchase and use recycled printing and writing paper in accordance with the schedule established in section 8A.315; establish a wastepaper recycling program in accordance with the recommendations made by the department of natural resources and requirements of section 8A.329; and, in accordance with section 8A.311, require product content statements and compliance with requirements regarding contract bidding.

15. Develop a plan to provide telephone yellow pages information without charge to persons declared to be blind under the standards in section 422.12, subsection 1, paragraph "*e*". The department may apply for federal funds to support the service. The program shall be limited in scope by the availability of funds.

16. *a.* A motor vehicle purchased by the commission shall not operate on gasoline other than ethanol blended gasoline as defined in section 214A.1. A state issued credit card used to purchase gasoline shall not be valid to purchase gasoline other than ethanol blended gasoline. The motor vehicle shall also be affixed with a brightly vis-

ible sticker which notifies the traveling public that the motor vehicle is being operated on ethanol blended gasoline. However, the sticker is not required to be affixed to an unmarked vehicle used for purposes of providing law enforcement or security.

b. Of all new passenger vehicles and light pick-up trucks purchased by the commission, a minimum of ten percent of all such vehicles and trucks purchased shall be equipped with engines which utilize alternative methods of propulsion, including but not limited to any of the following:

- (1) A flexible fuel which is any of the following:
  - (a) E-85 gasoline as provided in section 214A.2.
  - (b) B-20 biodiesel blended fuel as provided in section 214A.2.
  - (c) A renewable fuel approved by the office of renewable fuels and coproducts pursuant to section 159A.3.
    - (2) Compressed or liquefied natural gas.
    - (3) Propane gas.
    - (4) Solar energy.
    - (5) Electricity.

The provisions of this paragraph “b” do not apply to vehicles and trucks purchased and directly

used for law enforcement or off-road maintenance work.

17. Comply with the requirements for the purchase of lubricating oils, industrial oils, greases, and hydraulic fluids as established pursuant to section 8A.316.

18. Plan, establish, administer, and promote a statewide program to provide audio news and information services to blind or visually impaired persons residing in this state.

a. The commission may enter into necessary contracts and arrangements with the national federation for the blind to provide for the delivery of newspapers over the telephone, furnished by the national federation for the blind.

b. The commission may enter into necessary contracts and arrangements with the Iowa radio reading information service for the blind and print handicapped to provide for the delivery of newspapers, magazines, and other printed materials over the radio, furnished by the Iowa radio reading information service for the blind and print handicapped.

2007 Acts, ch 22, §52  
Subsection 16, paragraph b, subparagraph (1), unnumbered paragraph 1 amended

## CHAPTER 217

### DEPARTMENT OF HUMAN SERVICES

#### **217.12 Council duties.**

The family development and self-sufficiency council shall:

1. Identify the factors and conditions that place Iowa families at risk of long-term dependency upon the family investment program. The council shall seek to use relevant research findings and national and Iowa specific data on the family investment program.

2. Identify the factors and conditions that place Iowa families at risk of family instability and foster care placement. The council shall seek to use relevant research findings and national and Iowa specific data on the foster care system.

3. Subject to the availability of funds for this purpose, award grants to public or private organizations for provision of family development services to families at risk of long-term welfare dependency. Grant proposals for the family development and self-sufficiency grant program shall include the following elements:

a. Designation of families to be served that meet some criteria of being at risk of long-term welfare dependency, and agreement to serve clients that are referred by the department of human services from the family investment program which meet the criteria. The criteria may include, but are not limited to, factors such as educational

level, work history, family structure, age of the youngest child in the family, previous length of stay on the family investment program, and participation in the family investment program or the foster care program while the head of a household was a child. Grant proposals shall also establish the number of families to be served under the grant.

b. Designation of the services to be provided for the families served, including assistance regarding job-seeking skills, family budgeting, nutrition, self-esteem, methamphetamine education, health and hygiene, child rearing, child education preparation, and goal setting. Grant proposals shall indicate the support groups and support systems to be developed for the families served during the transition between the need for assistance and self-sufficiency.

c. Designation of the manner in which other needs of the families will be provided including, but not limited to, child care assistance, transportation, substance abuse treatment, support group counseling, food, clothing, and housing.

d. Designation of the training and recruitment of the staff which provides services, and the appropriateness of the training for the purposes of meeting family development and self-sufficiency goals of the families being served.

e. Designation of the support available within the community for the program and for meeting subsequent needs of the clients, and the manner in which community resources will be made available to the families being served.

f. Designation of the manner in which the program will be subject to audit and to evaluation.

g. Designation of agreement provisions for tracking and reporting performance measures developed pursuant to subsection 4.

Not more than five percent of any funds appropriated by the general assembly for the purposes of this subsection may be used for staffing and administration of the grants.

4. In cooperation with the legislative services agency, develop measures to independently evaluate the effectiveness of any grant funded under the program, that include measurement of the grantee's effectiveness in meeting its goals in a quantitative sense through reduction in length of stay on welfare programs or a reduced need for other state child and family welfare services. Families referred to the program shall be selected from those meeting the criteria established in the program as being at risk.

5. Seek to enlist research support from the Iowa research community in meeting the duties outlined in subsections 1 through 4.

6. Seek additional support for the funding of grants under the program, including but not limited to funds available through the federal government in serving families at risk of long-term welfare dependency, and private foundation grants.

7. Make recommendations to the governor and the general assembly on the effectiveness of early intervention programs in Iowa and throughout

the country that provide family development services that lead to self-sufficiency for families at risk of long-term welfare dependency.

8. Evaluate and make recommendations regarding the costs and benefits of the expansion of the services provided under the special needs program of the family investment program to include tuition for parenting skills programs, family support and counseling services, child development services, and transportation and child care expenses associated with the programs and services.

Family development and self-sufficiency grant funding; 2007 Acts, ch 218, §8

Section not amended; footnote added

### **217.23 Personnel — merit system — reimbursement for damaged property.**

1. The director of human services or the director's designee, shall employ such personnel as are necessary for the performance of the duties and responsibilities assigned to the department. All employees shall be selected on a basis of fitness for the work to be performed with due regard to training and experience and shall be subject to the provisions of chapter 8A, subchapter IV.

2. The department may expend moneys from the support allocation of the department as reimbursement for replacement or repair of personal items of the department's employees damaged or destroyed by clients of the department during the employee's tour of duty. However, the reimbursement shall not exceed three hundred dollars for each item. The department shall establish rules in accordance with chapter 17A to carry out the purpose of this section.

2007 Acts, ch 218, §37

Subsection 2 amended

## CHAPTER 218

### INSTITUTIONS GOVERNED BY HUMAN SERVICES DEPARTMENT

#### **218.58 Construction, repair, and improvement projects — emergencies.**

The department shall work with the department of administrative services to accomplish the following responsibilities:

1. The department shall prepare and submit to the director of the department of management, as provided in section 8.23, a multiyear construction program including estimates of the expenditure requirements for the construction, repair, or improvement of buildings, grounds, or equipment at the institutions listed in section 218.1.

2. The director shall have plans and specifications prepared by the department of administrative services for authorized construction, repair, or improvement projects costing over the competitive bid threshold in section 26.3, or as established in section 314.1B. An appropriation for a project

shall not be expended until the department of administrative services has adopted plans and specifications and has completed a detailed estimate of the cost of the project, prepared under the supervision of a registered architect or licensed professional engineer. Plans and specifications shall not be adopted and a project shall not proceed if the project would require an expenditure of money in excess of the appropriation.

3. The department of administrative services shall comply with the competitive bid procedures in chapter 26 to let all contracts under chapter 8A, subchapter III, for authorized construction, repair, or improvement of departmental buildings, grounds, or equipment.

4. If the director of the department of human services and the director of the department of administrative services determine that emergency

repairs or improvements estimated to cost more than the competitive bid threshold in section 26.3, or as established in section 314.1B are necessary to assure the continued operation of a departmental institution, the requirements of subsections 2 and 3 for preparation of plans and specifications and competitive procurement procedures are waived. A determination of necessity for waiver by the director of the department of human services and the director of the department of administrative services shall be in writing and shall be entered in the project record for emergency repairs or improvements. Emergency repairs or improvements shall be accomplished using plans and specifications and competitive quotation or bid procedures, as applicable, to the greatest extent possible, considering the necessity for rapid completion of the project. A waiver of the requirements of subsections 2 and 3 does not authorize an expenditure in excess of an amount otherwise authorized for the repair or improvement.

5. A claim for payment relating to a project

shall be itemized on a voucher form pursuant to section 8A.514, certified by the claimant and the architect or engineer in charge, and audited and approved by the department of administrative services. Upon approval by the department of administrative services, the director of the department of administrative services shall draw a warrant to be paid by the treasurer of state from funds appropriated for the project. A partial payment made before completion of the project does not constitute final acceptance of the work or a waiver of any defect in the work.

6. Subject to the prior approval of the administrator in control of a departmental institution, minor projects costing five thousand dollars or less may be authorized and completed by the executive head of the institution through the use of day labor. A contract is not required if a minor project is to be completed with the use of resident labor.

2007 Acts, ch 126, §44  
Subsection 2 amended

## CHAPTER 225C

### MENTAL ILLNESS, MENTAL RETARDATION, DEVELOPMENTAL DISABILITIES, OR BRAIN INJURY

#### 225C.6 Duties of commission.

1. To the extent funding is available, the commission shall perform the following duties:

a. Advise the administrator on the administration of the overall state disability services system.

b. Adopt necessary rules pursuant to chapter 17A which relate to disability programs and services, including but not limited to definitions of each disability included within the term “*disability services*” as necessary for purposes of state, county, and regional planning, programs, and services.

c. Adopt standards for community mental health centers, services, and programs as recommended under section 230A.16. The commission shall determine whether to grant, deny, or revoke the accreditation of the centers, services, and programs.

d. Adopt standards for the care of and services to persons with mental illness and mental retardation residing in county care facilities recommended under section 227.4.

e. Unless another governmental body sets standards for a service available to persons with disabilities, adopt state standards for that service. The commission shall provide that a service provider’s compliance with standards for a service set by a nationally recognized body shall be deemed to be in compliance with the state standards adopted by the commission for that service. The commis-

sion shall adopt state standards for those residential and community-based providers of services to persons with mental illness or developmental disabilities that are not otherwise subject to licensure by the department of human services or department of inspections and appeals, including but not limited to remedial services payable under the medical assistance program and other services payable from funds credited to a county mental health, mental retardation, and developmental disabilities services fund created in section 331.424A. In addition, the commission shall review the licensing standards used by the department of human services or department of inspections and appeals for those facilities providing services to persons with mental illness or developmental disabilities.

f. Assure that proper appeal procedures are available to persons aggrieved by decisions, actions, or circumstances relating to accreditation.

g. Adopt necessary rules for awarding grants from the state and federal government as well as other moneys that become available to the division for grant purposes.

h. Annually submit to the governor and the general assembly:

(1) A report concerning the activities of the commission.

(2) Recommendations formulated by the commission for changes in law.

i. By January 1 of each odd-numbered year,

submit to the governor and the general assembly an evaluation of:

(1) The extent to which services to persons with disabilities are actually available to persons in each county in the state and the quality of those services.

(2) The effectiveness of the services being provided by disability service providers in this state and by each of the state mental health institutes established under chapter 226 and by each of the state resource centers established under chapter 222.

*j.* Advise the administrator, the council on human services, the governor, and the general assembly on budgets and appropriations concerning disability services.

*k.* Coordinate activities with the governor's developmental disabilities council.

*l.* Establish standards for the provision under medical assistance of individual case management services. The commission shall determine whether to grant, deny, or revoke the accreditation of the services.

*m.* Identify basic financial eligibility standards for disability services. The standards shall include but are not limited to the following:

(1) A financial eligibility standard providing that a person with an income equal to or less than one hundred fifty percent of the federal poverty level, as defined by the most recently revised poverty income guidelines published by the United States department of health and human services, is eligible for disability services paid with public funding. However, a county may apply a copayment requirement for a particular disability service to a person with an income equal to or less than one hundred fifty percent of the federal poverty level, provided the disability service and the copayment amount both comply with rules adopted by the commission applying uniform standards with respect to copayment requirements. A person with an income above one hundred fifty percent of the federal poverty level may be eligible subject to a copayment or other cost-sharing arrangement subject to limitations adopted in rule by the commission.

(2) A requirement that a person who is eligible for federally funded services and other support must apply for the services and support.

(3) Resource limitations that are derived from the federal supplemental security income program limitations. A person with resources above the federal supplemental security income program limitations may be eligible subject to limitations adopted in rule by the commission. If a person does not qualify for federally funded services and other support but meets income, resource, and functional eligibility requirements, the following types of resources shall be disregarded:

(a) A retirement account that is in the accumulation stage.

(b) A burial, medical savings, or assistive tech-

nology account.

*n.* Identify disability services outcomes and indicators to support the ability of eligible persons with a disability to live, learn, work, and recreate in communities of the persons' choice. The identification duty includes but is not limited to responsibility for identifying, collecting, and analyzing data as necessary to issue reports on outcomes and indicators at the county and state levels.

*o.* Prepare five-year plans based upon the county management plans developed pursuant to section 331.439.

*p.* Work with other state agencies on coordinating, collaborating, and communicating concerning activities involving persons with disabilities.

*q.* Perform analyses and other functions associated with a redesign of the mental health and developmental disability services systems for adults and for children.

2. Notwithstanding section 217.3, subsection 6, the commission may adopt the rules authorized by subsection 1, pursuant to chapter 17A, without prior review and approval of those rules by the council on human services.

3. If the executive branch creates a committee, task force, council, or other advisory body to consider mental health and developmental disabilities policy, services, or program options involving children or adult consumers, the commission is designated to receive and consider any report, findings, recommendations, or other work product issued by such body. The commission may address the report, findings, recommendations, or other work product in fulfilling the commission's functions and to advise the department, council on human services, governor, and general assembly concerning disability services.

2007 Acts, ch 218, §118  
Subsection 1, paragraph e amended

### **225C.6A Mental health, developmental disability, and brain injury service system redesign implementation.**

1. *Purpose.* It is the intent of the general assembly to implement a redesign of the mental health, developmental disability, and brain injury service system over a period of years in order to transition to a coordinated system for Iowans with mental illness, mental retardation or other developmental disabilities, or brain injury. Because of the significance of the redesign to the persons who may be affected by it and the degree of uncertainty regarding the extent of funding changes necessary for implementation, the department and the commission shall not implement a redesign provision through rulemaking or other means unless specific statutory authority provides for the provision's implementation.

2. *Initial activities.* For the fiscal years beginning July 1, 2004, and July 1, 2005, the commission shall do the following:

a. Identify sources of revenue to support statewide delivery of core disability services to eligible disability populations.

b. Further develop adult disability services system redesign proposals and propose a redesign of the children's disability service system. The redesign of the children's system shall address issues associated with an individual's transition between the two systems.

c. (1) Plan, collect, and analyze data as necessary to issue cost estimates for serving additional populations and providing core disability services statewide. The department shall maintain compliance with applicable federal and state privacy laws to ensure the confidentiality and integrity of individually identifiable disability services data. The department shall regularly assess the status of the compliance in order to assure that data security is protected.

(2) In implementing a system under this paragraph "c" for collecting and analyzing state, county, and private contractor data, the department shall establish a client identifier for the individuals receiving services. The client identifier shall be used in lieu of the individual's name or social security number. The client identifier shall consist of the last four digits of an individual's social security number, the first three letters of the individual's last name, the individual's date of birth, and the individual's gender in an order determined by the department.

(3) Each county shall report to the department annually on or before December 1, for the preceding fiscal year the following information for each individual served: demographic information, expenditure data, and data concerning the services and other support provided to each individual, as specified in administrative rule adopted by the commission.

d. With consumer input, identify and propose standardized functional assessment tools and processes for use in the eligibility determination process when eligibility for a particular disability population group is implemented. The tools and processes shall be integrated with those utilized for the medical assistance program under chapter 249A. For the initial diagnostic criteria, the commission shall consider identifying a qualifying functional assessment score and any of the following diagnoses: mental illness, chronic mental illness, mental retardation, developmental disability, or brain injury.

e. The commission shall adopt a multiyear plan for developing and providing the data, cost projections, revenue requirements, and other information needed to support decisionmaking concerning redesign provisions. The information shall be provided as part of the commission's regular reports to the governor and general assembly or more often as determined to be appropriate by the commission.

f. Propose case rates for disability services.

g. Work with county representatives and other qualified persons to develop an implementation plan for replacing the county of legal settlement approach to determining service system funding responsibilities with an approach based upon residency. The plan shall address a statewide standard for proof of residency, outline a plan for establishing a data system for identifying residency of eligible individuals, address residency issues for individuals who began residing in a county due to a court order or criminal sentence or to obtain services in that county, recommend an approach for contesting a residency determination, and address other implementation issues.

2007 Acts, ch 218, §87, 92

Client identifier established under subsection 2, paragraph c, to be used beginning with data for disability services provided in the fiscal year beginning July 1, 2005, that is submitted by counties in December 2006; 2006 Acts, ch 1159, §3

2007 amendment to subsection 2, paragraph c, takes effect May 29, 2007, and applies retroactively to and after December 1, 2006, for information collected as of that date; deadline for submission of data for preceding fiscal year; rules; penalties; 2007 Acts, ch 218, §92

Subsection 2, paragraph c, NEW subparagraph (3)

### **225C.6B Mental health services system improvement — legislative intent — planning and implementation.**

#### *1. Intent.*

a. The general assembly intends for the state to implement a comprehensive, continuous, and integrated state mental health services plan in accordance with the requirements of sections 225C.4 and 225C.6 and other provisions of this chapter, by increasing the department's responsibilities in the development, funding, oversight, and ongoing leadership of mental health services in this state.

b. In order to further the purposes listed in sections 225C.1 and 225C.27 and in other provisions of this chapter, the general assembly intends that efforts focus on the goal of making available a comprehensive array of high-quality, evidence-based consumer and family-centered mental health services and other support in the least restrictive, community-based setting appropriate for a consumer.

c. In addition, it is the intent of the general assembly to promote policies and practices that achieve for consumers the earliest possible detection of mental health problems and early intervention; to stress that all health care programs address mental health disorders with the same urgency as physical health disorders; to promote the policies of all public programs that serve adults and children with mental disorders, including but not limited to child welfare, Medicaid, education, housing, criminal and juvenile justice, substance abuse treatment, and employment services; to consider the special mental health needs of adults and children; and to promote recovery and resiliency as expected outcomes for all consumers.

*2. Planning and implementation.* In order to build upon the partnership between the state and

counties in providing mental health and disability services in the state, the workgroups established for purposes of this subsection shall engage equal proportions representing the department, counties, and service providers. The county and provider representatives shall be appointed by the statewide associations representing counties and community providers. In addition, each workgroup shall include a representative of the commission, the mental health planning and advisory council, consumers, and a statewide advocacy organization. A workgroup shall be established for each of the following tasks provided for in this subsection: alternative distribution formulas, community mental health center plan, core mental health services, and the two comprehensive plan items. The division shall perform all of the following tasks in taking steps to improve the mental health services system for adults and children in this state:

*a. Alternative distribution formulas.* Identify alternative formulas for distributing mental health, mental retardation, and developmental disabilities allowed growth factor adjustment funding to counties. The alternative formulas shall provide methodologies that, as compared to the current methodologies, are more readily understood, better reflect the needs for services, respond to utilization patterns, acknowledge historical county spending, and address disparities in funding and service availability. The formulas shall serve to strengthen the partnership between the department and counties in the state's services system. The division may engage assistance from expert consultants with experience with funding allocation systems as necessary to evaluate options. The department shall report with findings and recommendations to the commission on or before November 1, 2007, and shall review and make recommendations to the department on or before December 1, 2007. The department shall submit the final report to the chairpersons and ranking members of the general assembly's committees on human resources and the joint appropriations subcommittee on health and human services, and to associated legislative staff, on or before January 31, 2008.

*b. Community mental health center plan.* Prepare a phased plan for increasing state responsibility for and oversight of mental health services provided by community mental health centers and the providers approved to fill the role of a center. The plan shall provide for an initial implementation date of July 1, 2008. The plan shall be submitted to the commission on or before October 1, 2007. The commission shall review the plan and provide comments to the department on or before November 1, 2007. The plan shall be submitted to the governor and general assembly on or before January 31, 2008. The department shall ensure that key stakeholders are engaged in the planning

process, including but not limited to the commission, mental health services providers, individuals with expertise in the delivery of mental health services, youth and adult consumers, family members of consumers, advocacy organizations, and counties.

*c. Core mental health services.* Identify core mental health services to be offered in each area of the state by community mental health centers and core services agency providers. The workgroup for this task shall be established no later than August 1, 2007. The core services shall be designed to address the needs of target populations identified by the workgroup and the services may include but are not limited to emergency services, school-based mental health services, short-term counseling, prescreening for those subject to involuntary treatment orders, and evidence-based practices. The division shall submit to the commission on or before October 1, 2007, proposed administrative rules and legislation to amend chapter 230A as necessary to implement the core services beginning July 1, 2008. The commission shall review and revise the proposed administrative rules and shall adopt the administrative rules after the general assembly has reviewed and approved the proposal. The proposals shall be submitted to the general assembly for review on or before January 31, 2008.

*d. Mental health and core service agency standards and accreditation.* Identify standards for accreditation of core services agencies that are not a community mental health center but may serve as a provider approved to fill the role of a center. Such core services agencies could be approved to provide core mental health services for children and adults on a regional basis. The standards shall be submitted to the commission for review and recommendation on or before December 1, 2007, and to the governor and general assembly on or before January 31, 2008.

*e. Co-occurring disorders.* The division and the department of public health shall give priority to the efforts underway to develop an implementation plan for addressing co-occurring mental health and substance abuse disorders in order to establish a comprehensive, continuous, and integrated system of care for such disorders. The division and the department of public health shall participate in a policy academy on co-occurring mental health and substance abuse disorders as part of developing an implementation plan for commission review by April 1, 2008. The commission shall review and make recommendations on the plan on or before May 1, 2008. The plan shall then be submitted to the governor and general assembly on or before June 1, 2008. The division may engage experts in the field of co-occurring mental health and substance abuse disorders to facilitate this planning process.

*f. Evidence-based practices.* Begin phased

implementation of evidence-based practices for mental health services over a period of several years.

(1) Not later than October 1, 2007, in order to provide a reasonable timeline for the implementation of evidence-based practices with mental health and disability services providers, the division shall provide for implementation of two adult and two children evidence-based practices per year over a three-year period.

(2) The division shall develop a comprehensive training program concerning such practices for community mental health centers, state resource centers and mental health institutes, and other providers, in collaboration with the Iowa consortium for mental health and mental health service providers. The division shall consult with experts on behavioral health workforce development regarding implementation of the mental health and disability services training and the curriculum and training opportunities offered.

(3) The department shall apply measures to ensure appropriate reimbursement is available to all providers for the implementation of mandated evidence-based practices and request appropriate funding for evidence-based practices from the governor and general assembly as part of the implementation plan. The implementation plan shall be submitted to the governor and general assembly on or before January 31, 2008.

(4) The department shall provide the commission with a plan for review to implement the provisions of this paragraph “f”.

*g. Comprehensive plan.*

(1) Complete a written plan describing the key components of the state’s mental health services system, including the services addressed in this subsection and those that are community-based, state institution-based, or regional or state-based. The plan shall incorporate the community mental health center plan provisions implemented pursuant to this subsection. The plan shall be submitted to the commission on or before November 15, 2008, and to the governor and general assembly on or before December 15, 2008.

(2) In addition, complete a written plan for the department to assume leadership and to assign and reassign significant financial responsibility for the components of the mental health services system in this state, including but not limited to the actions needed to implement the provisions of this subsection involving community mental health centers, core mental health services, core services agencies, co-occurring disorders, and evidence-based practices. The plan shall include recommendations for funding levels, payment methodologies for new and existing services, and allocation changes necessary for the department to assume significant financial responsibility for mental health services. The plan shall be submitted to the commission on or before November 15, 2008, and the commission shall provide review and rec-

ommendations on the plan to the department on or before December 15, 2008. The plan shall be submitted to the governor and general assembly on or before January 15, 2009.

(3) The planning provisions of this paragraph shall be directed toward the goal of strengthening the partnership between the department and counties in the state’s services system.

2007 Acts, ch 218, §93  
NEW section

### **225C.7 Mental health and developmental disabilities community services fund.**

1. A mental health and developmental disabilities community services fund is established in the office of the treasurer of state under the authority of the department, which shall consist of the amounts appropriated to the fund by the general assembly for each fiscal year. Before completion of the department’s budget estimate as required by section 8.23, the department shall determine and include in the estimate the amount which should be appropriated to the fund for the forthcoming fiscal period in order to implement the purpose stated in section 225C.1.

2. Moneys appropriated to the fund shall be allocated to counties for funding of community-based mental health, mental retardation, developmental disabilities, and brain injury services in the manner provided in the appropriation to the fund. If the allocation methodology includes a population factor, the most recent population estimates issued by the United States bureau of the census shall be applied.

3. If a county has not established or is not affiliated with a community mental health center under chapter 230A, the county shall expend a portion of the money received under this appropriation to contract with a community mental health center to provide mental health services to the county’s residents. If such a contractual relationship is unworkable or undesirable, the commission may waive the expenditure requirement. However, if the commission waives the requirement, the commission shall address the specific concerns of the county and shall attempt to facilitate the provision of mental health services to the county’s residents through an affiliation agreement or other means.

4. *a.* A county is entitled to receive money from the fund if that county raised by county levy and expended for mental health, mental retardation, and developmental disabilities services, in the preceding fiscal year, an amount of money at least equal to the amount so raised and expended for those purposes during the fiscal year beginning July 1, 1980.

*b.* With reference to the fiscal year beginning July 1, 1980, money “*raised by county levy and expended for mental health, mental retardation, and developmental disabilities services*” means the county’s maintenance of effort determined by us-



ing the general allocation application for the state community mental health and mental retardation services fund under section 225C.10, subsection 1, Code 1993. The department, with the agreement of each county, shall establish the actual amount expended by each county for persons with mental illness, mental retardation, or a developmental disability in the fiscal year which began on July 1, 1980, and this amount shall be deemed each county's maintenance of effort.

2007 Acts, ch 218, §77  
Subsection 2 amended

**225C.38 Payment — amount — reports.**

1. If an application for a family support subsidy is approved by the department:

a. A family support subsidy shall be paid to the parent or legal guardian on behalf of the family member. An approved subsidy shall be payable as of the first of the next month after the department approves the written application.

b. A family support subsidy shall be used to meet the special needs of the family. This subsidy is intended to complement but not supplant public assistance or social service benefits based on economic need, available through governmental programs or other means available to the family.

c. Except as provided in section 225C.41, a family support subsidy for a fiscal year shall be in an amount determined by the department in consultation with the comprehensive family support council created in section 225C.48. The parent or legal guardian receiving a family support subsidy may elect to receive a payment amount which is less than the amount determined in accordance with this paragraph.

2. The department shall administer the family support subsidy program and the payments made under the program as follows:

a. In each fiscal year, the department shall establish a figure for the number of family members for whom a family support subsidy shall be provided at any one time during the fiscal year. The figure shall be established by dividing the amount appropriated by the general assembly for family support subsidy payments during the fiscal year by the family support subsidy payment amount established in subsection 1, paragraph "c".

b. On or before July 15 in each fiscal year, the department shall approve the provision of a number of family support subsidies equal to the figure established in paragraph "a". During any thirty-day period, the number of family members for whom a family support subsidy is provided shall not be less than this figure.

c. Unless there are exceptional circumstances and the family requests and receives approval from the department for an exception to policy, a family is not eligible to receive the family support subsidy if any of the following are applicable to the family or the family member for whom the application was submitted:

(1) The family member is a special needs child who was adopted by the family and the family is receiving financial assistance under section 600.17.

(2) Medical assistance home and community-based waiver services are provided for the family member and the family lives in a county in which comprehensive family support program services are available.

(3) Medical assistance home and community-based waiver services are provided for the family member under a consumer choices option.

3. The parent or legal guardian who receives a family support subsidy shall report, in writing, the following information to the department:

a. Not less than annually, a statement that the family support subsidy was used to meet the special needs of the family.

b. The occurrence of any event listed in section 225C.40.

c. A request to terminate the family support subsidy.

Code editor notified of receipt of federal approval and a tentative implementation date of October 1, 2006, for consumer choices option provided in subsection 2, paragraph c, subparagraph (3); consumer choice option to supplant eligibility for family support subsidy for families receiving medical assistance home and community-based waiver services; advance notice of ineligibility for subsidy to affected families; 2006 Acts, ch 1159, §29  
Section not amended; footnote deleted

**225C.49 Departmental duties concerning services to individuals with a disability.**

1. The department shall provide coordination of the programs administered by the department which serve individuals with a disability and the individuals' families, including but not limited to the following juvenile justice and child welfare services: family-centered services described under section 232.102, decategorization of child welfare funding provided for under section 232.188, and foster care services paid under section 234.35, subsection 3. The department shall regularly review administrative rules associated with such programs and make recommendations to the council on human services, governor, and general assembly for revisions to remove barriers to the programs for individuals with a disability and the individuals' families including the following:

a. Eligibility prerequisites which require declaring the individual at risk of abuse, neglect, or out-of-home placement.

b. Time limits on services which restrict addressing ongoing needs of individuals with a disability and their families.

2. The department shall coordinate the department's programs and funding utilized by individuals with a disability and their families with other state and local programs and funding directed to individuals with a disability and their families.

3. In implementing the provisions of this section, the department shall do all of the following:

a. Compile information concerning services and other support available to individuals with a

disability and their families. Make the information available to individuals with a disability and their families and department staff.

b. Utilize internal training resources or contract for additional training of staff concerning the information under paragraph “a” and training of families and individuals as necessary to implement the family support subsidy and comprehensive family support programs under this chapter.

4. The department shall designate one individual whose sole duties are to provide central coordination of the programs under sections 225C.36 and 225C.47 and to work with the comprehensive family support council to oversee development and implementation of the programs.

2007 Acts, ch 172, §8  
Subsection 1, unnumbered paragraph 1 amended

## CHAPTER 229

### HOSPITALIZATION OF PERSONS WITH MENTAL ILLNESS

#### **229.19 Advocates — duties — compensation — state and county liability.**

1. a. In each county with a population of three hundred thousand or more inhabitants the board of supervisors shall appoint an individual who has demonstrated by prior activities an informed concern for the welfare and rehabilitation of persons with mental illness, and who is not an officer or employee of the department of human services nor of any agency or facility providing care or treatment to persons with mental illness, to act as an advocate representing the interests of patients involuntarily hospitalized by the court, in any matter relating to the patients’ hospitalization or treatment under section 229.14 or 229.15. In each county with a population of under three hundred thousand inhabitants, the chief judge of the judicial district encompassing the county shall appoint the advocate.

b. The court or, if the advocate is appointed by the county board of supervisors, the board shall assign the advocate appointed from a patient’s county of legal settlement to represent the interests of the patient. If a patient has no county of legal settlement, the court or, if the advocate is appointed by the county board of supervisors, the board shall assign the advocate appointed from the county where the hospital or facility is located to represent the interests of the patient.

c. The advocate’s responsibility with respect to any patient shall begin at whatever time the attorney employed or appointed to represent that patient as respondent in hospitalization proceedings, conducted under sections 229.6 to 229.13, reports to the court that the attorney’s services are no longer required and requests the court’s approval to withdraw as counsel for that patient. However, if the patient is found to be seriously mentally impaired at the hospitalization hearing, the attorney representing the patient shall automatically be relieved of responsibility in the case and an advocate shall be assigned to the patient at the conclusion of the hearing unless the attorney indicates an intent to continue the attorney’s services and the court so directs. If the court directs

the attorney to remain on the case, the attorney shall assume all the duties of an advocate. The clerk shall furnish the advocate with a copy of the court’s order approving the withdrawal and shall inform the patient of the name of the patient’s advocate.

d. With regard to each patient whose interests the advocate is required to represent pursuant to this section, the advocate’s duties shall include all of the following:

(1) To review each report submitted pursuant to sections 229.14 and 229.15.

(2) If the advocate is not an attorney, to advise the court at any time it appears that the services of an attorney are required to properly safeguard the patient’s interests.

(3) To be readily accessible to communications from the patient and to originate communications with the patient within five days of the patient’s commitment.

(4) To visit the patient within fifteen days of the patient’s commitment and periodically thereafter.

(5) To communicate with medical personnel treating the patient and to review the patient’s medical records pursuant to section 229.25.

(6) To file with the court quarterly reports, and additional reports as the advocate feels necessary or as required by the court, in a form prescribed by the court. The reports shall state what actions the advocate has taken with respect to each patient and the amount of time spent.

2. The hospital or facility to which a patient is committed shall grant all reasonable requests of the advocate to visit the patient, to communicate with medical personnel treating the patient, and to review the patient’s medical records pursuant to section 229.25. An advocate shall not disseminate information from a patient’s medical records to any other person unless done for official purposes in connection with the advocate’s duties pursuant to this chapter or when required by law.

3. The court or, if the advocate is appointed by the county board of supervisors, the board shall prescribe reasonable compensation for the servic-

es of the advocate. The compensation shall be based upon the reports filed by the advocate with the court. The advocate's compensation shall be paid by the county in which the court is located, either on order of the court or, if the advocate is appointed by the county board of supervisors, on the direction of the board. If the advocate is appointed by the court, the advocate is an employee of the state for purposes of chapter 669. If the advocate is appointed by the county board of supervisors, the advocate is an employee of the county for purposes of chapter 670. If the patient or the person who is legally liable for the patient's support is not indigent, the board shall recover the costs of compensating the advocate from that person. If that person has an income level as determined pursuant to section 815.9 greater than one hundred percent but not more than one hundred fifty percent

of the poverty guidelines, at least one hundred dollars of the advocate's compensation shall be recovered in the manner prescribed by the county board of supervisors. If that person has an income level as determined pursuant to section 815.9 greater than one hundred fifty percent of the poverty guidelines, at least two hundred dollars of the advocate's compensation shall be recovered in substantially the same manner prescribed by the county board of supervisors as provided in section 815.9.

2007 Acts, ch 22, §53, 54; 2007 Acts, ch 86, §3  
See Code editor's note to §29A.28  
Subsection 1, unnumbered paragraph 1 amended, divided, and designated as paragraphs a – d  
Subsection 1, former paragraphs a and b redesignated as subparagraphs (1) and (2) of paragraph d  
Subsection 1, former paragraph c amended and redesignated as subparagraph (3) of paragraph d  
Subsection 1, former paragraphs d – f redesignated as subparagraphs (4) – (6) of paragraph d

## CHAPTER 229A

### COMMITMENT OF SEXUALLY VIOLENT PREDATORS

#### 229A.2 Definitions.

As used in this chapter:

1. *“Agency with jurisdiction”* means an agency which has custody of or releases a person serving a sentence or term of confinement or is otherwise in confinement based upon a lawful order or authority, and includes but is not limited to the department of corrections, the department of human services, a judicial district department of correctional services, and the Iowa board of parole.

2. *“Appropriate secure facility”* means a state facility that is designed to confine but not necessarily to treat a sexually violent predator.

3. *“Discharge”* means an unconditional discharge from the sexually violent predator program. A person released from a secure facility into a transitional release program or released with or without supervision is not considered to be discharged.

4. *“Likely to engage in predatory acts of sexual violence”* means that the person more likely than not will engage in acts of a sexually violent nature. If a person is not confined at the time that a petition is filed, a person is *“likely to engage in predatory acts of sexual violence”* only if the person commits a recent overt act.

5. *“Mental abnormality”* means a congenital or acquired condition affecting the emotional or volitional capacity of a person and predisposing that person to commit sexually violent offenses to a degree which would constitute a menace to the health and safety of others.

6. *“Predatory”* means acts directed toward a person with whom a relationship has been established or promoted for the primary purpose of victimization.

7. *“Recent overt act”* means any act that has either caused harm of a sexually violent nature or creates a reasonable apprehension of such harm.

8. *“Safekeeper”* means a person who is confined in an appropriate secure facility pursuant to this chapter but who is not subject to an order of commitment pursuant to this chapter.

9. *“Sexually motivated”* means that one of the purposes for commission of a crime is the purpose of sexual gratification of the perpetrator of the crime.

10. *“Sexually violent offense”* means:

a. A violation of any provision of chapter 709, except section 709.18, subsection 2 or 3.

b. A violation of any of the following if the offense involves sexual abuse, attempted sexual abuse, or intent to commit sexual abuse:

(1) Murder as defined in section 707.1.

(2) Kidnapping as defined in section 710.1.

(3) Burglary as defined in section 713.1.

(4) Child endangerment under section 726.6, subsection 1, paragraph “e”.

c. Sexual exploitation of a minor in violation of section 728.12, subsection 1.

d. Pandering involving a minor in violation of section 725.3, subsection 2.

e. An offense involving an attempt or conspiracy to commit any offense referred to in this subsection.

f. An offense under prior law of this state or an offense committed in another jurisdiction which would constitute an equivalent offense under paragraphs “a” through “e”.

g. Any act which, either at the time of sentencing for the offense or subsequently during civil commitment proceedings pursuant to this chap-

ter, has been determined beyond a reasonable doubt to have been sexually motivated.

11. “*Sexually violent predator*” means a person who has been convicted of or charged with a sexually violent offense and who suffers from a mental abnormality which makes the person likely to engage in predatory acts constituting sexually violent offenses, if not confined in a secure facility.

12. “*Transitional release*” means a conditional release from a secure facility operated by the department of human services with the conditions of such release set by the court or the department of human services.

2007 Acts, ch 91, §1  
Subsection 10, paragraph a amended

## CHAPTER 231

### DEPARTMENT OF ELDER AFFAIRS — ELDER IOWANS

Single point of entry long-term living resources system team created to hold public meetings regarding access to long-term living resources system; report to general assembly by December 1, 2008; 2007 Acts, ch 92, §1

#### **231.23 Department of elder affairs — duties and authority.**

The department of elder affairs director shall:

1. Develop and administer a state plan on aging.
2. Assist the commission in the review and approval of area plans.
3. Pursuant to commission policy, coordinate state activities related to the purposes of this chapter and all other chapters under the department's jurisdiction.
4. Advocate for elders by reviewing and commenting upon all state plans, budgets, laws, rules, regulations, and policies which affect elders and by providing technical assistance to any agency, organization, association, or individual representing the needs of the elders.
5. Assist the commission in dividing the state into distinct planning and service areas.
6. Assist the commission in designating for each area a public or private nonprofit agency or organization as the area agency on aging for that area.
7. Pursuant to commission policy, take into account the views of elder Iowans.
8. Assist the commission in adopting a formula for the distribution of funds available from the federal Act.
9. Assist the commission in assuring that preference will be given to providing services to elders with the greatest economic or social needs, with particular attention to low-income minority elders.
10. Assist the commission in developing, adopting, and enforcing administrative rules, by issuing necessary forms and procedures.
11. Apply for, receive, and administer grants and gifts to conduct projects consistent with the purposes of this chapter.
12. Administer state authorized programs.
13. Provide annual training for area agency on

aging board of directors members.

14. Establish a procedure for an area agency on aging to use in selection of members of the agency's board of directors. The selection procedure shall be incorporated into the bylaws of the board of directors.

15. Provide oversight to ensure that the composition of the area agency on aging board of directors complies with the rules of the department.

2007 Acts, ch 81, §1  
Subsection 14 amended

#### **231.33 Area agencies on aging duties.**

Each area agency on aging shall:

1. Develop and administer an area plan on aging.
2. Assess the types and levels of services needed by older persons in the planning and service area, and the effectiveness of other public or private programs serving those needs.
3. Enter into subgrants or contracts to provide services under the plan.
4. Provide technical assistance as needed, document quarterly monitoring, and provide a written report of an annual on-site assessment of all service providers funded by the area agency.
5. Coordinate the administration of its plan with federal programs and with other federal, state, and local resources in order to develop a comprehensive and coordinated service system.
6. Establish an advisory council.
7. Give preference in the delivery of services under the area plan to elders with the greatest economic or social need.
8. Assure that elders in the planning and service area have reasonably convenient access to information and assistance services.
9. Provide adequate and effective opportunities for elders to express their views to the area agency on policy development and program implementation under the area plan.

10. Designate community focal points.
11. Contact outreach efforts, with special emphasis on rural elders, to identify elders with greatest economic or social needs and inform them of the availability of services under the area plan.
12. Develop and publish the methods that the agency uses to establish preferences and priorities for services.
13. Submit all fiscal and performance reports in accordance with the policies of the commission.
14. Monitor, evaluate, and comment on laws, rules, regulations, policies, programs, hearings, levies, and community actions which significantly affect the lives of elders.
15. Conduct public hearings on the needs of elders.
16. Represent the interests of elders to public officials, public and private agencies, or organizations.
17. Coordinate planning with other agencies

and organizations to promote new or expanded benefits and opportunities for elders.

18. Coordinate planning with other agencies for assuring the safety of elders in a natural disaster or other safety threatening situation.

19. Require the completion by board of directors members, annually, of four hours of training, provided by the department of elder affairs.

20. Incorporate into the bylaws of the area agency's board of directors and comply with the procedure established by the department for selection of members to the board of directors as provided in section 231.23.

21. Provide the opportunity for elders residing in the planning and service area to offer substantive suggestions regarding the employment practices of the area agency on aging.

2007 Acts, ch 218, §38  
NEW subsection 21

## CHAPTER 231B

### ELDER GROUP HOMES

Continuation of effectiveness of rules, regulations, forms, orders, and directives promulgated by the department of elder affairs under prior law, and validity of licenses, certifications, and permits issued by the department of elder affairs; schedule for updating Iowa administrative code to correspond to administration of chapter by department of inspections and appeals; 2007 Acts, ch 215, §206

#### 231B.1 Definitions.

1. "*Department*" means the department of inspections and appeals or the department's designee.

2. "*Elder*" means a person sixty years of age or older.

3. "*Elder group home*" means a single-family residence that is operated by a person who is providing room, board, and personal care and may provide health-related services to three through five elders who are not related to the person providing the service within the third degree of consanguinity or affinity, and which is staffed by an on-site manager twenty-four hours per day, seven days per week.

4. "*Governmental unit*" means the state, or any county, municipality, or other political subdivision or any department, division, board, or other agency of any of these entities.

5. "*Health-related care*" means services provided by a registered nurse or a licensed practical nurse, on a part-time or intermittent basis, and services provided by other licensed health care professionals, on a part-time or intermittent basis.

6. "*Medication setup*" means assistance with various steps of medication administration to sup-

port a tenant's autonomy, which may include but is not limited to routine prompting, cueing and reminding, opening containers or packaging at the direction of the tenant, reading instructions or other label information, or transferring medications from the original container into suitable medication dispensing containers, reminder containers, or medication cups.

7. "*Occupancy agreement*" means a written agreement entered into between an elder group home and a tenant that clearly describes the rights and responsibilities of the elder group home and the tenant, and other information required by rule. "*Occupancy agreement*" may include a separate signed lease and signed service agreement.

8. "*Personal care*" means assistance with the essential activities of daily living which may include but are not limited to transferring, bathing, personal hygiene, dressing, grooming, and house-keeping that are essential to the health and welfare of a tenant.

9. "*Tenant*" means an individual who receives elder group home services through a certified elder group home.

10. "*Tenant advocate*" means the office of the long-term care resident's advocate established in section 231.42.

11. “*Tenant’s legal representative*” means a person appointed by the court to act on behalf of a tenant, or a person acting pursuant to a power of attorney.

2007 Acts, ch 215, §135  
Subsection 1 amended

#### **231B.1A Findings — purpose.**

1. The general assembly finds that elder group homes are an important part of the long-term care continua in this state. Elder group homes emphasize the independence and dignity of the individual while providing housing in a cost-effective manner.

2. The purposes of establishing and regulating elder group homes include all of the following:

*a.* To encourage the establishment and maintenance of a safe and homelike environment for individuals of all income levels who require assistance with personal care to live independently but who require health-related care only on a part-time or intermittent basis.

*b.* To establish standards for elder group homes that allow flexibility in design, which promotes a model of service delivery by focusing on individual independence, needs and desires, and consumer-driven quality of service.

*c.* To encourage public participation in the development of elder group home programs for individuals of all income levels.

2007 Acts, ch 215, §136  
Subsection 3 stricken

#### **231B.2 Certification of elder group homes — rules.**

1. The department shall establish by rule, in accordance with chapter 17A, minimum standards for certification and monitoring of elder group homes. The department may adopt by reference, with or without amendment, nationally recognized standards and rules for elder group homes. The standards and rules shall be formulated in consultation with affected state agencies and affected industry, professional, and consumer groups; shall be designed to accomplish the purposes of this chapter; and shall include but not be limited to rules relating to all of the following:

*a.* Provisions to ensure, to the greatest extent possible, the health, safety, well-being, and appropriate treatment of tenants.

*b.* Requirements that elder group homes furnish the department with specified information necessary to administer this chapter. All information related to the provider application for an elder group home presented to the department shall be considered a public record pursuant to chapter 22.

*c.* Standards for tenant evaluation or assessment, which may vary in accordance with the nature of the services provided or the status of the tenant.

*d.* Provisions for granting short-term waivers

for tenants who exceed occupancy criteria.

2. Each elder group home operating in this state shall be certified by the department.

3. The owner or manager of a certified elder group home shall comply with the rules adopted by the department for an elder group home. A person, including a governmental unit, shall not represent an elder group home to the public as an elder group home or as a certified elder group home unless and until the program is certified pursuant to this chapter.

4. *a.* Services provided by a certified elder group home may be provided directly by staff of the elder group home, by individuals contracting with the elder group home to provide services, or by individuals employed by the tenant or with whom the tenant contracts if the tenant agrees to assume the responsibility and risk of the employment or the contractual relationship.

*b.* If a tenant is terminally ill and has elected to receive hospice services under the federal Medicare program from a Medicare-certified hospice program, the elder group home and the Medicare-certified hospice program shall enter into a written agreement under which the hospice program retains professional management responsibility for those services.

5. The department may enter into contracts to provide certification and monitoring of elder group homes. The department shall:

*a.* Have full access at reasonable times to all records, materials, and common areas pertaining to the provision of services and care to the tenants of a program during certification, monitoring, and complaint investigations of programs seeking certification, currently certified, or alleged to be uncertified.

*b.* With the consent of the tenant, visit the tenant’s unit.

6. A department, agency, or officer of this state or of any governmental unit shall not pay or approve for payment from public funds any amount to an elder group home for an actual or prospective tenant, unless the program holds a current certificate issued by the department and meets all current requirements for certification.

7. The department shall adopt rules regarding the conducting or operating of another business or activity in the distinct part of the physical structure in which the elder group home is operated, if the business or activity serves persons who are not tenants. The rules shall be developed in consultation with affected state agencies and affected industry, professional, and consumer groups.

8. An elder group home shall comply with section 135C.33.

9. The department shall conduct training sessions for personnel responsible for conducting monitoring evaluations and complaint investigations of elder group homes.

10. Certification shall be for two years unless revoked for good cause by the department.

2007 Acts, ch 215, §137 – 141  
 Subsection 1, unnumbered paragraph 1 amended  
 Subsection 1, paragraph b amended  
 Subsection 2 amended  
 Subsection 5, unnumbered paragraph 1 amended  
 Subsections 6, 7, 9, and 10 amended

**231B.3 Referral to uncertified elder group home prohibited.**

1. A person shall not place, refer, or recommend the placement of another person in an elder group home that is not certified pursuant to this chapter.

2. A person who has knowledge that an elder group home is operating without certification shall report the name and address of the home to the department. The department shall investigate a report made pursuant to this section.

2007 Acts, ch 215, §142  
 Subsection 2 amended

**231B.4 Zoning — fire and safety standards.**

An elder group home shall be located in an area zoned for single-family or multiple-family housing or in an unincorporated area and shall be constructed in compliance with applicable local housing codes and the rules adopted for the special classification by the state fire marshal. In the absence of local building codes, the facility shall comply with the state plumbing code established pursuant to section 135.11 and the state building code established pursuant to section 103A.7 and the rules adopted for the special classification by the state fire marshal. The rules adopted for the special classification by the state fire marshal regarding second floor occupancy shall be adopted in consultation with the department and shall take into consideration the mobility of the tenants.

2007 Acts, ch 215, §143  
 Section amended

**231B.5 Written occupancy agreement required.**

1. An elder group home shall not operate in this state unless a written occupancy agreement, as prescribed in subsection 2, is executed between the elder group home and each tenant or the tenant's legal representative prior to the tenant's occupancy, and unless the elder group home operates in accordance with the terms of the occupancy agreement. The elder group home shall deliver to the tenant or the tenant's legal representative a complete copy of the occupancy agreement and all supporting documents and attachments and shall deliver, at least thirty days prior to any changes, a written copy of changes to the occupancy agreement if any changes to the copy originally delivered are subsequently made, unless otherwise provided in this section.

2. An elder group home occupancy agreement

shall clearly describe the rights and responsibilities of the tenant and the elder group home. The occupancy agreement shall also include but is not limited to inclusion of all of the following information in the body of the agreement or in the supporting documents and attachments:

*a.* A description of all fees, charges, and rates describing tenancy and basic services covered, and any additional and optional services and their related costs.

*b.* A statement regarding the impact of the fee structure on third-party payments, and whether third-party payments and resources are accepted by the elder group home.

*c.* The procedure followed for nonpayment of fees.

*d.* Identification of the party responsible for payment of fees and identification of the tenant's legal representative, if any.

*e.* The term of the occupancy agreement.

*f.* A statement that the elder group home shall notify the tenant or the tenant's legal representative, as applicable, in writing at least thirty days prior to any change being made in the occupancy agreement with the following exceptions:

(1) When the tenant's health status or behavior constitutes a substantial threat to the health or safety of the tenant, other tenants, or others, including when the tenant refuses to consent to relocation.

(2) When an emergency or a significant change in the tenant's condition results in the need for the provision of services that exceed the type or level of services included in the occupancy agreement and the necessary services cannot be safely provided by the elder group home.

*g.* A statement that all tenant information shall be maintained in a confidential manner to the extent required under state and federal law.

*h.* Occupancy, involuntary transfer, and transfer criteria and procedures, which ensure a safe and orderly transfer.

*i.* The internal appeals process provided relative to an involuntary transfer.

*j.* The program's policies and procedures for addressing grievances between the elder group home and the tenants, including grievances relating to transfer and occupancy.

*k.* A statement of the prohibition against retaliation as prescribed in section 231B.13.

*l.* The emergency response policy.

*m.* The staffing policy which specifies if nurse delegation will be used, and how staffing will be adapted to meet changing tenant needs.

*n.* The refund policy.

*o.* A statement regarding billing and payment procedures.

3. Occupancy agreements and related documents executed by each tenant or tenant's legal representative shall be maintained by the elder group home from the date of execution until three

years from the date the occupancy agreement is terminated. A copy of the most current occupancy agreement shall be provided to members of the general public, upon request. Occupancy agreements and related documents shall be made available for on-site inspection to the department upon request and at reasonable times.

2007 Acts, ch 215, §144  
Subsection 3 amended

### 231B.6 Involuntary transfer.

1. If an elder group home initiates the involuntary transfer of a tenant and the action is not a result of a monitoring evaluation or complaint investigation by the department, and if the tenant or tenant's legal representative contests the transfer, the following procedure shall apply:

*a.* The elder group home shall notify the tenant or tenant's legal representative, in accordance with the occupancy agreement, of the need to transfer, the reason for the transfer, and the contact information of the tenant advocate.

*b.* The elder group home shall provide the tenant advocate with a copy of the notification to the tenant.

*c.* The tenant advocate shall offer the notified tenant or tenant's legal representative assistance with the program's internal appeals process. The tenant is not required to accept the assistance of the tenant advocate.

*d.* If, following the internal appeals process, the elder group home upholds the transfer decision, the tenant or the tenant's legal representative may utilize other remedies authorized by law to contest the transfer.

2. The department, in consultation with affected state agencies and affected industry, professional, and consumer groups, shall establish by rule, in accordance with chapter 17A, procedures to be followed, including the opportunity for hearing, when the transfer of a tenant results from a monitoring evaluation or complaint investigation conducted by the department.

2007 Acts, ch 215, §145, 146  
Subsection 1, unnumbered paragraph 1 amended  
Subsection 2 amended

### 231B.7 Complaints.

1. Any person with concerns regarding the operations or service delivery of an elder group home may file a complaint with the department. The name of the person who files a complaint with the department and any personal identifying information of the person or any tenant identified in the complaint shall be kept confidential and shall not be subject to discovery, subpoena, or other means of legal compulsion for its release to a person other than department employees involved with the complaint.

2. The department shall establish procedures for the disposition of complaints received in accor-

dance with this section.

2007 Acts, ch 215, §147  
Section amended

### 231B.8 Informal review.

1. If an elder group home contests the findings of regulatory insufficiencies of a monitoring evaluation or complaint investigation, the program shall submit written information, demonstrating that the program was in compliance with the applicable requirement at the time of the monitoring evaluation or complaint investigation of the regulatory insufficiencies, to the department for review.

2. The department shall review the written information submitted within ten working days of the receipt of the information. At the conclusion of the review, the department may affirm, modify, or dismiss the regulatory insufficiencies. The department shall notify the program in writing of the decision to affirm, modify, or dismiss the regulatory insufficiencies, and the reasons for the decision.

3. In the case of a complaint investigation, the department shall also notify the complainant, if known, of the decision and the reasons for the decision.

2007 Acts, ch 215, §148  
Section amended

### 231B.9 Public disclosure of findings.

Upon completion of a monitoring evaluation or complaint investigation of an elder group home by the department pursuant to this chapter, including the conclusion of all administrative appeals processes, the department's final findings with respect to compliance by the elder group home with requirements for certification shall be made available to the public in a readily available form and place. Other information relating to an elder group home that is obtained by the department which does not constitute the department's final findings from a monitoring evaluation or complaint investigation of the elder group home shall not be made available to the public except in proceedings involving the denial, suspension, or revocation of a certificate under this chapter.

2007 Acts, ch 215, §149  
Section amended

### 231B.10 Denial, suspension, or revocation — conditional operation.

1. The department may deny, suspend, or revoke a certificate in any case where the department finds that there has been a substantial or repeated failure on the part of the elder group home to comply with this chapter or minimum standards adopted under this chapter or for any of the following reasons:

*a.* Appropriation or conversion of the property of an elder group home tenant without the tenant's written consent or the written consent of the ten-



ant's legal representative.

b. Permitting, aiding, or abetting the commission of any illegal act in the elder group home.

c. Obtaining or attempting to obtain or retain a certificate by fraudulent means, misrepresentation, or by submitting false information.

d. Habitual intoxication or addiction to the use of drugs by the applicant, administrator, executive director, manager, or supervisor of the elder group home.

e. Securing the devise or bequest of the property of a tenant of an elder group home by undue influence.

f. Founded dependent adult abuse as defined in section 235B.2.

g. In the case of any officer, member of the board of directors, trustee, or designated manager of the elder group home or any stockholder, partner, or individual who has greater than a five percent equity interest in the elder group home, having or having had an ownership interest in an elder group home, assisted living or adult day services program, home health agency, residential care facility, or licensed nursing facility in this or any state which has been closed due to removal of program, agency, or facility licensure or certification or involuntary termination from participation in either the medical assistance or Medicare programs, or having been found to have failed to provide adequate protection or services for tenants to prevent abuse or neglect.

h. In the case of a certificate applicant or an existing certified owner or operator who is an entity other than an individual, the person is in a position of control or is an officer of the entity and engages in any act or omission proscribed by this chapter.

i. For any other reason as provided by law or administrative rule.

2. The department may as an alternative to denial, suspension, or revocation conditionally issue or continue a certificate dependent upon the performance by the elder group home of reasonable conditions within a reasonable period of time as set by the department so as to permit the program to commence or continue the operation of the elder group home pending full compliance with this chapter or the rules adopted pursuant to this chapter. If the elder group home does not make diligent efforts to comply with the conditions prescribed, the department may, under the proceedings prescribed by this chapter, deny, suspend, or revoke the certificate. An elder group home shall not be operated on a conditional certificate for more than one year.

2007 Acts, ch 215, §150, 151  
Subsection 1, unnumbered paragraph 1 amended  
Subsection 2 amended

#### **231B.11 Notice — appeal — emergency provisions.**

1. The denial, suspension, or revocation of a

certificate shall be effected by delivering to the applicant or certificate holder by restricted certified mail or by personal service a notice setting forth the particular reasons for such action. Such denial, suspension, or revocation shall become effective thirty days after the mailing or service of the notice, unless the applicant or certificate holder, within such thirty-day period, requests a hearing, in writing, of the department, in which case the notice shall be deemed to be suspended.

2. The denial, suspension, or revocation of a certificate may be appealed in accordance with rules adopted by the department in accordance with chapter 17A.

3. When the department finds that an imminent danger to the health or safety of a tenant of an elder group home exists which requires action on an emergency basis, the department may direct removal of all tenants of the elder group home and suspend the certificate prior to a hearing.

2007 Acts, ch 215, §152  
Section amended

#### **231B.12 Department notified of casualties.**

The department shall be notified within twenty-four hours, by the most expeditious means available, of any accident causing substantial injury or death to a tenant, and any substantial fire or natural or other disaster occurring at or near an elder group home.

2007 Acts, ch 215, §153  
Section amended

#### **231B.13 Retaliation by elder group home prohibited.**

An elder group home shall not discriminate or retaliate in any way against a tenant, a tenant's family, or an employee of the elder group home who has initiated or participated in any proceeding authorized by this chapter. An elder group home that violates this section is subject to a penalty as established by administrative rule in accordance with chapter 17A, to be assessed and collected by the department, paid into the state treasury, and credited to the general fund of the state.

2007 Acts, ch 215, §154  
Section amended

#### **231B.14 Civil penalties.**

The department may establish by rule, in accordance with chapter 17A, civil penalties for the following violations by an elder group home:

1. Noncompliance with any regulatory requirements which presents an imminent danger or a substantial probability of resultant death or physical harm to a tenant.

2. Following receipt of notice from the department, continued failure or refusal to comply within a prescribed time frame with regulatory requirements that have a direct relationship to the health, safety, or security of elder group home tenants.

3. Preventing or interfering with or attempting to impede in any way any duly authorized representative of the department in the lawful enforcement of this chapter or of the rules adopted pursuant to this chapter. As used in this subsection, “*lawful enforcement*” includes but is not limited to:

a. Contacting or interviewing any tenant of an elder group home in private at any reasonable hour and without advance notice.

b. Examining any relevant records of an elder group home.

c. Preserving evidence of any violation of this chapter or of the rules adopted pursuant to this chapter.

2007 Acts, ch 215, §155, 156  
 Subsection 2 amended  
 Subsection 3, unnumbered paragraph 1 amended

**231B.15 Criminal penalties and injunctive relief.**

A person establishing, conducting, managing, or operating an elder group home without a certificate is guilty of a serious misdemeanor. Each day of continuing violation after conviction or notice from the department by certified mail of a violation shall be considered a separate offense. A person establishing, conducting, managing, or operating an elder group home without a certificate may be temporarily or permanently restrained by a court of competent jurisdiction from such activi-

ty in an action brought by the state.

2007 Acts, ch 215, §157  
 Section amended

**231B.17 Iowa elder group home fees.**

1. The department shall collect elder group home certification and related fees. Fees collected and retained pursuant to this section shall be deposited in the general fund of the state.

2. The following certification and related fees shall apply to elder group homes:

a. For a two-year initial certification, seven hundred fifty dollars.

b. For a two-year recertification, one thousand dollars.

c. For a blueprint plan review, nine hundred dollars.

d. For an optional preliminary plan review, five hundred dollars.

2007 Acts, ch 215, §158  
 Subsection 1 amended

**231B.20 Nursing assistant and medication aide — certification.**

The department, in cooperation with other appropriate agencies, shall establish a procedure to allow nursing assistants or medication aides to claim work within an elder group home as credit toward sustaining the nursing assistant’s or medication aide’s certification.

2007 Acts, ch 215, §159  
 Section amended

**CHAPTER 231C**

**ASSISTED LIVING PROGRAMS**

Senior living program; see chapter 249H  
 Continuation of effectiveness of rules, regulations, forms, orders, and directives promulgated by the department of elder affairs under prior law, and validity of licenses, certifications, and permits issued by the department of elder affairs; schedule for updating Iowa administrative code to correspond to administration of chapter by department of inspections and appeals; 2007 Acts, ch 215, §206

**231C.1 Findings, purpose, and intent.**

1. The general assembly finds that assisted living is an important part of the long-term care continua in this state. Assisted living emphasizes the independence and dignity of the individual while providing services in a cost-effective manner.

2. The purposes of establishing an assisted living program include all of the following:

a. To encourage the establishment and maintenance of a safe and homelike environment for individuals of all income levels who require assistance to live independently but who do not require health-related care on a continuous twenty-four-hour per day basis.

b. To establish standards for assisted living programs that allow flexibility in design which promotes a social model of service delivery by focusing on independence, individual needs and desires, and consumer-driven quality of service.

c. To encourage public participation in the development of assisted living programs for individuals of all income levels.

3. It is the intent of the general assembly that the department promote a social model for assisted living programs and a consultative process to assist with compliance by assisted living programs.

2007 Acts, ch 215, §160  
 Subsection 3 stricken and rewritten

### 231C.2 Definitions.

As used in this chapter, unless the context otherwise requires:

1. “*Adult day services*” means adult day services as defined in section 231D.1.
2. “*Assisted living*” means provision of housing with services which may include but are not limited to health-related care, personal care, and assistance with instrumental activities of daily living to three or more tenants in a physical structure which provides a homelike environment. “*Assisted living*” also includes encouragement of family involvement, tenant self-direction, and tenant participation in decisions that emphasize choice, dignity, privacy, individuality, shared risk, and independence. “*Assisted living*” includes the provision of housing and assistance with instrumental activities of daily living only if personal care or health-related care is also included. “*Assisted living*” includes twenty-four hours per day response staff to meet scheduled and unscheduled or unpredictable needs in a manner that promotes maximum dignity and independence and provides supervision, safety, and security.
3. “*Department*” means the department of inspections and appeals or the department’s designee.
4. “*Governmental unit*” means the state, or any county, municipality, or other political subdivision or any department, division, board, or other agency of any of these entities.
5. “*Health-related care*” means services provided by a registered nurse or a licensed practical nurse, on a part-time or intermittent basis, and services provided by other licensed health care professionals, on a part-time or intermittent basis.
6. “*Instrumental activities of daily living*” means those activities that reflect the tenant’s ability to perform household and other tasks necessary to meet the tenant’s needs within the community, which may include but are not limited to shopping, cooking, housekeeping, chores, and traveling within the community.
7. “*Medication setup*” means assistance with various steps of medication administration to support a tenant’s autonomy, which may include but is not limited to routine prompting, cueing and reminding, opening containers or packaging at the direction of the tenant, reading instructions or other label information, or transferring medications from the original container into suitable medication dispensing containers, reminder containers, or medication cups.
8. “*Occupancy agreement*” means a written agreement entered into between an assisted living program and a tenant that clearly describes the rights and responsibilities of the assisted living program and a tenant, and other information required by rule. “*Occupancy agreement*” may in-

clude a separate signed lease and signed service agreement.

9. “*Personal care*” means assistance with the essential activities of daily living which may include but are not limited to transferring, bathing, personal hygiene, dressing, grooming, and housekeeping that are essential to the health and welfare of the tenant.

10. “*Recognized accrediting entity*” means a nationally recognized accrediting entity that the department recognizes as having specific assisted living program standards equivalent to the standards established by the department for assisted living programs.

11. “*Tenant*” means an individual who receives assisted living services through a certified assisted living program.

12. “*Tenant advocate*” means the office of long-term care resident’s advocate established in section 231.42.

13. “*Tenant’s legal representative*” means a person appointed by the court to act on behalf of a tenant or a person acting pursuant to a power of attorney.

2007 Acts, ch 215, §161  
Subsection 3 amended

### 231C.3 Certification of assisted living programs.

1. The department shall establish by rule in accordance with chapter 17A minimum standards for certification and monitoring of assisted living programs. The department may adopt by reference with or without amendment, nationally recognized standards and rules for assisted living programs. The rules shall include specification of recognized accrediting entities and provisions related to dementia-specific programs. The standards and rules shall be formulated in consultation with affected state agencies and affected industry, professional, and consumer groups; shall be designed to accomplish the purposes of this chapter; and shall include but are not limited to rules relating to all of the following:

a. Provisions to ensure, to the greatest extent possible, the health, safety, and well-being and appropriate treatment of tenants.

b. Requirements that assisted living programs furnish the department with specified information necessary to administer this chapter. All information related to a provider application for an assisted living program submitted to the department shall be considered a public record pursuant to chapter 22.

c. Standards for tenant evaluation or assessment, which may vary in accordance with the nature of the services provided or the status of the tenant.

d. Provisions for granting short-term waivers for tenants who exceed occupancy criteria.

2. Each assisted living program operating in this state shall be certified by the department. If an assisted living program is voluntarily accredited by a recognized accrediting entity, the department shall certify the assisted living program on the basis of the voluntary accreditation. An assisted living program that is certified by the department on the basis of voluntary accreditation shall not be subject to payment of the certification fee prescribed in section 231C.18, but shall be subject to an administrative fee as prescribed by rule. An assisted living program certified under this section is exempt from the requirements of section 135.63 relating to certificate of need requirements.

3. The owner or manager of a certified assisted living program shall comply with the rules adopted by the department for an assisted living program. A person including a governmental unit shall not represent an assisted living program to the public as an assisted living program or as a certified assisted living program unless and until the program is certified pursuant to this chapter.

4. *a.* Services provided by a certified assisted living program may be provided directly by staff of the assisted living program, by individuals contracting with the assisted living program to provide services, or by individuals employed by the tenant or with whom the tenant contracts if the tenant agrees to assume the responsibility and risk of the employment or the contractual relationship.

*b.* If a tenant is terminally ill and has elected to receive hospice services under the federal Medicare program from a Medicare-certified hospice program, the assisted living program and the Medicare-certified hospice program shall enter into a written agreement under which the hospice program retains professional management responsibility for those services.

5. The department may enter into contracts to provide certification and monitoring of assisted living programs. The department shall:

*a.* Have full access at reasonable times to all records, materials, and common areas pertaining to the provision of services and care to the tenants of a program during certification, monitoring, and complaint investigations of programs seeking certification, currently certified, or alleged to be uncertified.

*b.* With the consent of the tenant, visit the tenant's unit.

*c.* Require that the recognized accrediting entity providing accreditation for a program provide copies to the department of all materials related to the accreditation, monitoring, and complaint process.

6. The department may also establish by rule in accordance with chapter 17A minimum standards for subsidized and dementia-specific assisted living programs. The rules shall be formu-

lated in consultation with affected state agencies and affected industry, professional, and consumer groups.

7. A department, agency, or officer of this state or of any governmental unit shall not pay or approve for payment from public funds any amount to an assisted living program for an actual or prospective tenant, unless the program holds a current certificate issued by the department and meets all current requirements for certification.

8. The department shall adopt rules regarding the conducting or operating of another business or activity in the distinct part of the physical structure in which the assisted living program is provided, if the business or activity serves nontenants. The rules shall be developed in consultation with affected state agencies and affected industry, professional, and consumer groups.

9. An assisted living program shall comply with section 135C.33.

10. The department shall conduct training sessions for personnel responsible for conducting monitoring evaluations and complaint investigations of assisted living programs.

11. Certification of an assisted living program shall be for two years unless certification is revoked for good cause by the department.

2007 Acts, ch 215, §162 – 166

Subsection 1, unnumbered paragraph 1 amended

Subsection 1, paragraph b amended

Subsection 2 amended

Subsection 5, unnumbered paragraph 1 amended

Subsections 6 – 8, 10, and 11 amended

#### **231C.4 Fire and safety standards.**

The state fire marshal shall adopt rules, in coordination with the department, relating to the certification and monitoring of the fire and safety standards of certified assisted living programs.

2007 Acts, ch 215, §167

Section amended

#### **231C.5 Written occupancy agreement required.**

1. An assisted living program shall not operate in this state unless a written occupancy agreement, as prescribed in subsection 2, is executed between the assisted living program and each tenant or the tenant's legal representative, prior to the tenant's occupancy, and unless the assisted living program operates in accordance with the terms of the occupancy agreement. The assisted living program shall deliver to the tenant or the tenant's legal representative a complete copy of the occupancy agreement and all supporting documents and attachments and shall deliver, at least thirty days prior to any changes, a written copy of changes to the occupancy agreement if any changes to the copy originally delivered are subsequently made.

2. An assisted living program occupancy agreement shall clearly describe the rights and responsibilities of the tenant and the program. The occupancy agreement shall also include but is not

limited to inclusion of all of the following information in the body of the agreement or in the supporting documents and attachments:

*a.* A description of all fees, charges, and rates describing tenancy and basic services covered, and any additional and optional services and their related costs.

*b.* A statement regarding the impact of the fee structure on third-party payments, and whether third-party payments and resources are accepted by the assisted living program.

*c.* The procedure followed for nonpayment of fees.

*d.* Identification of the party responsible for payment of fees and identification of the tenant's legal representative, if any.

*e.* The term of the occupancy agreement.

*f.* A statement that the assisted living program shall notify the tenant or the tenant's legal representative, as applicable, in writing at least thirty days prior to any change being made in the occupancy agreement with the following exceptions:

(1) When the tenant's health status or behavior constitutes a substantial threat to the health or safety of the tenant, other tenants, or others, including when the tenant refuses to consent to relocation.

(2) When an emergency or a significant change in the tenant's condition results in the need for the provision of services that exceed the type or level of services included in the occupancy agreement and the necessary services cannot be safely provided by the assisted living program.

*g.* A statement that all tenant information shall be maintained in a confidential manner to the extent required under state and federal law.

*h.* Occupancy, involuntary transfer, and transfer criteria and procedures, which ensure a safe and orderly transfer.

*i.* The internal appeals process provided relative to an involuntary transfer.

*j.* The program's policies and procedures for addressing grievances between the assisted living program and the tenants, including grievances relating to transfer and occupancy.

*k.* A statement of the prohibition against retaliation as prescribed in section 231C.13.

*l.* The emergency response policy.

*m.* The staffing policy which specifies if nurse delegation will be used, and how staffing will be adapted to meet changing tenant needs.

*n.* In dementia-specific assisted living programs, a description of the services and programming provided to meet the life skills and social activities of tenants.

*o.* The refund policy.

*p.* A statement regarding billing and payment procedures.

3. Occupancy agreements and related documents executed by each tenant or the tenant's le-

gal representative shall be maintained by the assisted living program in program files from the date of execution until three years from the date the occupancy agreement is terminated. A copy of the most current occupancy agreement shall be provided to members of the general public, upon request. Occupancy agreements and related documents shall be made available for on-site inspection to the department upon request and at reasonable times.

2007 Acts, ch 215, §168  
Subsection 3 amended

### **231C.6 Involuntary transfer.**

1. If an assisted living program initiates the involuntary transfer of a tenant and the action is not a result of a monitoring evaluation or complaint investigation by the department, and if the tenant or the tenant's legal representative contests the transfer, the following procedure shall apply:

*a.* The assisted living program shall notify the tenant or the tenant's legal representative, in accordance with the occupancy agreement, of the need to transfer, the reason for the transfer, and the contact information of the tenant advocate.

*b.* The assisted living program shall provide the tenant advocate with a copy of the notification to the tenant.

*c.* The tenant advocate shall offer the notified tenant or the tenant's legal representative assistance with the program's internal appeals process. The tenant is not required to accept the assistance of the tenant advocate.

*d.* If, following the internal appeals process, the assisted living program upholds the transfer decision, the tenant or the tenant's legal representative may utilize other remedies authorized by law to contest the transfer.

2. The department, in consultation with affected state agencies and affected industry, professional, and consumer groups, shall establish, by rule in accordance with chapter 17A, procedures to be followed, including the opportunity for hearing, when the transfer of a tenant results from a monitoring evaluation or complaint investigation conducted by the department.

2007 Acts, ch 215, §169, 170  
Subsection 1, unnumbered paragraph 1 amended  
Subsection 2 amended

### **231C.7 Complaints.**

1. Any person with concerns regarding the operations or service delivery of an assisted living program may file a complaint with the department. The name of the person who files a complaint with the department and any personal identifying information of the person or any tenant identified in the complaint shall be kept confidential and shall not be subject to discovery, subpoena, or other means of legal compulsion for its release to a person other than department employ-

ees involved with the complaint.

2. The department shall establish procedures for the disposition of complaints received in accordance with this section.

2007 Acts, ch 215, §171  
Section amended

### 231C.8 Informal review.

1. If an assisted living program contests the regulatory insufficiencies of a monitoring evaluation or complaint investigation, the program shall submit written information, demonstrating that the program was in compliance with the applicable requirement at the time of the monitoring evaluation or complaint investigation, in support of the contesting of the regulatory insufficiencies, to the department for review.

2. The department shall review the written information submitted within ten working days of the receipt of the information. At the conclusion of the review, the department may affirm, modify, or dismiss the regulatory insufficiencies. The department shall notify the program in writing of the decision to affirm, modify, or dismiss the regulatory insufficiencies, and the reasons for the decision.

3. In the case of a complaint investigation, the department shall also notify the complainant, if known, of the decision and the reasons for the decision.

2007 Acts, ch 215, §172  
Section amended

### 231C.9 Public disclosure of findings.

Upon completion of a monitoring evaluation or complaint investigation of an assisted living program by the department pursuant to this chapter, including the conclusion of all administrative appeals processes, the department's final findings with respect to compliance by the assisted living program with requirements for certification shall be made available to the public in a readily available form and place. Other information relating to an assisted living program that is obtained by the department which does not constitute the department's final findings from a monitoring evaluation or complaint investigation of the assisted living program shall not be made available to the public except in proceedings involving the denial, suspension, or revocation of a certificate under this chapter.

2007 Acts, ch 215, §173  
Section amended

### 231C.10 Denial, suspension, or revocation — conditional operation.

1. The department may deny, suspend, or revoke a certificate in any case where the department finds that there has been a substantial or repeated failure on the part of the assisted living program to comply with this chapter or the rules,

or minimum standards adopted under this chapter, or for any of the following reasons:

*a.* Appropriation or conversion of the property of an assisted living program tenant without the tenant's written consent or the written consent of the tenant's legal representative.

*b.* Permitting, aiding, or abetting the commission of any illegal act in the assisted living program.

*c.* Obtaining or attempting to obtain or retain a certificate by fraudulent means, misrepresentation, or by submitting false information.

*d.* Habitual intoxication or addiction to the use of drugs by the applicant, administrator, executive director, manager, or supervisor of the assisted living program.

*e.* Securing the devise or bequest of the property of a tenant of an assisted living program by undue influence.

*f.* Founded dependent adult abuse as defined in section 235B.2.

*g.* In the case of any officer, member of the board of directors, trustee, or designated manager of the program or any stockholder, partner, or individual who has greater than a five percent equity interest in the program, having or having had an ownership interest in an assisted living program, adult day services program, elder group home, home health agency, residential care facility, or licensed nursing facility in any state which has been closed due to removal of program, agency, or facility licensure or certification or involuntary termination from participation in either the medical assistance or Medicare programs, or having been found to have failed to provide adequate protection or services for tenants to prevent abuse or neglect.

*h.* In the case of a certificate applicant or an existing certified owner or operator who is an entity other than an individual, the person is in a position of control or is an officer of the entity and engages in any act or omission proscribed by this chapter.

*i.* For any other reason as provided by law or administrative rule.

2. The department may as an alternative to denial, suspension, or revocation conditionally issue or continue a certificate dependent upon the performance by the assisted living program of reasonable conditions within a reasonable period of time as set by the department so as to permit the program to commence or continue the operation of the program pending full compliance with this chapter or the rules adopted pursuant to this chapter. If the assisted living program does not make diligent efforts to comply with the conditions prescribed, the department may, under the proceedings prescribed by this chapter, suspend or revoke the certificate. An assisted living program shall not be operated on a conditional certificate

for more than one year.

2007 Acts, ch 215, §174, 175  
Subsection 1, unnumbered paragraph 1 amended  
Subsection 2 amended

**231C.11 Notice — appeal — emergency provisions.**

1. The denial, suspension, or revocation of a certificate shall be effected by delivering to the applicant or certificate holder by restricted certified mail or by personal service a notice setting forth the particular reasons for such action. Such denial, suspension, or revocation shall become effective thirty days after the mailing or service of the notice, unless the applicant or certificate holder, within such thirty-day period, requests a hearing, in writing, of the department, in which case the notice shall be deemed to be suspended.

2. The denial, suspension, or revocation of a certificate may be appealed in accordance with rules adopted by the department in accordance with chapter 17A.

3. When the department finds that an imminent danger to the health or safety of tenants of an assisted living program exists which requires action on an emergency basis, the department may direct removal of all tenants of an assisted living program and suspend the certificate prior to a hearing.

2007 Acts, ch 215, §176  
Section amended

**231C.12 Department notified of casualties.**

The department shall be notified within twenty-four hours, by the most expeditious means available, of any accident causing substantial injury or death, and any substantial fire or natural or other disaster occurring at or near an assisted living program.

2007 Acts, ch 215, §177  
Section amended

**231C.13 Retaliation by assisted living program prohibited.**

An assisted living program shall not discriminate or retaliate in any way against a tenant, tenant's family, or an employee of the program who has initiated or participated in any proceeding authorized by this chapter. An assisted living program that violates this section is subject to a penalty as established by administrative rule in accordance with chapter 17A, to be assessed and collected by the department, paid into the state treasury, and credited to the general fund of the state.

2007 Acts, ch 215, §178  
Section amended

**231C.14 Civil penalties.**

The department may establish by rule, in accordance with chapter 17A, civil penalties for the fol-

lowing violations by an assisted living program:

1. Noncompliance with any regulatory requirements which presents an imminent danger or a substantial probability of resultant death or physical harm to a tenant.

2. Following receipt of notice from the department, continued failure or refusal to comply within a prescribed time frame with regulatory requirements that have a direct relationship to the health, safety, or security of program tenants.

3. Preventing or interfering with or attempting to impede in any way any duly authorized representative of the department in the lawful enforcement of this chapter or of the rules adopted pursuant to this chapter. As used in this subsection, "lawful enforcement" includes but is not limited to:

a. Contacting or interviewing any tenant of an assisted living program in private at any reasonable hour and without advance notice.

b. Examining any relevant records of an assisted living program.

c. Preserving evidence of any violation of this chapter or of the rules adopted pursuant to this chapter.

2007 Acts, ch 215, §179, 180  
Subsection 2 amended  
Subsection 3, unnumbered paragraph 1 amended

**231C.15 Criminal penalties and injunctive relief.**

A person establishing, conducting, managing, or operating any assisted living program without a certificate is guilty of a serious misdemeanor. Each day of continuing violation after conviction or notice from the department by certified mail of a violation shall be considered a separate offense or chargeable offense. A person establishing, conducting, managing, or operating an assisted living program without a certificate may be temporarily or permanently restrained by a court of competent jurisdiction from such activity in an action brought by the state.

2007 Acts, ch 215, §181  
Section amended

**231C.16 Nursing assistant and medication aide — certification.**

The department, in cooperation with other appropriate agencies, shall establish a procedure to allow nursing assistants or medication aides to claim work within an assisted living program as credit toward sustaining the nursing assistant's or medication aide's certification.

2007 Acts, ch 215, §182  
Section amended

**231C.18 Iowa assisted living fees.**

1. The department shall collect assisted living program certification and related fees. An assisted living program that is certified by the department on the basis of voluntary accreditation

by a recognized accrediting entity shall not be subject to payment of the certification fee, but shall be subject to an administrative fee as prescribed by rule. Fees collected and retained pursuant to this section shall be deposited in the general fund of the state.

2. The following certification and related fees shall apply to assisted living programs:

a. For a two-year initial certification, seven hundred fifty dollars.

b. For a two-year recertification, one thousand dollars.

c. For a blueprint plan review, nine hundred dollars.

d. For an optional preliminary plan review, five hundred dollars.

e. For accreditation via a national body of accreditation, one hundred twenty-five dollars.

2007 Acts, ch 215, §183  
Subsection 1 amended

## CHAPTER 231D

### ADULT DAY SERVICES

Continuation of effectiveness of rules, regulations, forms, orders, and directives promulgated by the department of elder affairs under prior law, and validity of licenses, certifications, and permits issued by the department of elder affairs; schedule for updating Iowa administrative code to correspond to administration of chapter by department of inspections and appeals; 2007 Acts, ch 215, §206

#### 231D.1 Definitions.

For the purposes of this chapter, unless the context otherwise requires:

1. “*Adult day services*”, “*adult day services program*”, or “*program*” means an organized program providing a variety of health-related care, social services, and other related support services for sixteen hours or less in a twenty-four-hour period to two or more persons with a functional impairment on a regularly scheduled, contractual basis.

2. “*Contractual agreement*” means a written agreement entered into between an adult day services program and a participant that clearly describes the rights and responsibilities of the adult day services program and the participant, and other information required by rule.

3. “*Department*” means the department of inspections and appeals.

4. “*Functional impairment*” means a psychological, cognitive, or physical impairment creating the inability to perform personal and instrumental activities of daily living and associated tasks necessitating some form of supervision or assistance or both.

5. “*Governmental unit*” means the state, or any county, municipality, or other political subdivision or any department, division, board, or other agency of any of these entities.

6. “*Health-related care*” means services provided by a registered nurse or a licensed practical nurse, on a part-time or intermittent basis, and services provided by other licensed health care professionals, on a part-time or intermittent basis.

7. “*Medication setup*” means assistance with various steps of medication administration to support a participant’s autonomy, which may include but is not limited to routine prompting, cueing and

reminding, opening containers or packaging at the direction of the participant, reading instructions or other label information, or transferring medications from the original container into suitable medication dispensing containers, reminder containers, or medication cups.

8. “*Participant*” means an individual who is the recipient of services provided by an adult day services program.

9. “*Participant’s legal representative*” means a person appointed by the court to act on behalf of a participant, or a person acting pursuant to a power of attorney.

10. “*Personal care*” means assistance with the essential activities of daily living which may include but are not limited to transferring, bathing, personal hygiene, dressing, grooming, and house-keeping that are essential to the health and welfare of a participant.

11. “*Recognized accrediting entity*” means a nationally recognized accrediting entity that the department recognizes as having specific adult day services program standards equivalent to the standards established by the department for adult day services.

12. “*Social services*” means services relating to the psychological and social needs of the individual in adjusting to participating in an adult day services program, and minimizing the stress arising from that circumstance.

13. “*Supervision*” means direct oversight and inspection of the act of accomplishing a function or activity.

2007 Acts, ch 215, §184  
Subsection 3 amended

#### 231D.2 Purpose — rules.

1. The purpose of this chapter is to promote



and encourage adequate and safe care for adults with functional impairments.

2. The department shall establish, by rule in accordance with chapter 17A, a program for certification and monitoring of and complaint investigations related to adult day services programs. The department, in establishing minimum standards for adult day services programs, may adopt by rule in accordance with chapter 17A, nationally recognized standards for adult day services programs. The rules shall include specification of recognized accrediting entities. The rules shall include a requirement that sufficient staffing be available at all times to fully meet a participant's identified needs. The rules shall include a requirement that no fewer than two staff persons who monitor participants as indicated in each participant's service plan shall be awake and on duty during the hours of operation when two or more participants are present. The rules and minimum standards adopted shall be formulated in consultation with affected state agencies and affected industry, professional, and consumer groups and shall be designed to accomplish the purpose of this chapter.

3. The department may establish by administrative rule, in accordance with chapter 17A, specific rules related to minimum standards for dementia-specific adult day services programs. The rules shall be formulated in consultation with affected state agencies and affected industry, professional, and consumer groups.

2007 Acts, ch 215, §185, 186  
Subsection 2 stricken and former subsections 3 and 4 amended and renumbered as 2 and 3

### 231D.3 Certification required.

1. A person or governmental unit acting severally or jointly with any other person or governmental unit shall not establish or operate an adult day services program and shall not represent an adult day services program to the public as certified unless and until the program is certified pursuant to this chapter. If an adult day services program is voluntarily accredited by a recognized accrediting entity with specific adult day services standards, the department shall accept voluntary accreditation as the basis for certification by the department. The owner or manager of a certified adult day services program shall comply with the rules adopted by the department for an adult day services program.

2. An adult day services program may provide any type of adult day services for which the program is certified. An adult day services program shall provide services and supervision commensurate with the needs of the participants. An adult day services program shall not provide services to individuals requiring a level or type of services for which the program is not certified and services provided shall not exceed the level or type of ser-

vices for which the program is certified.

3. An adult day services program that has been certified by the department shall not alter the program, operation, or adult day services for which the program is certified in a manner that affects continuing certification without prior approval of the department. The department shall specify, by rule, alterations that are subject to prior approval.

4. A department, agency, or officer of this state or of any governmental unit shall not pay or approve for payment from public funds any amount to an adult day services program for an actual or prospective participant, unless the program holds a current certificate issued by the department and meets all current requirements for certification.

5. The department shall adopt rules regarding the conducting or operating of another business or activity in the distinct part of the physical structure in which the adult day services program is provided, if the business or activity serves persons who are not participants. The rules shall be developed in consultation with affected state agencies and affected industry, professional, and consumer groups.

6. The department shall conduct training sessions for personnel responsible for conducting monitoring evaluations and complaint investigations of adult day services programs.

7. Certification of an adult day services program shall be for two years unless revoked for good cause by the department.

2007 Acts, ch 215, §187  
Subsections 1 and 3 - 7 amended

### 231D.4 Application and fees.

1. Certificates for adult day services programs shall be obtained from the department. Applications shall be upon such forms and shall include such information as the department may reasonably require, which may include affirmative evidence of compliance with applicable statutes and local ordinances. Each application for certification shall be accompanied by the appropriate fee.

2. *a.* The department shall collect adult day services certification fees. The fees shall be deposited in the general fund of the state.

*b.* The following certification and related fees shall apply to adult day services programs:

(1) For a two-year initial certification, seven hundred fifty dollars.

(2) For a two-year recertification, one thousand dollars.

(3) For a blueprint review, nine hundred dollars.

(4) For an optional preliminary plan review, five hundred dollars.

(5) For certification via a national body of accreditation, one hundred twenty-five dollars.

2007 Acts, ch 215, §188, 189  
Subsection 1 amended  
Subsection 2, paragraph a amended

**231D.5 Denial, suspension, or revocation.**

1. The department may deny, suspend, or revoke certification if the department finds that there has been a substantial or repeated failure on the part of the adult day services program to comply with this chapter or the rules or minimum standards adopted pursuant to this chapter, or for any of the following reasons:

*a.* Appropriation or conversion of the property of a participant without the participant's written consent or the written consent of the participant's legal representative.

*b.* Permitting, aiding, or abetting the commission of any illegal act in the adult day services program.

*c.* Obtaining or attempting to obtain or retain certification by fraudulent means, misrepresentation, or by submitting false information.

*d.* Habitual intoxication or addiction to the use of drugs by the applicant, owner, manager, or supervisor of the adult day services program.

*e.* Securing the devise or bequest of the property of a participant by undue influence.

*f.* Failure or neglect to maintain a required continuing education and training program for all personnel employed in the adult day services program.

*g.* Founded dependent adult abuse as defined in section 235B.2.

*h.* In the case of any officer, member of the board of directors, trustee, or designated manager of the program or any stockholder, partner, or individual who has greater than a five percent equity interest in the program, having or having had an ownership interest in an adult day services program, assisted living program, elder group home, home health agency, residential care facility, or licensed nursing facility in any state which has been closed due to removal of program, agency, or facility licensure or certification or involuntary termination from participation in either the medical assistance or Medicare programs, or having been found to have failed to provide adequate protection or services for participants to prevent abuse or neglect.

*i.* In the case of a certificate applicant or an existing certified owner or operator who is an entity other than an individual, the person is in a position of control or is an officer of the entity and engages in any act or omission proscribed by this chapter.

*j.* For any other reason as provided by law or administrative rule.

2. In the case of an application by an existing certificate holder for a new or newly acquired adult day services program, continuing or repeated failure of the certificate holder to operate any previously certified adult day services program in compliance with this chapter or of the rules adopted pursuant to this chapter.

3. In the case of a certificate applicant or exist-

ing certificate holder which is an entity other than an individual, the department may deny, suspend, or revoke a certificate if any individual who is in a position of control or is an officer of the entity engages in any act or omission proscribed by this section.

2007 Acts, ch 215, §190, 191  
Subsection 1, unnumbered paragraph 1 amended  
Subsection 3 amended

**231D.6 Notice — appeal — emergency provisions.**

1. The denial, suspension, or revocation of a certificate shall be effected by delivering to the applicant or certificate holder by restricted certified mail or by personal service a notice setting forth the particular reasons for the action. The denial, suspension, or revocation shall become effective thirty days after the mailing or service of the notice, unless the applicant or certificate holder, within the thirty-day period, requests a hearing, in writing, of the department, in which case the notice shall be deemed to be suspended.

2. The denial, suspension, or revocation of a certificate may be appealed in accordance with rules adopted by the department in accordance with chapter 17A.

3. When the department finds that an immediate danger to the health or safety of participants in an adult day services program exists which requires action on an emergency basis, the department may direct the removal of all participants in the adult day services program and suspend the certificate prior to a hearing.

2007 Acts, ch 215, §192  
Section amended

**231D.7 Conditional operation.**

The department may, as an alternative to denial, suspension, or revocation of certification under section 231D.5, conditionally issue or continue certification dependent upon the performance by the adult day services program of reasonable conditions within a reasonable period of time as prescribed by the department so as to permit the program to commence or continue the operation of the program pending full compliance with this chapter or the rules adopted pursuant to this chapter. If the adult day services program does not make diligent efforts to comply with the conditions prescribed, the department may, under the proceedings prescribed by this chapter, suspend or revoke the certificate. An adult day services program shall not be operated under conditional certification for more than one year.

2007 Acts, ch 215, §193  
Section amended

**231D.8 Department notified of casualties.**

The department shall be notified within twenty-four hours, by the most expeditious means available, of any accident causing substantial injury or

death, and any substantial fire or natural or other disaster occurring at or near an adult day services program.

2007 Acts, ch 215, §194  
Section amended

#### **231D.9 Complaints and confidentiality.**

1. A person with concerns regarding the operations or service delivery of an adult day services program may file a complaint with the department. The name of the person who files a complaint with the department and any personal identifying information of the person or any participant identified in the complaint shall be kept confidential and shall not be subject to discovery, subpoena, or other means of legal compulsion for its release to a person other than employees of the department involved in the investigation of the complaint.

2. The department shall establish procedures for the disposition of complaints received in accordance with this section.

2007 Acts, ch 215, §195  
Section amended

#### **231D.9A Informal review.**

1. If an adult day services program contests the findings of regulatory insufficiencies of a monitoring evaluation or complaint investigation, the program shall submit written information, demonstrating that the program was in compliance with the applicable requirement at the time of the monitoring evaluation or complaint investigation, to the department for review.

2. The department shall review the written information submitted within ten working days of the receipt of the information. At the conclusion of the review, the department may affirm, modify, or dismiss the regulatory insufficiencies. The department shall notify the program in writing of the decision to affirm, modify, or dismiss the regulatory insufficiencies, and the reasons for the decision.

3. In the case of a complaint investigation, the department shall also notify the complainant, if known, of the decision and the reasons for the decision.

2007 Acts, ch 215, §196  
Section amended

#### **231D.10 Public disclosure of findings.**

Upon completion of a monitoring evaluation or complaint investigation of an adult day services program by the department pursuant to this chapter, including the conclusion of all administrative appeals processes, the department's final findings with respect to compliance by the adult day services program with requirements for certification shall be made available to the public in a readily available form and place. Other information relating to an adult day services program that is obtained by the department which does not consti-

tute the department's final findings from a monitoring evaluation or complaint investigation of the adult day services program shall not be made available to the public except in proceedings involving the denial, suspension, or revocation of a certificate under this chapter.

2007 Acts, ch 215, §197  
Section amended

#### **231D.11 Penalties.**

1. A person establishing, conducting, managing, or operating an adult day services program without a certificate is guilty of a serious misdemeanor. Each day of continuing violation after conviction or notice from the department by certified mail of a violation shall be considered a separate offense or chargeable offense. A person establishing, conducting, managing, or operating an adult day services program without a certificate may be temporarily or permanently restrained by a court of competent jurisdiction from such activity in an action brought by the state.

2. A civil penalty, as established by rule, may apply in any of the following situations:

*a.* Program noncompliance with one or more regulatory requirements has caused or is likely to cause harm, serious injury, threat, or death to a participant.

*b.* Program failure or refusal to comply with regulatory requirements within prescribed time frames.

*c.* Preventing or interfering with or attempting to impede in any way any duly authorized representative of the department in the lawful enforcement of this chapter or of the rules adopted pursuant to this chapter. As used in this paragraph, "lawful enforcement" includes but is not limited to:

(1) Contacting or interviewing any participant in an adult day services program in private at any reasonable hour and without advance notice.

(2) Examining any relevant records of an adult day services program.

(3) Preserving evidence of any violation of this chapter or of the rules adopted pursuant to this chapter.

2007 Acts, ch 215, §198, 199

Subsection 1 amended

Subsection 2, paragraph c, unnumbered paragraph 1 amended

#### **231D.12 Retaliation by adult day services program prohibited.**

1. An adult day services program shall not discriminate or retaliate in any way against a participant, participant's family, or an employee of the program who has initiated or participated in any proceeding authorized by this chapter. An adult day services program that violates this section is subject to a penalty as established by administrative rule, to be assessed and collected by the department, paid into the state treasury, and credited to the general fund of the state.

2. Any attempt to discharge a participant from

an adult day services program by whom or upon whose behalf a complaint has been submitted to the department under section 231D.9, within ninety days after the filing of the complaint or the conclusion of any proceeding resulting from the complaint, shall raise a rebuttable presumption that the action was taken by the program in retaliation for the filing of the complaint, except in situations in which the participant is discharged due to changes in health status which exceed the level of care offered by the adult day services program or in other situations as specified by rule.

2007 Acts, ch 215, §201  
Section amended

### **231D.13 Nursing assistant and medication aide — certification.**

The department, in cooperation with other appropriate agencies, shall establish a procedure to allow nursing assistants or medication aides to claim work within adult day services programs as credit toward sustaining the nursing assistant's or medication aide's certification.

2007 Acts, ch 215, §201  
Section amended

### **231D.15 Fire and safety standards.**

The state fire marshal shall adopt rules, in coordination with the department, relating to the certification and monitoring of the fire and safety standards of adult day services programs.

2007 Acts, ch 215, §202  
Section amended

### **231D.17 Written contractual agreement required.**

1. An adult day services program shall not operate in this state unless a written contractual agreement is executed between the adult day services program and each participant or the participant's legal representative prior to the participant's admission to the program, and unless the adult day services program operates in accordance with the terms of the written contractual agreement. The adult day services program shall deliver to the participant or the participant's legal representative a complete copy of the written contractual agreement and all supporting documents and attachments, prior to the participant's admission to the program, and shall also deliver a written copy of changes to the written contractual agreement, if any changes to the copy originally delivered are subsequently made, at least thirty days prior to any changes, unless otherwise provided in this section.

2. An adult day services program written contractual agreement shall clearly describe the rights and responsibilities of the participant and the program. The written contractual agreement shall also include but is not limited to inclusion of all of the following information in the body of the agreement or in the supporting documents and at-

tachments:

*a.* A description of all fees, charges, and rates describing admission and basic services covered, and any additional and optional services and their related costs.

*b.* A statement regarding the impact of the fee structure on third-party payments, and whether third-party payments and resources are accepted by the adult day services program.

*c.* The procedure followed for nonpayment of fees.

*d.* Identification of the party responsible for payment of fees and identification of the participant's legal representative, if any.

*e.* The term of the written contractual agreement.

*f.* A statement that the adult day services program shall notify the participant or the participant's legal representative, as applicable, in writing at least thirty days prior to any change being made in the written contractual agreement, with the following exceptions:

(1) When the participant's health status or behavior constitutes a substantial threat to the health or safety of the participant, other participants, or others, including when the participant refuses to consent to discharge.

(2) When an emergency or a significant change in the participant's condition results in the need for the provision of services that exceed the type or level of services included in the written contractual agreement and the necessary services cannot be safely provided by the adult day services program.

*g.* A statement that all participant information shall be maintained in a confidential manner to the extent required under state and federal law.

*h.* Discharge, involuntary transfer, and transfer criteria and procedures, which ensure a safe and orderly transfer.

*i.* The internal appeals process provided relative to an involuntary transfer.

*j.* The program's policies and procedures for addressing grievances between the adult day services program and the participants, including grievances relating to transfer and occupancy.

*k.* A statement of the prohibition against retaliation as prescribed in section 231D.12.

*l.* The emergency response policy.

*m.* The staffing policy which specifies staff is available during all times of program operation, if nurse delegation will be used, and how staffing will be adapted to meet changing participant needs.

*n.* In dementia-specific adult day services programs, a description of the services and programming provided to meet the life skills and social activities of participants.

*o.* The refund policy.

*p.* A statement regarding billing and payment procedures.

3. Written contractual agreements and related documents executed by each participant or participant's legal representative shall be maintained by the adult day services program in program files from the date of execution until three years from the date the written contractual agreement is terminated. A copy of the most current written contractual agreement shall be provided to members of the general public, upon request. Written contractual agreements and related documents shall be made available for on-site inspection to the department upon request and at reasonable times.

2007 Acts, ch 215, §203  
Subsection 3 amended

#### **231D.18 Involuntary transfer.**

1. If an adult day services program initiates the involuntary transfer of a participant and the action is not a result of a monitoring evaluation or complaint investigation by the department, and if the participant or participant's legal representative contests the transfer, the following procedure

shall apply:

*a.* The adult day services program shall notify the participant or participant's legal representative, in accordance with the written contractual agreement, of the need to transfer and the reason for the transfer.

*b.* If, following the internal appeals process, the adult day services program upholds the transfer decision, the participant or participant's legal representative may utilize other remedies authorized by law to contest the transfer.

2. The department, in consultation with affected state agencies and affected industry, professional, and consumer groups, shall establish by rule, in accordance with chapter 17A, procedures to be followed, including the opportunity for hearing, when the transfer of a participant results from a monitoring evaluation or complaint investigation conducted by the department.

2007 Acts, ch 215, §204, 205  
Subsection 1, unnumbered paragraph 1 amended  
Subsection 2 amended

## CHAPTER 231E

### SUBSTITUTE DECISION MAKER ACT

Funding for implementation of chapter appropriated in 2007 Acts, ch 218, §1; Code editor notified by department director that implementation of chapter is anticipated by October 1, 2007; see §231E.13

#### **231E.13 Implementation.**

Implementation of this chapter is subject to availability of funding as determined by the department. The department shall notify the Code editor upon implementation of this chapter.

Code editor notified by director of department regarding use of funds

contained in 2007 Acts, ch 218, §1, for proposed implementation of chapter on October 1, 2007; hiring of administrator for state office of substitute decision maker anticipated during September of 2007  
Section not amended; footnote added

## CHAPTER 232

### JUVENILE JUSTICE

#### **232.2 Definitions.**

As used in this chapter unless the context otherwise requires:

1. "*Abandonment of a child*" means the relinquishment or surrender, without reference to any particular person, of the parental rights, duties, or privileges inherent in the parent-child relationship. Proof of abandonment must include both the intention to abandon and the acts by which the intention is evidenced. The term does not require that the relinquishment or surrender be over any particular period of time.

2. "*Adjudicatory hearing*" means a hearing to determine if the allegations of a petition are true.

3. "*Adult*" means a person other than a child.

4. "*Case permanency plan*" means the plan, mandated by Pub. L. No. 96-272 and Pub. L. No.

105-89, as codified in 42 U.S.C. § 622(b)(10), 671(a)(16), and 675(1)(5), which is designed to achieve placement in the most appropriate, least restrictive, and most family-like setting available and in close proximity to the parent's home, consistent with the best interests and special needs of the child, and which considers the placement's proximity to the school in which the child is enrolled at the time of placement. The plan shall be developed by the department or agency involved and the child's parent, guardian, or custodian. The plan shall specifically include all of the following:

*a.* Plans for carrying out the voluntary placement agreement or judicial determination pursuant to which the child entered care.

*b.* The type and appropriateness of the place-

ment and services to be provided to the child.

c. The care and services that will be provided to the child, biological parents, and foster parents.

d. How the care and services will meet the needs of the child while in care and will facilitate the child's return home or other permanent placement.

e. The most recent information available regarding the child's health and education records, including the date the records were supplied to the agency or individual who is the child's foster care provider.

f. (1) When a child is sixteen years of age or older, a written transition plan of services which, based upon an assessment of the child's needs, would assist the child in preparing for the transition from foster care to adulthood. The written plan of services and needs assessment shall be developed with any person who may reasonably be expected to be a service provider for the child when the child becomes an adult or to become responsible for the costs of services at that time, including but not limited to the administrator of county general relief under chapter 251 or 252 or of the central point of coordination process implemented under section 331.440. If the child is interested in pursuing higher education, the plan shall provide for the child's participation in the college student aid commission's program of assistance in applying for federal and state aid under section 261.2.

(2) If the needs assessment indicates the child is reasonably likely to need or be eligible for services or other support from the adult service system upon reaching age eighteen, the transition plan shall be reviewed and approved by the transition committee for the area in which the child resides, in accordance with section 235.7, before the child reaches age seventeen and one-half. The transition committee's review and approval shall be indicated in the case permanency plan.

g. The actions expected of the parent, guardian, or custodian in order for the department or agency to recommend that the court terminate a dispositional order for the child's out-of-home placement and for the department or agency to end its involvement with the child and the child's family.

h. If reasonable efforts to place a child for adoption or with a guardian are made concurrently with reasonable efforts as defined in section 232.102, the concurrent goals and timelines may be identified. Concurrent case permanency plan goals for reunification, and for adoption or for other permanent out-of-home placement of a child shall not be considered inconsistent in that the goals reflect divergent possible outcomes for a child in an out-of-home placement.

i. A provision that a designee of the department or other person responsible for placement of a child out-of-state shall visit the child at least once every six months.

j. If it has been determined that the child can-

not return to the child's home, documentation of the steps taken to make and finalize an adoption or other permanent placement.

k. If it is part of the child's records or it is otherwise known that the child has behaved in a manner that threatened the safety of another person, has committed a violent act causing bodily injury to another person, or has been a victim or perpetrator of sexual abuse, that information shall be addressed in the plan and shall be provided to the child's parent, guardian, or foster parent or other person with custody of the child. The information shall be provided whether the child's placement is voluntary or made pursuant to a court determination. The information shall be provided at the time it is learned by the department or agency developing the plan and, if possible, at the time of the child's placement. The information shall only be withheld if ordered by the court or it is determined by the department or agency developing the plan that providing the information would be detrimental to the child or to the family with whom the child is living. In determining whether providing the information would be detrimental, the court, department, or agency shall consider any history of abuse within the child's family or toward the child.

l. The provisions involving sibling visitation or interaction required under section 232.108.

5. "Child" means a person under eighteen years of age.

6. "Child in need of assistance" means an unmarried child:

a. Whose parent, guardian or other custodian has abandoned or deserted the child.

b. Whose parent, guardian, other custodian, or other member of the household in which the child resides has physically abused or neglected the child, or is imminently likely to abuse or neglect the child.

c. Who has suffered or is imminently likely to suffer harmful effects as a result of either of the following:

(1) Mental injury caused by the acts of the child's parent, guardian, or custodian.

(2) The failure of the child's parent, guardian, custodian, or other member of the household in which the child resides to exercise a reasonable degree of care in supervising the child.

d. Who has been, or is imminently likely to be, sexually abused by the child's parent, guardian, custodian or other member of the household in which the child resides.

e. Who is in need of medical treatment to cure, alleviate, or prevent serious physical injury or illness and whose parent, guardian or custodian is unwilling or unable to provide such treatment.

f. Who is in need of treatment to cure or alleviate serious mental illness or disorder, or emotional damage as evidenced by severe anxiety, depression, withdrawal, or untoward aggressive behavior toward self or others and whose parent, guard-

ian, or custodian is unwilling to provide such treatment.

g. Whose parent, guardian, or custodian fails to exercise a minimal degree of care in supplying the child with adequate food, clothing or shelter and refuses other means made available to provide such essentials.

h. Who has committed a delinquent act as a result of pressure, guidance, or approval from a parent, guardian, custodian, or other member of the household in which the child resides.

i. Who has been the subject of or a party to sexual activities for hire or who poses for live display or for photographic or other means of pictorial reproduction or display which is designed to appeal to the prurient interest and is patently offensive; and taken as a whole, lacks serious literary, scientific, political or artistic value.

j. Who is without a parent, guardian or other custodian.

k. Whose parent, guardian, or other custodian for good cause desires to be relieved of the child's care and custody.

l. Who for good cause desires to have the child's parents relieved of the child's care and custody.

m. Who is in need of treatment to cure or alleviate chemical dependency and whose parent, guardian, or custodian is unwilling or unable to provide such treatment.

n. Whose parent's or guardian's mental capacity or condition, imprisonment, or drug or alcohol abuse results in the child not receiving adequate care.

o. In whose body there is an illegal drug present as a direct and foreseeable consequence of the acts or omissions of the child's parent, guardian, or custodian. The presence of the drug shall be determined in accordance with a medically relevant test as defined in section 232.73.

p. Whose parent, guardian, or custodian does any of the following: unlawfully manufactures a dangerous substance in the presence of a child, knowingly allows such manufacture by another person in the presence of a child, or in the presence of a child possesses a product containing ephedrine, its salts, optical isomers, salts of optical isomers, or pseudoephedrine, its salts, optical isomers, salts of optical isomers, with the intent to use the product as a precursor or an intermediary to a dangerous substance.

(1) For the purposes of this paragraph, "*in the presence of a child*" means the physical presence of a child during the manufacture or possession, the manufacture or possession occurred in a child's home, on the premises, or in a motor vehicle located on the premises, or the manufacture or possession occurred under other circumstances in which a reasonably prudent person would know that the manufacture or possession may be seen, smelled, or heard by a child.

(2) For the purposes of this paragraph, "*dan-*

*gerous substance*" means any of the following:

(a) Amphetamine, its salts, isomers, or salts of its isomers.

(b) Methamphetamine, its salts, isomers, or salts of its isomers.

(c) A chemical or combination of chemicals that poses a reasonable risk of causing an explosion, fire, or other danger to the life or health of persons who are in the vicinity while the chemical or combination of chemicals is used or is intended to be used in any of the following:

(i) The process of manufacturing an illegal or controlled substance.

(ii) As a precursor in the manufacturing of an illegal or controlled substance.

(iii) As an intermediary in the manufacturing of an illegal or controlled substance.

q. Who is a newborn infant whose parent has voluntarily released custody of the child in accordance with chapter 233.

6A. "*Chronic runaway*" means a child who is reported to law enforcement as a runaway more than once in any thirty-day period or three or more times in any year.

7. "*Complaint*" means an oral or written report which is made to the juvenile court by any person and alleges that a child is within the jurisdiction of the court.

8. "*Court*" means the juvenile court established under section 602.7101.

9. "*Court appointed special advocate*" means a person duly certified by the child advocacy board created in section 237.16 for participation in the court appointed special advocate program and appointed by the court to represent the interests of a child in any judicial proceeding to which the child is a party or is called as a witness or relating to any dispositional order involving the child resulting from such proceeding.

10. "*Criminal or juvenile justice agency*" means any agency which has as its primary responsibility the enforcement of the state's criminal laws or of local ordinances made pursuant to state law.

11. "*Custodian*" means a stepparent or a relative within the fourth degree of consanguinity to a child who has assumed responsibility for that child, a person who has accepted a release of custody pursuant to division IV, or a person appointed by a court or juvenile court having jurisdiction over a child. The rights and duties of a custodian with respect to a child are as follows:

a. To maintain or transfer to another the physical possession of that child.

b. To protect, train, and discipline that child.

c. To provide food, clothing, housing, and medical care for that child.

d. To consent to emergency medical care, including surgery.

e. To sign a release of medical information to a health professional.

All rights and duties of a custodian shall be sub-

ject to any residual rights and duties remaining in a parent or guardian.

12. “*Delinquent act*” means:

a. The violation of any state law or local ordinance which would constitute a public offense if committed by an adult except any offense which by law is exempted from the jurisdiction of this chapter.

b. The violation of a federal law or a law of another state which violation constitutes a criminal offense if the case involving that act has been referred to the juvenile court.

c. The violation of section 123.47 which is committed by a child.

13. “*Department*” means the department of human services and includes the local, county, and service area officers of the department.

14. “*Desertion*” means the relinquishment or surrender for a period in excess of six months of the parental rights, duties, or privileges inherent in the parent-child relationship. Proof of desertion need not include the intention to desert, but is evidenced by the lack of attempted contact with the child or by only incidental contact with the child.

15. “*Detention*” means the temporary care of a child in a physically restricting facility designed to ensure the continued custody of the child at any point between the child’s initial contact with the juvenile authorities and the final disposition of the child’s case.

16. “*Detention hearing*” means a hearing at which the court determines whether it is necessary to place or retain a child in detention.

17. “*Director*” means the director of the department of human services or that person’s designee.

18. “*Dismissal of complaint*” means the termination of all proceedings against a child.

19. “*Dispositional hearing*” means a hearing held after adjudication to determine what dispositional order should be made.

20. “*Family in need of assistance*” means a family in which there has been a breakdown in the relationship between a child and the child’s parent, guardian or custodian.

21. “*Guardian*” means a person who is not the parent of a child, but who has been appointed by a court or juvenile court having jurisdiction over the child, to have a permanent self-sustaining relationship with the child and to make important decisions which have a permanent effect on the life and development of that child and to promote the general welfare of that child. A guardian may be a court or a juvenile court. Guardian does not mean conservator, as defined in section 633.3, although a person who is appointed to be a guardian may also be appointed to be a conservator.

Unless otherwise enlarged or circumscribed by a court or juvenile court having jurisdiction over the child or by operation of law, the rights and du-

ties of a guardian with respect to a child shall be as follows:

a. To consent to marriage, enlistment in the armed forces of the United States, or medical, psychiatric, or surgical treatment.

b. To serve as guardian ad litem, unless the interests of the guardian conflict with the interests of the child or unless another person has been appointed guardian ad litem.

c. To serve as custodian, unless another person has been appointed custodian.

d. To make periodic visitations if the guardian does not have physical possession or custody of the child.

e. To consent to adoption and to make any other decision that the parents could have made when the parent-child relationship existed.

f. To make other decisions involving protection, education, and care and control of the child.

22. a. “*Guardian ad litem*” means a person appointed by the court to represent the interests of a child in any judicial proceeding to which the child is a party, and includes a court appointed special advocate, except that a court appointed special advocate shall not file motions or petitions pursuant to section 232.54, subsections 1 and 4, section 232.103, subsection 2, paragraph “c”, and section 232.111.

b. Unless otherwise enlarged or circumscribed by a court or juvenile court having jurisdiction over the child or by operation of law, the duties of a guardian ad litem with respect to a child shall include the following:

(1) Conducting in-person interviews with the child, if the child’s age is appropriate for the interview, and interviewing each parent, guardian, or other person having custody of the child, if authorized by counsel.

(2) Conducting interviews with the child, if the child’s age is appropriate for the interview, prior to any court-ordered hearing.

(3) Visiting the home, residence, or both home and residence of the child and any prospective home or residence of the child, including each time placement is changed.

(4) Interviewing any person providing medical, mental health, social, educational, or other services to the child, before any hearing referred to in subparagraph (2).

(5) Obtaining firsthand knowledge, if possible, of the facts, circumstances, and parties involved in the matter in which the person is appointed guardian ad litem.

(6) Attending any hearings in the matter in which the person is appointed as the guardian ad litem.

(7) If the child is required to have a transition plan developed in accordance with the child’s case permanency plan and subject to review and approval of a transition committee under section 235.7, assisting the transition committee in devel-



opment of the transition plan.

c. The order appointing the guardian ad litem shall grant authorization to the guardian ad litem to interview any relevant person and inspect and copy any records relevant to the proceedings, if not prohibited by federal law. The order shall specify that the guardian ad litem may interview any person providing medical, mental health, social, educational, or other services to the child, may attend any departmental staff meeting, case conference, or meeting with medical or mental health providers, service providers, organizations, or educational institutions regarding the child, if deemed necessary by the guardian ad litem, and may inspect and copy any records relevant to the proceedings.

d. If authorized by the court, a guardian ad litem may continue a relationship with and provide advice to a child for a period of time beyond the child's eighteenth birthday.

23. "*Health practitioner*" means a licensed physician or surgeon, osteopath, osteopathic physician or surgeon, dentist, optometrist, podiatric physician, or chiropractor, a resident or intern of any such profession, and any registered nurse or licensed practical nurse.

24. "*Informal adjustment*" means the disposition of a complaint without the filing of a petition and may include but is not limited to the following:

- a. Placement of the child on nonjudicial probation.
- b. Provision of intake services.
- c. Referral of the child to a public or private agency other than the court for services.

25. "*Informal adjustment agreement*" means an agreement between an intake officer, a child who is the subject of a complaint, and the child's parent, guardian or custodian providing for the informal adjustment of the complaint.

26. "*Intake*" means the preliminary screening of complaints by an intake officer to determine whether the court should take some action and if so, what action.

27. "*Intake officer*" means a juvenile court officer or other officer appointed by the court to perform the intake function.

28. "*Judge*" means the judge of a juvenile court.

29. "*Juvenile*" means the same as "*child*". However, in the interstate compact on juveniles, sections 232.171 and 232.172, "*juvenile*" means a person defined as a juvenile in the law of a state which is a party to the compact.

30. "*Juvenile court officer*" means a person appointed as a juvenile court officer under section 602.7202 and a chief juvenile court officer appointed under section 602.1217.

31. "*Juvenile court social records*" or "*social records*" means all records made with respect to a child in connection with proceedings over which the court has jurisdiction under this chapter other than official records and includes but is not limited

to the records made and compiled by intake officers, predisposition reports, and reports of physical and mental examinations.

32. "*Juvenile detention home*" means a physically restricting facility used only for the detention of children.

33. "*Juvenile parole officer*" means a person representing an agency which retains jurisdiction over the case of a child adjudicated to have committed a delinquent act, placed in a secure facility and subsequently released, who supervises the activities of the child until the case is dismissed.

34. "*Juvenile shelter care home*" means a physically unrestricting facility used only for the shelter care of children.

35. "*Mental injury*" means a nonorganic injury to a child's intellectual or psychological capacity as evidenced by an observable and substantial impairment in the child's ability to function within the child's normal range of performance and behavior, considering the child's cultural origin.

36. "*Nonjudicial probation*" means the informal adjustment of a complaint which involves the supervision of the child who is the subject of the complaint by an intake officer or juvenile court officer for a period during which the child may be required to comply with specified conditions concerning the child's conduct and activities.

37. "*Nonsecure facility*" means a physically unrestricting facility in which children may be placed pursuant to a dispositional order of the court made in accordance with the provisions of this chapter.

38. "*Official juvenile court records*" or "*official records*" means official records of the court of proceedings over which the court has jurisdiction under this chapter which includes but is not limited to the following:

- a. The docket of the court and entries therein.
- b. Complaints, petitions, other pleadings, motions, and applications filed with a court.
- c. Any summons, notice, subpoena, or other process and proofs of publication.
- d. Transcripts of proceedings before the court.
- e. Findings, judgments, decrees and orders of the court.

39. "*Parent*" means a biological or adoptive mother or father of a child but does not include a mother or father whose parental rights have been terminated.

40. "*Peace officer*" means a law enforcement officer or a person designated as a peace officer by a provision of the Code.

41. "*Petition*" means a pleading the filing of which initiates formal judicial proceedings in the juvenile court.

42. "*Physical abuse or neglect*" or "*abuse or neglect*" means any nonaccidental physical injury suffered by a child as the result of the acts or omissions of the child's parent, guardian or custodian or other person legally responsible for the child.

42A. "*Preadoptive care*" means the provision

of parental nurturing on a full-time basis to a child in foster care by a person who has signed a pre-adoptive placement agreement with the department for the purposes of proceeding with a legal adoption of the child. Parental nurturing includes but is not limited to furnishing of food, lodging, training, education, treatment, and other care.

43. “*Predisposition investigation*” means an investigation conducted for the purpose of collecting information relevant to the court’s fashioning of an appropriate disposition of a delinquency case over which the court has jurisdiction.

44. “*Predisposition report*” is a report furnished to the court which contains the information collected during a predisposition investigation.

45. “*Probation*” means a legal status which is created by a dispositional order of the court in a case where a child has been adjudicated to have committed a delinquent act, which exists for a specified period of time, and which places the child under the supervision of a juvenile court officer or other person or agency designated by the court. The probation order may require a child to comply with specified conditions imposed by the court concerning conduct and activities, subject to being returned to the court for violation of those conditions.

46. “*Registry*” means the central registry for child abuse information as established under chapter 235A.

47. “*Residual parental rights and responsibilities*” means those rights and responsibilities remaining with the parent after transfer of legal custody or guardianship of the person of the child. These include but are not limited to the right of visitation, the right to consent to adoption, and the responsibility for support.

48. “*Secure facility*” means a physically restricting facility in which children adjudicated to have committed a delinquent act may be placed pursuant to a dispositional order of the court.

49. “*Sexual abuse*” means the commission of a sex offense as defined by the penal law.

50. “*Shelter care*” means the temporary care of a child in a physically unrestricting facility at any time between a child’s initial contact with juvenile authorities and the final judicial disposition of the child’s case.

51. “*Shelter care hearing*” means a hearing at which the court determines whether it is necessary to place or retain a child in shelter care.

52. “*Sibling*” means an individual who is related to another individual by blood, adoption, or affinity through a common legal or biological parent.

53. “*Social investigation*” means an investigation conducted for the purpose of collecting information relevant to the court’s fashioning of an appropriate disposition of a child in need of assistance case over which the court has jurisdiction.

54. “*Social report*” means a report furnished to the court which contains the information collected during a social investigation.

55. “*Taking into custody*” means an act which would be governed by the laws of arrest under the criminal code if the subject of the act were an adult. The taking into custody of a child is subject to all constitutional and statutory protections which are afforded an adult upon arrest.

56. “*Termination hearing*” means a hearing held to determine whether the court should terminate a parent-child relationship.

57. “*Termination of the parent-child relationship*” means the divestment by the court of the parent’s and child’s privileges, duties and powers with respect to each other.

58. “*Voluntary placement*” means a foster care placement in which the department provides foster care services to a child according to a signed placement agreement between the department and the child’s parent or guardian.

59. “*Waiver hearing*” means a hearing at which the court determines whether it shall waive its jurisdiction over a child alleged to have committed a delinquent act so that the state may prosecute the child as if the child were an adult.

2007 Acts, ch 67, §1, 2; 2007 Acts, ch 172, §2, 3

Subsection 4, paragraphs e and i amended

Subsection 4, NEW paragraph “f”

NEW subsection 52 and former subsections 52 – 58 renumbered as 53  
– 59

### **232.52 Disposition of child found to have committed a delinquent act.**

1. Pursuant to a hearing as provided in section 232.50, the court shall enter the least restrictive dispositional order appropriate in view of the seriousness of the delinquent act, the child’s culpability as indicated by the circumstances of the particular case, the age of the child, the child’s prior record, or the fact that the child has received a youthful offender deferred sentence under section 907.3A. The order shall specify the duration and the nature of the disposition, including the type of residence or confinement ordered and the individual, agency, department or facility in whom custody is vested. In the case of a child who has received a youthful offender deferred sentence, the initial duration of the dispositional order shall be until the child reaches the age of eighteen.

2. The dispositional orders which the court may enter subject to its continuing jurisdiction are as follows:

a. An order prescribing one or more of the following:

(1) A work assignment of value to the state or to the public.

(2) Restitution consisting of monetary payment or a work assignment of value to the victim.

(3) If the child is fourteen years of age or older, restitution consisting of monetary payment or a work assignment of value to the county or to the public for fees of attorneys appointed to represent the child at public expense pursuant to section 232.11.

(4) The suspension or revocation of the driv-

er's license or operating privilege of the child, for a period of one year, for the commission of delinquent acts which are a violation of any of the following:

- (a) Section 123.46.
- (b) Section 123.47 regarding the purchase or attempt to purchase of alcoholic beverages.
- (c) Chapter 124.
- (d) Section 126.3.
- (e) Chapter 453B.
- (f) Two or more violations of section 123.47 regarding the possession of alcoholic beverages.
- (g) Section 708.1, if the assault is committed upon an employee of the school at which the child is enrolled, and the child intended to inflict serious injury upon the school employee or caused bodily injury or mental illness.
- (h) Section 724.4, if the child carried the dangerous weapon on school grounds.
- (i) Section 724.4B.

The child may be issued a temporary restricted license or school license if the child is otherwise eligible.

(5) The suspension of the driver's license or operating privilege of the child for a period not to exceed one year. The order shall state whether a work permit may or shall not be issued to the child.

An order under paragraph "a" may be the sole disposition or may be included as an element in other dispositional orders.

b. An order placing the child on probation and releasing the child to the child's parent, guardian or custodian.

c. An order providing special care and treatment required for the physical, emotional or mental health of the child, and

(1) Placing the child on probation or other supervision; and

(2) If the court deems appropriate, ordering the parent, guardian, or custodian to reimburse the county for any costs incurred as provided in section 232.141, subsection 1, or to otherwise pay or provide for such care and treatment.

A parent or guardian may be required by the juvenile court to participate in educational or treatment programs as part of a probation plan if the court determines it to be in the best interest of the child. A parent or guardian who does not participate in the probation plan when required to do so by the court may be held in contempt.

d. An order transferring the legal custody of the child, subject to the continuing jurisdiction of the court for purposes of section 232.54, to one of the following:

(1) An adult relative or other suitable adult and placing the child on probation.

(2) A child-placing agency or other suitable private agency or facility which is licensed or otherwise authorized by law to receive and provide care for children and placing the child on probation or other supervision.

(3) The department of human services for purposes of foster care and prescribing the type of placement which will serve the best interests of the child and the means by which the placement shall be monitored by the court. The court shall consider ordering placement in family foster care as an alternative to group foster care.

(4) The chief juvenile court officer or the officer's designee for placement in a program under section 232.191, subsection 4. The chief juvenile court officer or the officer's designee may place a child in group foster care for failure to comply with the terms and conditions of the supervised community treatment program for up to seventy-two hours without notice to the court or for more than seventy-two hours if the court is notified of the placement within seventy-two hours of placement, subject to a hearing before the court on the placement within ten days.

e. An order transferring the guardianship of the child, subject to the continuing jurisdiction and custody of the court for the purposes of section 232.54, to the director of the department of human services for purposes of placement in the state training school or other facility, provided that the child is at least twelve years of age and the court finds the placement to be in the best interests of the child or necessary for the protection of the public, and that the child has been found to have committed an act which is a forcible felony, as defined in section 702.11, or a felony violation of section 124.401 or chapter 707, or the court finds any three of the following conditions exist:

(1) The child is at least fifteen years of age and the court finds the placement to be in the best interests of the child or necessary to the protection of the public.

(2) The child has committed an act which is a crime against a person and which would be an aggravated misdemeanor or a felony if the act were committed by an adult.

(3) The child has previously been found to have committed a delinquent act.

(4) The child has previously been placed in a treatment facility outside the child's home or in a supervised community treatment program established pursuant to section 232.191, subsection 4, as a result of a prior delinquency adjudication.

f. An order committing the child to a mental health institute or other appropriate facility for the purpose of treatment of a mental or emotional condition after making findings pursuant to the standards set out for involuntary commitment in chapter 229.

g. An order placing a child, other than a child who has committed a violation of section 123.47, in secure custody for not more than two days in a facility under section 232.22, subsection 3, paragraph "a" or "b".

h. In the case of a child adjudicated delinquent for an act which would be a violation of chapter 236

or section 708.2A if committed by an adult, an order requiring the child to attend a batterers' treatment program under section 708.2B.

2A. Notwithstanding subsection 2, the court shall not order group foster care placement of the child which is a charge upon the state if that placement is not in accordance with the service area plan for group foster care established pursuant to section 232.143 for the departmental service area in which the court is located.

3. When the court enters an order placing a child on probation pursuant to this section, the court may in cases of change of residency transfer jurisdiction of the child to the juvenile court of the county where the child's residence is established. The court to which the jurisdiction of the child is transferred shall have the same powers with respect to the child as if the petition had originally been filed in that court.

4. When the court enters an order transferring the legal and physical custody of a child to an agency, facility, department or institution, the court shall transmit its order, its finding, and a summary of its information concerning the child to such agency, facility, department or institution.

5. If the court orders the transfer of custody of the child to the department of human services or other agency for placement, the department or agency responsible for the placement of the child shall submit a case permanency plan to the court and shall make every effort to return the child to the child's home as quickly as possible.

6. When the court orders the transfer of legal custody of a child pursuant to subsection 2, paragraph "d", "e", or "f", the order shall state that reasonable efforts as defined in section 232.57 have been made. If deemed appropriate by the court, the order may include a determination that continuation of the child in the child's home is contrary to the child's welfare. The inclusion of such a determination shall not under any circumstances be deemed a prerequisite for entering an order pursuant to this section. However, the inclusion of such a determination, supported by the record, may be used to assist the department in obtaining federal funding for the child's placement. If such a determination is included in the order, unless the court makes a determination that further reasonable efforts are not required, reasonable efforts shall be made to prevent permanent removal of a child from the child's home and to encourage reunification of the child with the child's parents and family. The reasonable efforts may include but are not limited to early intervention and follow-up programs implemented pursuant to section 232.191.

When the court orders the transfer of legal custody of a child pursuant to subsection 2, paragraph "d", and the child is sixteen years of age or older, the order shall specify the services needed to assist the child in preparing for the transition from foster care to adulthood. If the child has a case per-

manency plan, the court shall consider the written transition plan of services and needs assessment developed for the child's case permanency plan. If the child does not have a case permanency plan containing the transition plan and needs assessment at the time the transfer order is entered, the written transition plan and needs assessment shall be developed and submitted for the court's consideration no later than six months from the date of the transfer order. The court shall modify the initial transfer order as necessary to specify the services needed to assist the child in preparing for the transition from foster care to adulthood. If the transition plan identifies services or other support needed to assist the child when the child becomes an adult and the court deems it to be beneficial to the child, the court may authorize the individual who is the child's guardian ad litem or court appointed special advocate to continue a relationship with and provide advice to the child for a period of time beyond the child's eighteenth birthday.

7. If the court orders the transfer of the custody of the child to the department of human services or to another agency for placement in group foster care, the department or agency shall make every reasonable effort to place the child in the least restrictive, most family-like, and most appropriate setting available and in close proximity to the parents' home, consistent with the child's best interests and special needs, and shall consider the placement's proximity to the school in which the child is enrolled at the time of placement.

8. If a child has previously been adjudicated as a child in need of assistance, and a social worker or other caseworker from the department of human services has been assigned to work on the child's case, the court may order the department of human services to assign the same social worker or caseworker to work on any matters related to the child arising under this division.

9. *a.* Upon receipt of an application from the director of the department of human services, the court shall enter an order to temporarily transfer a child who has been placed in the state training school pursuant to subsection 2, paragraph "e", to a facility which has been designated to be an alternative placement site for the state training school, provided the court finds that all of the following conditions exist:

(1) There is insufficient time to file a motion and hold a hearing for a substitute dispositional order under section 232.54.

(2) Immediate removal of the child from the state training school is necessary to safeguard the child's physical or emotional health.

(3) That reasonable attempts to notify the parents, guardian ad litem, and attorney for the child have been made.

*b.* If the court finds the conditions in paragraph "a" exist and there is insufficient time to provide notice as required under rule of juvenile procedure 8.12, the court may enter an ex parte or-

der temporarily transferring the child to the alternative placement site.

c. Within three days of the child's transfer, the director shall file a motion for a substitute dispositional order under section 232.54 and the court shall hold a hearing concerning the motion within fourteen days of the child's transfer.

10. The court shall order a juvenile adjudicated a delinquent for an offense that requires DNA profiling under section 81.2 to submit a DNA sample for DNA profiling pursuant to section 81.4.

2007 Acts, ch 218, §113  
Juvenile victim restitution, see chapter 232A  
Subsection 6, unnumbered paragraph 1 amended

**232.57 Reasonable efforts defined — effect of aggravated circumstances.**

1. For the purposes of this division, unless the context otherwise requires, "*reasonable efforts*" means the efforts made to prevent permanent removal of a child from the child's home and to encourage reunification of the child with the child's parents and family. Reasonable efforts shall include but are not limited to giving consideration, if appropriate, to interstate placement of a child in the permanency planning decisions involving the child and giving consideration to in-state and out-of-state placement options at a permanency hearing and when using concurrent planning. If a court order includes a determination that continuation of the child in the child's home is not appropriate or not possible, reasonable efforts may include the efforts made in a timely manner to finalize a permanency plan for the child.

2. If the court determines by clear and convincing evidence that aggravated circumstances exist, with written findings of fact based upon evidence in the record, the court may waive the requirement for making reasonable efforts. The existence of aggravated circumstances is indicated by any of the following:

- a. The parent has abandoned the child.
- b. The court finds the circumstances described in section 232.116, subsection 1, paragraph "i", are applicable to the child.
- c. The parent's parental rights have been terminated under section 232.116 with respect to another child who is a member of the same family, and there is clear and convincing evidence to show that the offer or receipt of services would not be likely within a reasonable period of time to correct the conditions which led to the child's removal.
- d. The parent has been convicted of the murder of another child of the parent.
- e. The parent has been convicted of the voluntary manslaughter of another child of the parent.
- f. The parent has been convicted of aiding or abetting, attempting, conspiring in, or soliciting the commission of the murder or voluntary manslaughter of another child of the parent.
- g. The parent has been convicted of a felony assault which resulted in serious bodily injury of the

child or of another child of the parent.

3. Any order entered under this division may include findings regarding reasonable efforts.

2007 Acts, ch 172, §4  
Subsection 1 amended

**232.58 Permanency hearings.**

1. If an order entered pursuant to this division for an out-of-home placement of a child includes a determination that continuation of the child in the child's home is contrary to the child's welfare, the court shall review the child's continued placement by holding a permanency hearing or hearings in accordance with this section. The initial permanency hearing shall be the earlier of the following:

a. For an order for which the court has not waived reasonable efforts requirements, the permanency hearing shall be held within twelve months of the date the child was removed from the home.

b. For an order in a case in which aggravated circumstances exist for which the court has waived reasonable efforts requirements, the permanency hearing shall be held within thirty days of the date the requirements were waived.

2. Reasonable notice shall be provided of a permanency hearing for an out-of-home placement in which the court order has included a determination that continuation of the child in the child's home is contrary to the child's welfare. A permanency hearing shall be conducted in substantial conformance with the provisions of section 232.99. During the hearing, the court shall consider the child's need for a secure and permanent placement in light of any case permanency plan or evidence submitted to the court and the reasonable efforts made concerning the child. Upon completion of the hearing, the court shall enter written findings identifying a primary permanency goal for the child. If a case permanency plan is in effect at the time of the hearing, the court shall also make a determination as to whether reasonable progress is being made in achieving the permanency goal and in complying with the other provisions of that case permanency plan.

3. After a permanency hearing, the court shall do one of the following:

a. Enter an order pursuant to section 232.52 to return the child to the child's home.

b. Enter an order pursuant to section 232.52 to continue the out-of-home placement of the child for an additional six months at which time the court shall hold a hearing to consider modification of its permanency order. An order entered under this paragraph shall enumerate the specific factors, conditions, or expected behavioral changes which comprise the basis for the determination that the need for removal of the child from the child's home will no longer exist at the end of the additional six-month period.

c. Direct the county attorney or the attorney for the child to institute proceedings to terminate

the parent-child relationship.

*d.* Enter an order, pursuant to findings based upon the existence of the evidence required by subsection 4, to do one of the following:

(1) Transfer guardianship and custody of the child to a suitable person.

(2) Transfer sole custody of the child from one parent to another parent.

(3) Transfer custody of the child to a suitable person for the purpose of long-term care.

(4) If the department has documented to the court's satisfaction a compelling reason for determining that an order under the other subparagraphs of this paragraph "d" would not be in the child's best interest, order another planned permanent living arrangement for the child.

4. Prior to entering a permanency order pursuant to subsection 3, paragraph "d", clear and convincing evidence must exist showing that all of the following apply:

*a.* A termination of the parent-child relationship would not be in the best interest of the child.

*b.* Services were offered to the child's family to correct the situation which led to the child's removal from the home.

*c.* The child cannot be returned to the child's home.

5. Any permanency order may provide restrictions upon the contact between the child and the child's parent or parents, consistent with the best interest of the child.

6. With respect to a dispositional order made pursuant to section 232.52, subsection 2, paragraph "d", "e", or "f", for which the court has suspended or terminated sibling visitation or interaction, when a review is made under this section the court shall consider whether the visitation or interaction can be safely resumed and may modify the suspension or termination as appropriate.

7. Subsequent to the entry of a permanency order pursuant to this section, the child shall not be returned to the care, custody, or control of the child's parent or parents, over a formal objection filed by the child's attorney or guardian ad litem, unless the court finds by a preponderance of the evidence that returning the child to such custody would be in the best interest of the child.

8. Following an initial permanency hearing and the entry of a permanency order which places a child in the custody or guardianship of another person or agency, the court shall retain jurisdiction and annually review the order to ascertain whether the best interest of the child is being served. When the order places the child in the custody of the department for the purpose of a planned permanent living arrangement, the review shall be in a hearing that shall not be waived or continued beyond twelve months after the initial permanency hearing or the last permanency review hearing. Any modification shall be accomplished through a hearing procedure following

reasonable notice. During the hearing, all relevant and material evidence shall be admitted and procedural due process shall be provided to all parties.

2007 Acts, ch 67, §3; 2007 Acts, ch 172, §5  
 Subsection 2 amended  
 NEW subsection 6 and former subsections 6 and 7 renumbered as 7 and 8

**232.69 Mandatory and permissive reporters — training required.**

1. The classes of persons enumerated in this subsection shall make a report within twenty-four hours and as provided in section 232.70, of cases of child abuse. In addition, the classes of persons enumerated in this subsection shall make a report of abuse of a child who is under twelve years of age and may make a report of abuse of a child who is twelve years of age or older, which would be defined as child abuse under section 232.68, subsection 2, paragraph "c" or "e", except that the abuse resulted from the acts or omissions of a person other than a person responsible for the care of the child.

*a.* Every health practitioner who in the scope of professional practice, examines, attends, or treats a child and who reasonably believes the child has been abused. Notwithstanding section 139A.30, this provision applies to a health practitioner who receives information confirming that a child is infected with a sexually transmitted disease.

*b.* Any of the following persons who, in the scope of professional practice or in their employment responsibilities, examines, attends, counsels, or treats a child and reasonably believes a child has suffered abuse:

(1) A social worker.  
 (2) An employee or operator of a public or private health care facility as defined in section 135C.1.

(3) A certified psychologist.

(4) A licensed school employee, certified para-educator, holder of a coaching authorization issued under section 272.31, or an instructor employed by a community college.

(5) An employee or operator of a licensed child care center, registered child development home, head start program, family development and self-sufficiency grant program under section 217.12, or healthy opportunities for parents to experience success – healthy families Iowa program under section 135.106.

(6) An employee or operator of a substance abuse program or facility licensed under chapter 125.

(7) An employee of a department of human services institution listed in section 218.1.

(8) An employee or operator of a juvenile detention or juvenile shelter care facility approved under section 232.142.

(9) An employee or operator of a foster care fa-

cility licensed or approved under chapter 237.

(10) An employee or operator of a mental health center.

(11) A peace officer.

(12) A counselor or mental health professional.

(13) An employee or operator of a provider of services to children funded under a federally approved medical assistance home and community-based services waiver.

2. Any other person who believes that a child has been abused may make a report as provided in section 232.70.

3. *a.* For the purposes of this subsection, “*licensing board*” means a board designated in section 147.13, the board of educational examiners created in section 272.2, or a licensing board as defined in section 272C.1.

*b.* A person required to make a report under subsection 1, other than a physician whose professional practice does not regularly involve providing primary health care to children, shall complete two hours of training relating to the identification and reporting of child abuse within six months of initial employment or self-employment involving the examination, attending, counseling, or treatment of children on a regular basis. Within one month of initial employment or self-employment, the person shall obtain a statement of the abuse reporting requirements from the person’s employer or, if self-employed, from the department. The person shall complete at least two hours of additional child abuse identification and reporting training every five years.

*c.* If the person is an employee of a hospital or similar institution, or of a public or private institution, agency, or facility, the employer shall be responsible for providing the child abuse identification and reporting training. If the person is self-employed, employed in a licensed or certified profession, or employed by a facility or program that is subject to licensure, regulation, or approval by a state agency, the person shall obtain the child abuse identification and reporting training as provided in paragraph “*d*”.

*d.* The person may complete the initial or additional training requirements as part of any of the following that are applicable to the person:

(1) A continuing education program required under chapter 272C and approved by the appropriate licensing board.

(2) A training program using a curriculum approved by the abuse education review panel established by the director of public health pursuant to section 135.11.

(3) A training program using such an approved curriculum offered by the department of human services, the department of education, an area education agency, a school district, the Iowa law enforcement academy, or a similar public agency.

*e.* A licensing board with authority over the license of a person required to make a report under subsection 1 shall require as a condition of licensure that the person is in compliance with the requirements for abuse training under this subsection. The licensing board shall require the person upon licensure renewal to accurately document for the licensing board the person’s completion of the training requirements. However, the licensing board may adopt rules providing for waiver or suspension of the compliance requirements, if the waiver or suspension is in the public interest, applicable to a person who is engaged in active duty in the military service of this state or of the United States, to a person for whom compliance with the training requirements would impose a significant hardship, or to a person who is practicing a licensed profession outside this state or is otherwise subject to circumstances that would preclude the person from encountering child abuse in this state.

*f.* For persons required to make a report under subsection 1 who are not engaged in a licensed profession that is subject to the authority of a licensing board but are employed by a facility or program subject to licensure, registration, or approval by a state agency, the agency shall require as a condition of renewal of the facility’s or program’s licensure, registration, or approval, that such persons employed by the facility or program are in compliance with the training requirements of this subsection.

*g.* For peace officers, the elected or appointed official designated as the head of the agency employing the peace officer shall ensure compliance with the training requirements of this subsection.

*h.* For persons required to make a report under subsection 1 who are employees of state departments and political subdivisions of the state, the department director or the chief administrator of the political subdivision shall ensure the persons’ compliance with the training requirements of this subsection.

2007 Acts, ch 10, §164, 165

Subsection 3, paragraph a amended

Subsection 3, paragraph d, subparagraph (1) amended

### **232.91 Presence of parents, guardian ad litem, and others at hearings — additional parties.**

1. Any hearings or proceedings under this division subsequent to the filing of a petition shall not take place without the presence of the child’s parent, guardian, custodian, or guardian ad litem in accordance with and subject to section 232.38. A parent without custody may petition the court to be made a party to proceedings under this division.

2. An agency, facility, institution, or person, including a foster parent or an individual providing preadoptive care, may petition the court to be made a party to proceedings under this division.

3. Any person who is entitled under section 232.88 to receive notice of a hearing concerning a child shall be given the opportunity to be heard in any other review or hearing involving the child. A foster parent, relative, or other individual with whom a child has been placed for preadoptive care shall have the right to be heard in any proceeding involving the child.

2007 Acts, ch 172, §13  
 Subsection 3 amended

**232.102 Transfer of legal custody of child and placement.**

1. After a dispositional hearing the court may enter an order transferring the legal custody of the child to one of the following for purposes of placement:

- a. A parent who does not have physical care of the child, other relative, or other suitable person.
- b. A child-placing agency or other suitable private agency, facility, or institution which is licensed or otherwise authorized by law to receive and provide care for the child.
- c. The department of human services.

If the child is sixteen years of age or older, the order shall specify the services needed to assist the child in preparing for the transition from foster care to adulthood. If the child has a case permanency plan, the court shall consider the written transition plan of services and needs assessment developed for the child's case permanency plan. If the child does not have a case permanency plan containing the transition plan and needs assessment at the time the order is entered, the written transition plan and needs assessment shall be developed and submitted for the court's consideration no later than six months from the date of the transfer order. The court shall modify the initial transfer order as necessary to specify the services needed to assist the child in preparing for the transition from foster care to adulthood. If the transition plan identifies services or other support needed to assist the child when the child becomes an adult and the court deems it to be beneficial to the child, the court may authorize the individual who is the child's guardian ad litem or court appointed special advocate to continue a relationship with and provide advice to the child for a period of time beyond the child's eighteenth birthday.

1A. The court shall not order group foster care placement of the child which is a charge upon the state if that placement is not in accordance with the service area plan for group foster care established pursuant to section 232.143 for the departmental service area in which the court is located.

2. After a dispositional hearing and upon the request of the department, the court may enter an order appointing the department as the guardian of an unaccompanied refugee child or of a child without parent or guardian.

3. After a dispositional hearing and upon written findings of fact based upon evidence in the rec-

ord that an alternative placement set forth in subsection 1, paragraph "b", has previously been made and is not appropriate the court may enter an order transferring the guardianship of the child for the purposes of subsection 8, to the director of human services for the purposes of placement in the Iowa juvenile home at Toledo.

4. a. Upon receipt of an application from the director of the department of human services, the court shall enter an order to temporarily transfer a child who has been placed in the Iowa juvenile home at Toledo pursuant to subsection 3, to a facility which has been designated to be an alternative placement site for the juvenile home, provided the court finds that all of the following conditions exist:

- (1) There is insufficient time to file a motion and hold a hearing for a new dispositional order under section 232.103.
- (2) Immediate removal of the child from the juvenile home is necessary to safeguard the child's physical or emotional health.
- (3) That reasonable attempts to notify the parents, guardian ad litem, and attorney for the child have been made.

b. If the court finds the conditions in paragraph "a" exist and there is insufficient time to provide notice as required under rule of juvenile procedure 8.12, the court may enter an ex parte order temporarily transferring the child to the alternative placement site.

c. Within three days of the child's transfer, the director shall file a motion for a new dispositional order under section 232.103 and the court shall hold a hearing concerning the motion within fourteen days of the child's transfer.

5. a. Whenever possible the court should permit the child to remain at home with the child's parent, guardian, or custodian. Custody of the child should not be transferred unless the court finds there is clear and convincing evidence that:

- (1) The child cannot be protected from physical abuse without transfer of custody; or
- (2) The child cannot be protected from some harm which would justify the adjudication of the child as a child in need of assistance and an adequate placement is available.

b. In order to transfer custody of the child under this subsection, the court must make a determination that continuation of the child in the child's home would be contrary to the welfare of the child, and shall identify the reasonable efforts that have been made. The court's determination regarding continuation of the child in the child's home, and regarding reasonable efforts, including those made to prevent removal and those made to finalize any permanency plan in effect, as well as any determination by the court that reasonable efforts are not required, must be made on a case-by-case basis. The grounds for each determination must be explicitly documented and stated in the



court order. However, preserving the safety of the child is the paramount consideration. If imminent danger to the child's life or health exists at the time of the court's consideration, the determinations otherwise required under this paragraph shall not be a prerequisite for an order for removal of the child. If the court transfers custody of the child, unless the court waives the requirement for making reasonable efforts or otherwise makes a determination that reasonable efforts are not required, reasonable efforts shall be made to make it possible for the child to safely return to the family's home.

6. The child shall not be placed in the state training school.

7. In any order transferring custody to the department or an agency, or in orders pursuant to a custody order, the court shall specify the nature and category of disposition which will serve the best interests of the child, and shall prescribe the means by which the placement shall be monitored by the court. If the court orders the transfer of the custody of the child to the department of human services or other agency for placement, the department or agency shall submit a case permanency plan to the court and shall make every reasonable effort to return the child to the child's home as quickly as possible consistent with the best interests of the child. When the child is not returned to the child's home and if the child has been previously placed in a licensed foster care facility, the department or agency shall consider placing the child in the same licensed foster care facility. If the court orders the transfer of custody to a parent who does not have physical care of the child, other relative, or other suitable person, the court may direct the department or other agency to provide services to the child's parent, guardian, or custodian in order to enable them to resume custody of the child. If the court orders the transfer of custody to the department of human services or to another agency for placement in group foster care, the department or agency shall make every reasonable effort to place the child in the least restrictive, most family-like, and most appropriate setting available, and in close proximity to the parents' home, consistent with the child's best interests and special needs, and shall consider the placement's proximity to the school in which the child is enrolled at the time of placement.

8. Any order transferring custody to the department or an agency shall include a statement informing the child's parent that the consequences of a permanent removal may include the termination of the parent's rights with respect to the child.

9. An agency, facility, institution, or person to whom custody of the child has been transferred pursuant to this section shall file a written report with the court at least every six months concerning the status and progress of the child. The court shall hold a periodic dispositional review hearing

for each child in placement pursuant to this section in order to determine whether the child should be returned home, an extension of the placement should be made, a permanency hearing should be held, or a termination of the parent-child relationship proceeding should be instituted. The placement shall be terminated and the child returned to the child's home if the court finds by a preponderance of the evidence that the child will not suffer harm in the manner specified in section 232.2, subsection 6. If the placement is extended, the court shall determine whether additional services are necessary to facilitate the return of the child to the child's home, and if the court determines such services are needed, the court shall order the provision of such services. When the child is not returned to the child's home and if the child has been previously placed in a licensed foster care facility, the department or agency responsible for the placement of the child shall consider placing the child in the same licensed foster care facility.

a. The initial dispositional review hearing shall not be waived or continued beyond six months after the date of the dispositional hearing.

b. Subsequent dispositional review hearings shall not be waived or continued beyond twelve months after the date of the most recent dispositional review hearing.

c. For purposes of this subsection, a hearing held pursuant to section 232.103 satisfies the requirements for initial dispositional review or subsequent permanency hearing.

10. a. As used in this division, "*reasonable efforts*" means the efforts made to preserve and unify a family prior to the out-of-home placement of a child in foster care or to eliminate the need for removal of the child or make it possible for the child to safely return to the family's home. Reasonable efforts shall include but are not limited to giving consideration, if appropriate, to interstate placement of a child in the permanency planning decisions involving the child and giving consideration to in-state and out-of-state placement options at a permanency hearing and when using concurrent planning. If returning the child to the family's home is not appropriate or not possible, reasonable efforts shall include the efforts made in a timely manner to finalize a permanency plan for the child. A child's health and safety shall be the paramount concern in making reasonable efforts. Reasonable efforts may include but are not limited to family-centered services, if the child's safety in the home can be maintained during the time the services are provided. In determining whether reasonable efforts have been made, the court shall consider both of the following:

(1) The type, duration, and intensity of services or support offered or provided to the child and the child's family. If family-centered services were not provided, the court record shall enumerate the reasons the services were not provided, including

but not limited to whether the services were not available, not accepted by the child's family, judged to be unable to protect the child and the child's family during the time the services would have been provided, judged to be unlikely to be successful in resolving the problems which would lead to removal of the child, or other services were found to be more appropriate.

(2) The relative risk to the child of remaining in the child's home versus removal of the child.

b. As used in this section, "*family-centered services*" means services and other support intended to safely maintain a child with the child's family or with a relative, to safely and in a timely manner return a child to the home of the child's parent or relative, or to promote achievement of concurrent planning goals by identifying and helping the child secure placement for adoption, with a guardian, or with other alternative permanent family connections. Family-centered services are adapted to the individual needs of a family in regard to the specific services and other support provided to the child's family and the intensity and duration of service delivery. Family-centered services are intended to preserve a child's connections to the child's neighborhood, community, and family and to improve the overall capacity of the child's family to provide for the needs of the children in the family.

11. The performance of reasonable efforts to place a child for adoption or with a guardian may be made concurrently with making reasonable efforts as defined in this section.

12. If the court determines by clear and convincing evidence that aggravated circumstances exist, with written findings of fact based upon evidence in the record, the court may waive the requirement for making reasonable efforts. The existence of aggravated circumstances is indicated by any of the following:

a. The parent has abandoned the child.

b. The court finds the circumstances described in section 232.116, subsection 1, paragraph "i", are applicable to the child.

c. The parent's parental rights have been terminated under section 232.116 with respect to another child who is a member of the same family, and there is clear and convincing evidence to show that the offer or receipt of services would not be likely within a reasonable period of time to correct the conditions which led to the child's removal.

d. The parent has been convicted of the murder of another child of the parent.

e. The parent has been convicted of the voluntary manslaughter of another child of the parent.

f. The parent has been convicted of aiding or abetting, attempting, conspiring in, or soliciting the commission of the murder or voluntary manslaughter of another child of the parent.

g. The parent has been convicted of a felony assault which resulted in serious bodily injury of the

child or of another child of the parent.

13. Unless prohibited by the court order transferring custody of the child for placement or other court order or the department or agency that received the custody transfer finds that allowing the visitation would not be in the child's best interest, the department or agency may authorize reasonable visitation with the child by the child's grandparent, great-grandparent, or other adult relative who has established a substantial relationship with the child.

2007 Acts, ch 172, §6, 9; 2007 Acts, ch 218, §114  
See Code editor's note to §29A.28  
Subsection 5, paragraph b amended  
Subsection 10 amended

### 232.104 Permanency hearing.

1. a. The time for the initial permanency hearing for a child subject to out-of-home placement shall be the earlier of the following:

(1) For a temporary removal order entered under section 232.78, 232.95, or 232.96, for a child who was removed without a court order under section 232.79, or for an order entered under section 232.102, for which the court has not waived reasonable efforts requirements, the permanency hearing shall be held within twelve months of the date the child was removed from the home.

(2) For an order entered under section 232.102, for which the court has waived reasonable efforts requirements under section 232.102, subsection 12, the permanency hearing shall be held within thirty days of the date the requirements were waived.

b. The permanency hearing may be held concurrently with a hearing under section 232.103 to review, modify, substitute, vacate, or terminate a dispositional order.

c. Reasonable notice of a permanency hearing shall be provided to the parties. A permanency hearing shall be conducted in substantial conformance with the provisions of section 232.99. During the hearing, the court shall consider the child's need for a secure and permanent placement in light of any permanency plan or evidence submitted to the court and the reasonable efforts made concerning the child. Upon completion of the hearing, the court shall enter written findings and make a determination identifying a primary permanency goal for the child. If a permanency plan is in effect at the time of the hearing, the court shall also make a determination as to whether reasonable progress is being made in achieving the permanency goal and complying with the other provisions of that permanency plan.

2. After a permanency hearing the court shall do one of the following:

a. Enter an order pursuant to section 232.102 to return the child to the child's home.

b. Enter an order pursuant to section 232.102 to continue placement of the child for an additional six months at which time the court shall hold a

hearing to consider modification of its permanency order. An order entered under this paragraph shall enumerate the specific factors, conditions, or expected behavioral changes which comprise the basis for the determination that the need for removal of the child from the child's home will no longer exist at the end of the additional six-month period.

c. Direct the county attorney or the attorney for the child to institute proceedings to terminate the parent-child relationship.

d. Enter an order, pursuant to findings required by subsection 3, to do one of the following:

(1) Transfer guardianship and custody of the child to a suitable person.

(2) Transfer sole custody of the child from one parent to another parent.

(3) Transfer custody of the child to a suitable person for the purpose of long-term care.

(4) If the department has documented to the court's satisfaction a compelling reason for determining that an order under the other subparagraphs of this paragraph would not be in the child's best interest, order another planned permanent living arrangement for the child.

3. Prior to entering a permanency order pursuant to subsection 2, paragraph "d", convincing evidence must exist showing that all of the following apply:

a. A termination of the parent-child relationship would not be in the best interest of the child.

b. Services were offered to the child's family to correct the situation which led to the child's removal from the home.

c. The child cannot be returned to the child's home.

4. Any permanency order may provide restrictions upon the contact between the child and the child's parent or parents, consistent with the best interest of the child.

5. With respect to a dispositional order providing for transfer of custody of a child and siblings to the department or other agency for placement for which the court has suspended or terminated sibling visitation or interaction, when a review is made under this section the court shall consider whether the visitation or interaction can be safely resumed and may modify the suspension or termination as appropriate.

6. Subsequent to the entry of a permanency order pursuant to this section, the child shall not be returned to the care, custody, or control of the child's parent or parents, over a formal objection filed by the child's attorney or guardian ad litem, unless the court finds by a preponderance of the evidence, that returning the child to such custody would be in the best interest of the child.

7. Following an initial permanency hearing and the entry of a permanency order which places a child in the custody or guardianship of another person or agency, the court shall retain jurisdic-

tion and annually review the order to ascertain whether the best interest of the child is being served. When the order places the child in the custody of the department for the purpose of long-term foster care placement in a facility, the review shall be in a hearing that shall not be waived or continued beyond twelve months after the initial permanency hearing or the last permanency review hearing. Any modification shall be accomplished through a hearing procedure following reasonable notice. During the hearing, all relevant and material evidence shall be admitted and procedural due process shall be provided to all parties.

2007 Acts, ch 67, §4; 2007 Acts, ch 172, §7

Subsection 1, paragraph c amended

NEW subsection 5 and former subsections 5 and 6 renumbered as 6 and

7

### **232.108 Visitation or ongoing interaction with siblings.**

1. If the court orders the transfer of custody of a child and siblings to the department or other agency for placement under this division, under division II, relating to juvenile delinquency proceedings, or under any other provision of this chapter, the department or other agency shall make a reasonable effort to place the child and siblings together in the same placement. The requirement of this subsection remains applicable to custody transfer orders made at separate times and applies in addition to efforts made by the department or agency to place the child with a relative.

2. If the requirements of subsection 1 apply but the siblings are not placed in the same placement together, the department or other agency shall provide the siblings with the reasons why and the efforts being made to facilitate such placement, or why making efforts for such placement is not appropriate. Unless visitation or ongoing interaction with siblings is suspended or terminated by the court, the department or agency shall make reasonable effort to provide for frequent visitation or other ongoing interaction between the child and the child's siblings from the time of the child's out-of-home placement until the child returns home or is in a permanent placement.

3. A person who wishes to assert a sibling relationship with a child who is subject to an order under this chapter for an out-of-home placement and to request frequent visitation or other ongoing interaction with the child may file a petition with the court with jurisdiction over the child. Unless the court determines it would not be in the child's best interest, upon finding that the person is a sibling of the child, the provisions of this section providing for frequent visitation or other ongoing interaction between the siblings shall apply. Nothing in this section is intended to provide or expand a right to counsel under this chapter beyond the right provided and persons specified in sections

232.89 and 232.113.

4. If the court determines by clear and convincing evidence that visitation or other ongoing interaction between a child and the child's siblings would be detrimental to the well-being of the child or a sibling, the court shall order the visitation or interaction to be suspended or terminated. The reasons for the determination shall be noted in the court order suspending or terminating the visitation or interaction and shall be explained to the child and the child's siblings, and to the parent, guardian, or custodian of the child.

5. The case permanency plan of a child who is subject to this section shall comply with all of the following, as applicable:

*a.* The plan shall document the efforts being made to provide for the child's frequent visitation or other ongoing interaction with the child's siblings from the time of the child's out-of-home placement until the child returns home or is in a permanent placement. The child's parent, guardian, or custodian may comment on the efforts as documented in the case permanency plan.

*b.* If at any point the court determines that the child's visitation or interaction with siblings would be detrimental to the child's well-being and visitation or interaction with siblings is suspended or terminated by the court, the determination shall be noted in the case permanency plan. If the court lifts the suspension or termination, the case permanency plan shall be revised to document the efforts to provide for visitation or interaction as required under paragraph "a".

*c.* If one or more of the child's siblings are also subject to an order under this chapter for an out-of-home placement and the siblings are not placed in the same placement together, the plan shall document the reasons why and the efforts being made to facilitate such placement, or why making efforts for such placement is not appropriate.

6. If an order is entered for termination of parental rights of a child who is subject to this section, unless the court has suspended or terminated sibling visitation or interaction in accordance with this section, the department or child-placing agency shall do all of the following to facilitate frequent visitation or ongoing interaction between the child and siblings when the child is adopted or enters a permanent placement:

*a.* Include in the training provided to prospective adoptive parents information regarding the importance of sibling relationships to an adopted child and counseling methods for maintaining sibling relationships.

*b.* Provide prospective adoptive parents with information regarding the child's siblings. The address of a sibling's residence shall not be disclosed in the information unless authorized by court order for good cause shown.

*c.* Encourage prospective adoptive parents to plan for facilitating postadoption contact between the child and the child's siblings.

7. Any information regarding court-ordered or authorized sibling visitation, interaction, or contact shall be provided to the foster parent, relative caretaker, guardian, prospective adoptive parent, and child as soon as reasonably possible following the entry of the court order or authorization as necessary to facilitate the visitation or interaction.

2007 Acts, ch 67, §5  
NEW section

### **232.116 Grounds for termination.**

1. Except as provided in subsection 3, the court may order the termination of both the parental rights with respect to a child and the relationship between the parent and the child on any of the following grounds:

*a.* The parents voluntarily and intelligently consent to the termination of parental rights and the parent-child relationship and for good cause desire the termination.

*b.* The court finds that there is clear and convincing evidence that the child has been abandoned or deserted.

*c.* The court finds that there is clear and convincing evidence that the child is a newborn infant whose parent has voluntarily released custody of the child in accordance with chapter 233.

*d.* The court finds that both of the following have occurred:

(1) The court has previously adjudicated the child to be a child in need of assistance after finding the child to have been physically or sexually abused or neglected as the result of the acts or omissions of one or both parents, or the court has previously adjudicated a child who is a member of the same family to be a child in need of assistance after such a finding.

(2) Subsequent to the child in need of assistance adjudication, the parents were offered or received services to correct the circumstance which led to the adjudication, and the circumstance continues to exist despite the offer or receipt of services.

*e.* The court finds that all of the following have occurred:

(1) The child has been adjudicated a child in need of assistance pursuant to section 232.96.

(2) The child has been removed from the physical custody of the child's parents for a period of at least six consecutive months.

(3) There is clear and convincing evidence that the parents have not maintained significant and meaningful contact with the child during the previous six consecutive months and have made no reasonable efforts to resume care of the child despite being given the opportunity to do so. For the purposes of this subparagraph, "significant and meaningful contact" includes but is not limited to the affirmative assumption by the parents of the duties encompassed by the role of being a parent. This affirmative duty, in addition to financial obli-

gations, requires continued interest in the child, a genuine effort to complete the responsibilities prescribed in the case permanency plan, a genuine effort to maintain communication with the child, and requires that the parents establish and maintain a place of importance in the child's life.

*f.* The court finds that all of the following have occurred:

- (1) The child is four years of age or older.
- (2) The child has been adjudicated a child in need of assistance pursuant to section 232.96.
- (3) The child has been removed from the physical custody of the child's parents for at least twelve of the last eighteen months, or for the last twelve consecutive months and any trial period at home has been less than thirty days.
- (4) There is clear and convincing evidence that at the present time the child cannot be returned to the custody of the child's parents as provided in section 232.102.

*g.* The court finds that all of the following have occurred:

- (1) The child has been adjudicated a child in need of assistance pursuant to section 232.96.
- (2) The court has terminated parental rights pursuant to section 232.117 with respect to another child who is a member of the same family.
- (3) There is clear and convincing evidence that the parent continues to lack the ability or willingness to respond to services which would correct the situation.
- (4) There is clear and convincing evidence that an additional period of rehabilitation would not correct the situation.

*h.* The court finds that all of the following have occurred:

- (1) The child is three years of age or younger.
- (2) The child has been adjudicated a child in need of assistance pursuant to section 232.96.
- (3) The child has been removed from the physical custody of the child's parents for at least six months of the last twelve months, or for the last six consecutive months and any trial period at home has been less than thirty days.
- (4) There is clear and convincing evidence that the child cannot be returned to the custody of the child's parents as provided in section 232.102 at the present time.

*i.* The court finds that all of the following have occurred:

- (1) The child meets the definition of child in need of assistance based on a finding of physical or sexual abuse or neglect as a result of the acts or omissions of one or both parents.
- (2) There is clear and convincing evidence that the abuse or neglect posed a significant risk to the life of the child or constituted imminent danger to the child.
- (3) There is clear and convincing evidence that the offer or receipt of services would not correct the

conditions which led to the abuse or neglect of the child within a reasonable period of time.

*j.* The court finds that both of the following have occurred:

- (1) The child has been adjudicated a child in need of assistance pursuant to section 232.96 and custody has been transferred from the child's parents for placement pursuant to section 232.102.
- (2) The parent has been imprisoned for a crime against the child, the child's sibling, or another child in the household, or the parent has been imprisoned and it is unlikely that the parent will be released from prison for a period of five or more years.

*k.* The court finds that all of the following have occurred:

- (1) The child has been adjudicated a child in need of assistance pursuant to section 232.96 and custody has been transferred from the child's parents for placement pursuant to section 232.102.
- (2) The parent has a chronic mental illness and has been repeatedly institutionalized for mental illness, and presents a danger to self or others as evidenced by prior acts.

(3) There is clear and convincing evidence that the parent's prognosis indicates that the child will not be able to be returned to the custody of the parent within a reasonable period of time considering the child's age and need for a permanent home.

*l.* The court finds that all of the following have occurred:

- (1) The child has been adjudicated a child in need of assistance pursuant to section 232.96 and custody has been transferred from the child's parents for placement pursuant to section 232.102.
- (2) The parent has a severe, chronic substance abuse problem, and presents a danger to self or others as evidenced by prior acts.
- (3) There is clear and convincing evidence that the parent's prognosis indicates that the child will not be able to be returned to the custody of the parent within a reasonable period of time considering the child's age and need for a permanent home.

*m.* The court finds that both of the following have occurred:

- (1) The child has been adjudicated a child in need of assistance pursuant to section 232.96 after finding that the child has been physically or sexually abused or neglected as a result of the acts or omissions of a parent.
- (2) The parent found to have physically or sexually abused or neglected the child has been convicted of a felony and imprisoned for physically or sexually abusing or neglecting the child, the child's sibling, or any other child in the household.

*n.* The court finds that all of the following have occurred:

- (1) The child has been adjudicated a child in need of assistance pursuant to section 232.96.
- (2) The parent has been convicted of child en-

dangerment resulting in the death of the child's sibling, has been convicted of three or more acts of child endangerment involving the child, the child's sibling, or another child in the household, or has been convicted of child endangerment resulting in a serious injury to the child, the child's sibling, or another child in the household.

(3) There is clear and convincing evidence that the circumstances surrounding the parent's conviction for child endangerment would result in a finding of imminent danger to the child.

*o.* The parent has been convicted of a felony offense that is a criminal offense against a minor as defined in section 692A.1, the parent is divorced from or was never married to the minor's other parent, and the parent is serving a minimum sentence of confinement of at least five years for that offense.

2. In considering whether to terminate the rights of a parent under this section, the court shall give primary consideration to the child's safety, to the best placement for furthering the long-term nurturing and growth of the child, and to the physical, mental, and emotional condition and needs of the child. This consideration may include any of the following:

*a.* Whether the parent's ability to provide the needs of the child is affected by the parent's mental capacity or mental condition or the parent's imprisonment for a felony.

*b.* For a child who has been placed in foster family care by a court or has been voluntarily placed in foster family care by a parent or by another person, whether the child has become integrated into the foster family to the extent that the child's familial identity is with the foster family, and whether the foster family is able and willing to permanently integrate the child into the foster family. In considering integration into a foster family, the court shall review the following:

(1) The length of time the child has lived in a stable, satisfactory environment and the desirability of maintaining that environment and continuity for the child.

(2) The reasonable preference of the child, if the court determines that the child has sufficient capacity to express a reasonable preference.

*c.* The relevant testimony or written statement that a foster parent, relative, or other individual with whom the child has been placed for preadoptive care or other care has a right to provide to the court.

3. The court need not terminate the relationship between the parent and child if the court finds any of the following:

*a.* A relative has legal custody of the child.

*b.* The child is over ten years of age and objects to the termination.

*c.* There is clear and convincing evidence that the termination would be detrimental to the child

at the time due to the closeness of the parent-child relationship.

*d.* It is necessary to place the child in a hospital, facility, or institution for care and treatment and the continuation of the parent-child relationship is not preventing a permanent family placement for the child.

*e.* The absence of a parent is due to the parent's admission or commitment to any institution, hospital, or health facility or due to active service in the state or federal armed forces.

2007 Acts, ch 172, §14  
Subsection 2, paragraph c amended

### **232.133 Appeal.**

1. An interested party aggrieved by an order or decree of the juvenile court may appeal from the court for review of questions of law or fact. However, an order adjudicating a child to have committed a delinquent act, entered pursuant to section 232.47, shall not be appealed until the court enters a corresponding dispositional order pursuant to section 232.52. An appeal that affects the custody of a child shall be heard at the earliest practicable time.

2. Except for appeals from orders entered in child in need of assistance proceedings or orders entered pursuant to section 232.117, appellate procedures shall be governed by the same provisions applicable to appeals from the district court. The supreme court may prescribe rules to expedite the resolution of appeals from orders entered in child in need of assistance proceedings or orders entered pursuant to section 232.117.

3. The pendency of an appeal or application therefor shall not suspend the order of the juvenile court regarding a child and shall not discharge the child from the custody of the court or the agency, association, facility, institution or person to whom the court has transferred legal custody unless the appellate court otherwise orders on application of an appellant.

4. If the appellate court does not dismiss the proceedings and discharge the child, the appellate court shall affirm or modify the order of the juvenile court and remand the child to the jurisdiction of the juvenile court for disposition not inconsistent with the appellate court's finding on the appeal.

2007 Acts, ch 126, §45  
Subsection 2 amended

### **232.143 Service area group foster care budget targets.**

1. *a.* A statewide expenditure target for children in group foster care placements in a fiscal year, which placements are a charge upon or are paid for by the state, shall be established annually in an appropriation bill by the general assembly. Representatives of the department and juvenile court services shall jointly develop a formula for

allocating a portion of the statewide expenditure target established by the general assembly to each of the department's service areas. The formula shall be based upon the service area's proportion of the state population of children and of the statewide usage of group foster care in the previous five completed fiscal years and upon other indicators of need. The expenditure amount determined in accordance with the formula shall be the group foster care budget target for that service area.

b. A service area may exceed the service area's budget target for group foster care by not more than five percent in a fiscal year, provided the overall funding allocated by the department for all child welfare services in the service area is not exceeded.

c. If all of the following circumstances are applicable, a service area may temporarily exceed the service area's budget target as necessary for placement of a child in group foster care:

(1) The child is thirteen years of age or younger.

(2) The court has entered a dispositional order for placement of the child in group foster care.

(3) The child is placed in a juvenile detention facility awaiting placement in group foster care.

d. If a child is placed pursuant to paragraph "c", causing a service area to temporarily exceed the service area's budget target, the department and juvenile court services shall examine the cases of the children placed in group foster care and counted in the service area's budget target at the time of the placement pursuant to paragraph "c". If the examination indicates it may be appropriate to terminate the placement for any of the cases, the department and juvenile court services shall initiate action to set a dispositional review hearing under this chapter for such cases. In such a dispositional review hearing, the court shall determine whether needed aftercare services are available following termination of the placement and whether termination of the placement is in the best interests of the child and the community.

2. For each of the department's service areas, representatives appointed by the department and juvenile court services shall establish a plan for containing the expenditures for children placed in group foster care ordered by the court within the budget target allocated to that service area pursuant to subsection 1. The plan shall be established in a manner so as to ensure the budget target amount will last the entire fiscal year. The plan shall include monthly targets and strategies for developing alternatives to group foster care placements in order to contain expenditures for child welfare services within the amount appropriated by the general assembly for that purpose. Funds for a child placed in group foster care shall be considered encumbered for the duration of the child's projected or actual length of stay, whichever is ap-

plicable. Each service area plan shall be established within sixty days of the date by which the group foster care budget target for the service area is determined. To the extent possible, the department and juvenile court services shall coordinate the planning required under this subsection with planning for services paid under section 232.141, subsection 4. The department's service area manager shall communicate regularly, as specified in the service area plan, with the chief juvenile court officers within that service area concerning the current status of the service area plan's implementation.

3. State payment for group foster care placements shall be limited to those placements which are in accordance with the service area plans developed pursuant to subsection 2.

2007 Acts, ch 218, §115  
Statewide expenditure target for group foster maintenance and services for 2007-2008 fiscal year; 2007 Acts, ch 218, §18  
Subsection 1 amended

### **232.196 Runaway assessment center.**

1. As part of a county runaway treatment plan under section 232.195, a county may establish a runaway assessment center or other plan. The center or other plan, if established, shall provide services to assess a child who is referred to the center or plan for being a chronic runaway and intensive family counseling services designed to address any problem causing the child to run away. A center shall at least meet the requirements established for providing child foster care under chapter 237.

2. a. If not sent home with the child's parent, guardian, or custodian, a chronic runaway may be placed in a runaway assessment center by the peace officer who takes the child into custody under section 232.19, if the officer believes it to be in the child's best interest after consulting with the child's parent, guardian, or custodian. A chronic runaway shall not be placed in a runaway assessment center for more than forty-eight hours.

b. If a runaway is placed in an assessment center according to a county plan, the runaway shall be assessed within twenty-four hours of being placed in the center by a center counselor to determine the following:

(1) The reasons why the child is a runaway.

(2) Whether the initiation or continuation of child in need of assistance or family in need of assistance proceedings is appropriate.

c. As soon as practicable following the assessment, the child and the child's parents, guardian, or custodian shall be provided the opportunity for a counseling session to identify the underlying causes of the runaway behavior and develop a plan to address those causes.

d. A child shall be released from a runaway assessment center, established pursuant to the county plan, to the child's parents, guardian, or

custodian not later than forty-eight hours after being placed in the center unless the child is placed in shelter care under section 232.21 or an order is entered under section 232.78. A child whose parents, guardian, or custodian failed to attend counseling at the center or fail to take custody of the child at the end of placement in the center may be

the subject of a child in need of assistance petition or such other order as the juvenile court finds to be in the child's best interest.

Renewal of funding for county runaway treatment plan; 2007 Acts, ch 218, §20

Section not amended; footnote added

## CHAPTER 234

### CHILD AND FAMILY SERVICES

#### 234.3 Child welfare advisory committee.

1. A child welfare advisory committee is established to advise the administrator and the department of human services on programmatic and budgetary matters related to the provision or purchase of child welfare services. The committee shall meet at least quarterly, or upon the call of the chairperson, to review departmental budgets, policies, and programs, and proposed budgets, policies, and programs, and to make recommendations and suggestions to make the state child welfare budget, programs, and policies more effective in serving families and children.

2. The advisory committee shall consist of fifteen voting members, appointed by the governor and confirmed by the senate. The membership shall include representatives of child welfare service providers, juvenile court services, the Iowa foster and adoptive parent association, the child advocacy board, the coalition for family and children's services in Iowa, children's advocates, service consumers, and others who have training or knowledge related to child welfare services. The terms of voting members shall be for three-year staggered terms, beginning and ending as provided in section 69.19. A member shall continue to serve until a successor is appointed and a vacancy shall be filled for the remainder of the unexpired term. In addition, four members shall be legislators, all serving as ex officio, nonvoting members, with one each appointed by the speaker of the house of representatives, the minority leader of the house of representatives, the majority leader of the senate, and the minority leader of the senate. The director of human services and the administrator, or their designees, shall also be ex officio nonvoting members, and shall serve as resource persons to the committee.

3. A chairperson, vice chairperson, and other officers deemed necessary by the committee shall be appointed by the membership of the committee. Committee staffing shall be designated by the administrator.

2007 Acts, ch 218, §116  
NEW section

**234.4 and 234.5** Reserved.

#### 234.6 Powers and duties of the administrator.

The administrator shall be vested with the authority to administer the family investment program, state supplementary assistance, food programs, child welfare, and emergency relief, family and adult service programs, and any other form of public welfare assistance and institutions that are placed under the administrator's administration. The administrator shall perform duties, formulate and adopt rules as may be necessary; shall outline policies, dictate procedure, and delegate such powers as may be necessary for competent and efficient administration. Subject to restrictions that may be imposed by the director of human services and the council on human services, the administrator may abolish, alter, consolidate, or establish subdivisions and may abolish or change offices previously created. The administrator may employ necessary personnel and fix their compensation; may allocate or reallocate functions and duties among any subdivisions now existing or later established; and may adopt rules relating to the employment of personnel and the allocation of their functions and duties among the various subdivisions as competent and efficient administration may require. The administrator shall:

1. Cooperate with the federal social security board created by Title VII of the Social Security Act [42 U.S.C. 901], enacted by the 74th Congress of the United States and approved August 14, 1935, or other agency of the federal government for public welfare assistance, in such reasonable manner as may be necessary to qualify for federal aid, including the making of such reports in such form and containing such information as the federal social security board, from time to time, may require, and to comply with such regulations as such federal social security board, from time to time, may find necessary to assure the correctness and verification of such reports.

2. Furnish information to acquaint the public generally with the operation of the acts under the jurisdiction of the administrator.

3. With the approval of the director of human services, the governor, the director of management, and the director of the department of ad-



ministrative services, set up from the funds under the administrator's control and management an administrative fund and from the administrative fund pay the expenses of operating the division.

4. Notwithstanding any provisions to the contrary in chapter 239B relating to the consideration of income and resources of claimants for assistance, the administrator, with the consent and approval of the director of human services and the council on human services, shall make such rules as may be necessary to qualify for federal aid in the assistance programs administered by the administrator.

5. The department of human services shall have the power and authority to use the funds available to it, to purchase services of all kinds from public or private agencies to provide for the needs of children, including but not limited to psychiatric services, supervision, specialized group, foster homes and institutional care.

6. Have authority to use funds available to the department, subject to any limitations placed on the use thereof by the legislation appropriating the funds, to provide to or purchase, for families and individuals eligible therefor, services including but not limited to the following:

- a. Child care for children or adult day services, in facilities which are licensed or are approved as meeting standards for licensure.
- b. Foster care, including foster family care, group homes and institutions.
- c. Family-centered services, as defined in section 232.102, subsection 10, paragraph "b".
- d. Family planning.
- e. Protective services.
- f. Services or support provided to a child with mental retardation or other developmental disability or to the child's family.
- g. Transportation services.
- h. Any services, not otherwise enumerated in this subsection, authorized by or pursuant to the United States Social Security Act of 1934, as amended.

7. Administer the food programs authorized by federal law, and recommend rules necessary in the administration of those programs to the director for promulgation pursuant to chapter 17A.

8. Provide consulting and technical services to the director of the department of education, or the director's designee, upon request, relating to pre-kindergarten, kindergarten, and before and after school programming and facilities.

9. Recommend rules for their adoption by the council on human services for before and after school child care programs, conducted within and by or contracted for by school districts, that are appropriate for the ages of the children who receive services under the programs.

10. In determining the reimbursement rate for services purchased by the department of human services from a person or agency, the depart-

ment shall not include private moneys contributed to the person or agency unless the moneys are contributed for services provided to a specific individual.

2007 Acts, ch 172, §10  
Unnumbered paragraphs 1 and 2 combined editorially  
Subsection 6, paragraph c amended

#### **234.35 When state to pay foster care costs.**

1. The department of human services is responsible for paying the cost of foster care for a child, according to rates established pursuant to section 234.38, under any of the following circumstances:

- a. When a court has committed the child to the director of human services or the director's designee.
  - b. When a court has transferred legal custody of the child to the department of human services.
  - c. When the department has agreed to provide foster care services for the child for a period of not more than ninety days on the basis of a signed placement agreement between the department and the child's parent or guardian.
  - d. When the child has been placed in emergency care for a period of not more than thirty days upon approval of the director or the director's designee.
  - e. When a court has entered an order transferring the legal custody of the child to a foster care placement pursuant to section 232.52, subsection 2, paragraph "d", or section 232.102, subsection 1. However, payment for a group foster care placement shall be limited to those placements which conform to a service area group foster care plan established pursuant to section 232.143.
  - f. When the department has agreed to provide foster care services for a child who is eighteen years of age or older on the basis of a signed placement agreement between the department and the child or the person acting on behalf of the child.
  - g. When the department has agreed to provide foster care services for the child on the basis of a signed placement agreement initiated before July 1, 1992, between the department and the child's parent or guardian.
  - h. When the child is placed in shelter care pursuant to section 232.20, subsection 1, or section 232.21.
  - i. When the court has entered an order in a voluntary foster care placement proceeding pursuant to section 232.182, subsection 5, placing the child into foster care.
2. Except as provided under section 234.38 for direct payment of foster parents, payment for foster care costs shall be limited to foster care providers with whom the department has a contract in force.
3. Payment for foster care services provided to a child who is eighteen years of age or older shall

be limited to the following:

*a.* For a child who is eighteen years of age, family foster care or independent living arrangements.

*b.* For a child who is nineteen years of age, independent living arrangements.

*c.* For a child who is at imminent risk of becoming homeless or failing to graduate from high school or to obtain a graduate equivalency diploma, if the services are in the child's best interests, funding is available for the services, and an appropriate alternative service is unavailable.

4. The department shall report annually to the governor and general assembly by January 1 on

the numbers of children for whom the state paid for independent living services during the immediately preceding fiscal year. The report shall detail the number of children, by county, who received such services, were discharged from such services, the voluntary or involuntary status of such services, and the reasons for discharge. The department shall assess the report data as part of any evaluation of independent living services or consideration for improving the services.

See Iowa Acts for special provisions relating to foster care payments in a given fiscal year

Limitations on funding for state shelter care; 2006 Acts, ch 1184, §17; 2007 Acts, ch 218, §18, 57, 67

Section not amended; footnote revised

## CHAPTER 235A

### CHILD ABUSE

#### **235A.15 Authorized access — procedures involving other states.**

1. Notwithstanding chapter 22, the confidentiality of all child abuse information shall be maintained, except as specifically provided by this section.

2. Access to report data and disposition data subject to placement in the central registry pursuant to section 232.71D is authorized only to the following persons or entities:

*a.* Subjects of a report as follows:

(1) To a child named in a report as a victim of abuse or to the child's attorney or guardian ad litem.

(2) To a parent or to the attorney for the parent of a child named in a report as a victim of abuse.

(3) To a guardian or legal custodian, or that person's attorney, of a child named in a report as a victim of abuse.

(4) To a person or the attorney for the person named in a report as having abused a child.

*b.* Persons involved in an assessment of child abuse as follows:

(1) To a health practitioner or mental health professional who is examining, attending, or treating a child whom such practitioner or professional believes or has reason to believe has been the victim of abuse or to a health practitioner or mental health professional whose consultation with respect to a child believed to have been the victim of abuse is requested by the department.

(2) To an employee or agent of the department of human services responsible for the assessment of a child abuse report.

(3) To a law enforcement officer responsible for assisting in an assessment of a child abuse allegation or for the temporary emergency removal of a child from the child's home.

(4) To a multidisciplinary team, or to parties to an interagency agreement entered into pursuant

to section 280.25, if the department of human services approves the composition of the multidisciplinary team or the relevant provisions of the interagency agreement and determines that access to the team or to the parties to the interagency agreement is necessary to assist the department in the diagnosis, assessment, and disposition of a child abuse case.

(5) In an individual case, to each mandatory reporter who reported the child abuse.

(6) To the county attorney.

(7) To the juvenile court.

(8) To a licensing authority for a facility providing care to a child named in a report, if the licensing authority is notified of a relationship between facility policy and the alleged child abuse under section 232.71B.

(9) To the child protection assistance team established in accordance with section 915.35 for the county in which the report was made.

*c.* Individuals, agencies, or facilities providing care to a child, but only with respect to disposition data and, if authorized in law to the extent necessary for purposes of an employment evaluation, report data, for cases of founded child abuse placed in the central registry in accordance with section 232.71D as follows:

(1) To an administrator of a psychiatric medical institution for children licensed under chapter 135H.

(2) To an administrator of a child foster care facility licensed under chapter 237 if the data concerns a person employed or being considered for employment by the facility.

(3) To an administrator of a child care facility registered or licensed under chapter 237A if the data concerns a person employed or being considered for employment by or living in the facility.

(4) To the superintendent of the Iowa braille and sight saving school if the data concerns a per-

son employed or being considered for employment or living in the school.

(5) To the superintendent of the school for the deaf if the data concerns a person employed or being considered for employment or living in the school.

(6) To an administrator of a community mental health center accredited under chapter 230A if the data concerns a person employed or being considered for employment by the center.

(7) To an administrator of a facility or program operated by the state, a city, or a county which provides services or care directly to children, if the data concerns a person employed by or being considered for employment by the facility or program.

(8) To an administrator of an agency certified by the department of human services to provide services under a medical assistance home and community-based services waiver, if the data concerns a person employed by or being considered by the agency for employment.

(9) To the administrator of an agency providing mental health, mental retardation, or developmental disability services under a county management plan developed pursuant to section 331.439, if the data concerns a person employed by or being considered by the agency for employment.

(10) To an administrator of a child care resource and referral agency which has entered into an agreement authorized by the department to provide child care resource and referral services. Access is authorized if the data concerns a person providing child care services or a person employed by a provider of such services and the agency includes the provider as a referral or the provider has requested to be included as a referral.

(11) To an administrator of a hospital licensed under chapter 135B if the data concerns a person employed or being considered for employment by the hospital.

(12) To an area education agency or other person responsible for providing early intervention services to children that is funded under part C of the federal Individuals with Disabilities Education Act.

(13) To a federal, state, or local governmental unit, or agent of the unit, that has a need for the information in order to carry out its responsibilities under law to protect children from abuse and neglect.

(14) To a nursing program that is approved by the state board of nursing under section 152.5, if the data relates to a record check performed pursuant to section 152.5.

*d.* Report data and disposition data, and assessment data to the extent necessary for resolution of the proceeding, relating to judicial and administrative proceedings as follows:

(1) To a juvenile court involved in an adjudication or disposition of a child named in a report.

(2) To a district court upon a finding that data is necessary for the resolution of an issue arising

in any phase of a case involving child abuse.

(3) To a court or the department hearing an appeal for correction of report data and disposition data as provided in section 235A.19.

(4) To an expert witness at any stage of an appeal necessary for correction of report data and disposition data as provided in section 235A.19.

(5) To a probation or parole officer, juvenile court officer, court appointed special advocate as defined in section 232.2, or adult correctional officer having custody or supervision of, or conducting an investigation for a court or the board of parole regarding, a person named in a report as a victim of child abuse or as having abused a child.

(6) To the department of justice for purposes of review by the prosecutor's review committee or the commitment of sexually violent predators as provided in chapter 229A.

(7) Each licensing board specified under chapter 147 and the Iowa department of public health for the purpose of licensure, certification or registration, disciplinary investigation, or the renewal of licensure, certification or registration, or disciplinary proceedings of health care professionals.

*e.* Others as follows, but only with respect to report data and disposition data for cases of founded child abuse subject to placement in the registry pursuant to section 232.71D:

(1) To a person conducting bona fide research on child abuse, but without data identifying individuals named in a child abuse report, unless having that data open to review is essential to the research or evaluation and the authorized registry officials give prior written approval and the child, the child's guardian or guardian ad litem and the person named in a report as having abused a child give permission to release the data.

(2) To registry or department personnel when necessary to the performance of their official duties or to a person or agency under contract with the department to carry out official duties and functions of the department.

(3) To the department of justice for the sole purpose of the filing of a claim for restitution or compensation pursuant to sections 915.21 and 915.84. Data provided pursuant to this subparagraph is subject to the provisions of section 915.90.

(4) To a legally constituted child protection agency of another state which is investigating or assessing or treating a child named in a report as having been abused or which is investigating or assessing or treating a person named as having abused a child.

(5) To a public or licensed child placing agency of another state responsible for an adoptive or foster care preplacement or placement evaluation.

(6) To the attorney for the department of human services who is responsible for representing the department.

(7) To the child advocacy and local citizen foster care review boards created pursuant to sections 237.16 and 237.19.

(8) To an employee or agent of the department of human services regarding a person who is providing child care if the person is not registered or licensed to operate a child care facility.

(9) To the board of educational examiners created under chapter 272 for purposes of determining whether a license, certificate, or authorization should be issued, denied, or revoked.

(10) To a legally constituted child protection agency in another state if the agency is conducting a records check of a person who is providing care or has applied to provide care to a child in the other state.

(11) To the legally authorized protection and advocacy agency recognized in section 135C.2, if a person identified in the information as a victim or a perpetrator of abuse resides in or receives services from a facility or agency because the person is diagnosed as having a developmental disability or a mental illness.

(12) To the department of human services for a record check relating to employment or residence pursuant to section 218.13.

(13) To the Iowa board for the treatment of sexual abusers for purposes of certifying sex offender treatment providers.

(14) To an employee or agent of the department responsible for registering or licensing or approving the registration or licensing of an agency or facility, or to an individual providing care to a child and regulated by the department.

(15) To an employee of the department responsible for an adoptive placement, a certified adoption investigator, or licensed child placing agency responsible for an adoptive placement.

(16) To the superintendent, or the superintendent's designee, of a school district or to the authorities in charge of an accredited nonpublic school for purposes of a volunteer or employment record check.

(17) To the department of inspections and appeals for purposes of record checks of applicants for employment with the department of inspections and appeals.

(18) To a person or agency responsible for the care or supervision of a child named in a report as an alleged victim of abuse or a person named in a report as having allegedly abused a child, if the juvenile court or department deems access to report data and disposition data by the person or agency to be necessary.

*f.* Only with respect to disposition data for cases of founded child abuse subject to placement in the central registry pursuant to section 232.71D, to a person who submits written authorization from an individual allowing the person access to data pursuant to this subsection on behalf of the individual in order to verify whether the individual is named in a founded child abuse report as having abused a child.

3. Access to report data and disposition data for a case of child abuse determined to meet the

definition of child abuse, which data is not subject to placement in the central registry pursuant to section 232.71D, is authorized only to the following persons:

*a.* Subjects of a report identified in subsection 2, paragraph "a".

*b.* Persons involved in an assessment of child abuse identified in subsection 2, paragraph "b", subparagraphs (2), (3), (4), (6), and (7).

*c.* Others identified in subsection 2, paragraph "e", subparagraphs (2), (3), (6), and (18).

*d.* The department of justice for purposes of review by the prosecutor's review committee or the commitment of sexually violent predators as provided in chapter 229A.

4. Access to report data for a case of child abuse determined to not meet the definition of child abuse, which data is not subject to placement in the central registry pursuant to section 232.71D, is authorized only to the following:

*a.* Subjects of a report identified in subsection 2, paragraph "a".

*b.* Persons involved in an assessment of child abuse identified in subsection 2, paragraph "b", subparagraphs (2), (6), and (7).

*c.* Others identified in subsection 2, paragraph "e", subparagraphs (2) and (18).

*d.* The department of justice for purposes of review by the prosecutor's review committee or the commitment of sexually violent predators as provided in chapter 229A.

5. Access to disposition data subject to placement in the central registry pursuant to section 232.71D is authorized to the department of administrative services or to the personnel office of a public employer, as defined in section 20.3, as necessary for presentation in grievance or arbitration procedures provided for in sections 8A.415 and 20.18. Disposition data introduced into a grievance or arbitration proceeding shall not be considered a part of the public record of a case.

6. *a.* If a child who is a legal resident of another state is present in this state and a report of child abuse is made concerning the child, the department shall act to ensure the safety of the child. The department shall contact the child's state of legal residency to coordinate the assessment of the report. If the child's state of residency refuses to conduct an assessment, the department shall commence an appropriate assessment.

*b.* If a report of child abuse is made concerning an alleged perpetrator who resides in this state and a child who resides in another state, the department shall assist the child's state of residency in conducting an assessment of the report. The assistance shall include but is not limited to an offer to interview the alleged perpetrator and any other relevant source. If the child's state of residency refuses to conduct an assessment of the report, the department shall commence an appropriate assessment. The department shall seek to develop protocols with states contiguous to this state for

coordination in the assessment of a report of child abuse when a person involved with the report is a resident of another state.

7. If the director of human services receives a written request for information regarding a specific case of child abuse involving a fatality or near fatality to a child from the majority or minority leader of the senate or the speaker or the minority leader of the house of representatives, the director or the director's designee shall arrange for a confidential meeting with the requestor or the requestor's designee. In the confidential meeting the director or the director's designee shall share all pertinent information concerning the case, including but not limited to child abuse information. Any written document distributed by the director or the director's designee at the confidential meeting shall not be removed from the meeting and a participant in the meeting shall be subject to the restriction on redissemination of confidential information applicable to a person under section 235A.17, subsection 3, for confidential information disclosed to the participant at the meeting. A participant in the meeting may issue a report to the governor or make general public statements concerning the department's handling of the case of child abuse.

8. Upon the request of the governor, the department shall disclose child abuse information to the governor or the governor's designee relating to a specific case of child abuse reported to the department.

9. If, apart from a request made pursuant to subsection 7 or 8, the department receives from a member of the public a request for information relating to a case of founded child abuse involving a fatality or near fatality to a child, the response to the request shall be made in accordance with this subsection and subsections 10 and 11. If the request is received before or during performance of an assessment of the case in accordance with section 232.71B, the director of human services or the director's designee shall initially disclose whether or not the assessment will be or is being performed. Otherwise, within five business days of receiving the request or completing the assessment, whichever is later, the director of human services or the director's designee shall consult with the county attorney responsible for prosecution of any alleged perpetrator of the fatality or near fatality and shall disclose information, including but not limited to child abuse information, relating to the case, except for the following:

*a.* The substance or content of any mental health or psychological information that is confidential under chapter 228.

*b.* Information that constitutes the substance or contains the content of an attorney work product or is a privileged communication under section 622.10.

*c.* Information that would reveal the identity of any individual who provided information relat-

ing to a report of child abuse or an assessment of such a report involving the child.

*d.* Information that the director or the director's designee reasonably believes is likely to cause mental or physical harm to a sibling of the child or to another child residing in the child's household.

*e.* Information that the director or the director's designee reasonably believes is likely to jeopardize the prosecution of any alleged perpetrator of the fatality or near fatality.

*f.* Information that the director or the director's designee reasonably believes is likely to jeopardize the rights of any alleged perpetrator of the fatality or near fatality to a fair trial.

*g.* Information that the director or the director's designee reasonably believes is likely to undermine an ongoing or future criminal investigation.

*h.* Information, the release of which is a violation of federal law or regulation.

10. The information released by the director of human services or the director's designee pursuant to a request made under subsection 9 relating to a case of founded child abuse involving a fatality or near fatality to a child shall include all of the following, unless such information is excepted from disclosure under subsection 9:

*a.* Any relevant child abuse information concerning the child or the child's family and the department's response and findings.

*b.* A summary of information, that would otherwise be confidential under section 217.30, as to whether or not the child or a member of the child's family was utilizing social services provided by the department at the time of the child fatality or near fatality or within the five-year period preceding the fatality or near fatality.

*c.* Any recommendations made by the department to the county attorney or the juvenile court.

*d.* If applicable, a summary of an evaluation of the department's responses in the case.

11. *a.* If a person who made a request for information under subsection 9 does not believe the department has substantially complied with the request, the person may apply to the juvenile court under section 235A.24 for an order for disclosure of additional information.

*b.* If release of social services information in addition to that released under subsection 10, paragraph "b", is believed to be in the public's interest and right to know, the director of human services or the director's designee may apply to the court under section 235A.24 requesting a review of the information proposed for release and an order authorizing release of the information. A release of information that would otherwise be confidential under section 217.30 concerning social services provided to the child or the child's family shall not include information concerning financial or medical assistance provided to the child or the child's family.

12. If an individual who is the subject of a child abuse report listed in subsection 2, paragraph “a”, or another party involved in a child abuse assessment under section 232.71B releases in a public forum or to the media information concerning a case of child abuse including but not limited to child abuse information which would otherwise be confidential, the director of human services, or the director’s designee, may respond with relevant information concerning the case of child abuse that

was the subject of the release. Prior to releasing the response, the director or the director’s designee shall consult with the child’s parent or guardian, or the child’s guardian ad litem, and apply to the court under section 235A.24 requesting a review of the information proposed for release and an order authorizing release of the information.

2007 Acts, ch 10, §166; 2007 Acts, ch 22, §55

See §235A.24

Subsection 2, paragraph c, subparagraph (14) amended

Subsection 2, paragraph d, subparagraph (7) amended

## CHAPTER 235B

### DEPENDENT ADULT ABUSE

#### 235B.3 Dependent adult abuse reports.

1. *a.* The department shall receive dependent adult abuse reports and shall collect, maintain, and disseminate the reports by establishing a central registry for dependent adult abuse information. The department shall evaluate the reports expeditiously. However, the department of inspections and appeals is solely responsible for the evaluation and disposition of dependent adult abuse cases within health care facilities and shall inform the department of human services of such evaluations and dispositions.

*b.* Reports of dependent adult abuse which is the result of the acts or omissions of the dependent adult shall be collected and maintained in the files of the dependent adult as assessments only and shall not be included in the central registry.

*c.* A report of dependent adult abuse that meets the definition of dependent adult abuse under section 235B.2, subsection 5, paragraph “a”, subparagraph (1), subparagraph subdivision (a) or (d), which the department determines is minor, isolated, and unlikely to reoccur shall be collected and maintained by the department as an assessment only for a five-year period and shall not be included in the central registry and shall not be considered to be founded dependent adult abuse. However, a subsequent report of dependent adult abuse that meets the definition of dependent adult abuse under section 235B.2, subsection 5, paragraph “a”, subparagraph (1), subparagraph subdivision (a) or (d), that occurs within the five-year period and that is committed by the caretaker responsible for the act or omission which was the subject of the previous report of dependent adult abuse which the department determined was minor, isolated, and unlikely to reoccur shall not be considered minor, isolated, and unlikely to reoccur.

2. A person who, in the course of employment, examines, attends, counsels, or treats a dependent adult and reasonably believes the dependent adult has suffered abuse, shall report the suspected dependent adult abuse to the department. Persons

required to report include all of the following:

*a.* A member of the staff of a community mental health center, a member of the staff of a hospital, a member of the staff or employee of a public or private health care facility as defined in section 135C.1, a member of the staff or employee of an elder group home as defined in section 231B.1, a member of the staff or employee of an assisted living program certified under section 231C.3, and a member of the staff or employee of an adult day services program as defined in section 231D.1.

*b.* A peace officer.

*c.* An in-home homemaker-home health aide.

*d.* An individual employed as an outreach person.

*e.* A health practitioner, as defined in section 232.68.

*f.* A member of the staff or an employee of a supported community living service, sheltered workshop, or work activity center.

*g.* A social worker.

*h.* A certified psychologist.

3. *a.* If a staff member or employee is required to report pursuant to this section, the person shall immediately notify the department and shall also immediately notify the person in charge or the person’s designated agent.

*b.* The employer or supervisor of a person who is required to or may make a report pursuant to this section shall not apply a policy, work rule, or other requirement that interferes with the person making a report of dependent adult abuse or that results in the failure of another person to make the report.

4. An employee of a financial institution may report suspected financial exploitation of a dependent adult to the department.

5. Any other person who believes that a dependent adult has suffered abuse may report the suspected abuse to the department of human services.

6. Following the reporting of suspected dependent adult abuse, the department of human services or an agency approved by the department

shall complete an assessment of necessary services and shall make appropriate referrals for receipt of these services. The assessment shall include interviews with the dependent adult, and, if appropriate, with the alleged perpetrator of the dependent adult abuse and with any person believed to have knowledge of the circumstances of the case. The department may provide necessary protective services and may establish a sliding fee schedule for those persons able to pay a portion of the protective services.

7. Upon a showing of probable cause that a dependent adult has been abused, a court may authorize a person, also authorized by the department, to make an evaluation, to enter the residence of, and to examine the dependent adult. Upon a showing of probable cause that a dependent adult has been financially exploited, a court may authorize a person, also authorized by the department, to make an evaluation, and to gain access to the financial records of the dependent adult.

8. If the department determines that disclosure is necessary for the protection of a dependent adult, the department may disclose to a subject of a dependent adult abuse report referred to in section 235B.6, subsection 2, paragraph "a", that an individual is listed in the child or dependent adult abuse registry or is required to register with the sex offender registry in accordance with chapter 692A.

9. The department shall inform the appropriate county attorneys of any reports of dependent adult abuse. The department may request information from any person believed to have knowledge of a case of dependent adult abuse. The person, including but not limited to a county attorney, a law enforcement agency, a multidisciplinary team, a social services agency in the state, or any person who is required pursuant to subsection 2 to report dependent adult abuse, whether or not the person made the specific dependent adult abuse report, shall cooperate and assist in the evaluation upon the request of the department. If the department's assessment reveals that dependent adult abuse exists which might constitute a criminal offense, a report shall be made to the appropriate law enforcement agency. County attorneys and appropriate law enforcement agencies shall also take any other lawful action necessary or advisable for the protection of the dependent adult.

a. If, upon completion of the evaluation or upon referral from the department of inspections and appeals, the department determines that the best interests of the dependent adult require court action, the department shall initiate action for the appointment of a guardian or conservator or for admission or commitment to an appropriate institution or facility pursuant to the applicable procedures under chapter 125, 222, 229, or 633, or shall pursue other remedies provided by law. The appropriate county attorney shall assist the depart-

ment in the preparation of the necessary papers to initiate the action and shall appear and represent the department at all district court proceedings.

b. The department shall assist the court during all stages of court proceedings involving a suspected case of dependent adult abuse.

c. In every case involving abuse which is substantiated by the department and which results in a judicial proceeding on behalf of the dependent adult, legal counsel shall be appointed by the court to represent the dependent adult in the proceedings. The court may also appoint a guardian ad litem to represent the dependent adult if necessary to protect the dependent adult's best interests. The same attorney may be appointed to serve both as legal counsel and as guardian ad litem. Before legal counsel or a guardian ad litem is appointed pursuant to this section, the court shall require the dependent adult and any person legally responsible for the support of the dependent adult to complete under oath a detailed financial statement. If, on the basis of that financial statement, the court deems that the dependent adult or the legally responsible person is able to bear all or a portion of the cost of the legal counsel or guardian ad litem, the court shall so order. In cases where the dependent adult or the legally responsible person is unable to bear the cost of the legal counsel or guardian ad litem, the expense shall be paid by the county.

10. A person participating in good faith in reporting or cooperating with or assisting the department in evaluating a case of dependent adult abuse has immunity from liability, civil or criminal, which might otherwise be incurred or imposed based upon the act of making the report or giving the assistance. The person has the same immunity with respect to participating in good faith in a judicial proceeding resulting from the report or cooperation or assistance or relating to the subject matter of the report, cooperation, or assistance.

11. It shall be unlawful for any person or employer to discharge, suspend, or otherwise discipline a person required to report or voluntarily reporting an instance of suspected dependent adult abuse pursuant to subsection 2 or 5, or cooperating with, or assisting the department of human services in evaluating a case of dependent adult abuse, or participating in judicial proceedings relating to the reporting or cooperation or assistance based solely upon the person's reporting or assistance relative to the instance of dependent adult abuse. A person or employer found in violation of this subsection is guilty of a simple misdemeanor.

12. A person required by this section to report a suspected case of dependent adult abuse who knowingly and willfully fails to do so commits a simple misdemeanor. A person required by this section to report a suspected case of dependent adult abuse who knowingly fails to do so or who knowingly, in violation of subsection 3, interferes with the making of such a report or applies a re-

quirement that results in such a failure is civilly liable for the damages proximately caused by the failure.

13. The department of inspections and appeals shall adopt rules which require licensed health care facilities to separate an alleged dependent adult abuser from a victim following an allegation of perpetration of abuse and prior to the completion of an investigation of the allegation.

2007 Acts, ch 159, §15  
Subsection 1 amended

#### **235B.6 Authorized access.**

1. Notwithstanding chapter 22, the confidentiality of all dependent adult abuse information shall be maintained, except as specifically provided by subsections 2 and 3.

2. Access to dependent adult abuse information other than unfounded dependent adult abuse information is authorized only to the following persons:

*a.* A subject of a report including all of the following:

(1) To an adult named in a report as a victim of abuse or to the adult's attorney or guardian ad litem.

(2) To a guardian or legal custodian, or that person's attorney, of an adult named in a report as a victim of abuse.

(3) To the person or the attorney for the person named in a report as having abused an adult.

*b.* A person involved in an investigation of dependent adult abuse including all of the following:

(1) A health practitioner or mental health professional who is examining, attending, or treating an adult whom such practitioner or professional believes or has reason to believe has been the victim of abuse or to a health practitioner or mental health professional whose consultation with respect to an adult believed to have been the victim of abuse is requested by the department.

(2) An employee or agent of the department responsible for the investigation of a dependent adult abuse report or for the purpose of performing record checks as required under section 135C.33.

(3) A representative of the department involved in the certification or accreditation of an agency or program providing care or services to a dependent adult believed to have been a victim of abuse.

(4) A law enforcement officer responsible for assisting in an investigation of a dependent adult abuse allegation.

(5) A multidisciplinary team, if the department of human services approves the composition of the multidisciplinary team and determines that access to the team is necessary to assist the department in the investigation, diagnosis, assessment, and disposition of a case of dependent adult abuse.

(6) The mandatory reporter who reported the dependent adult abuse in an individual case.

(7) Each board specified under chapter 147 and the Iowa department of public health for the purpose of licensure, certification or registration, disciplinary investigation, or the renewal of licensure, certification or registration, or disciplinary proceedings of health care professionals.

*c.* A person providing care to an adult including all of the following:

(1) A licensing authority for a facility providing care to an adult named in a report.

(2) A person authorized as responsible for the care or supervision of an adult named in a report as a victim of abuse or a person named in a report as having abused an adult if the court or registry deems access to dependent adult abuse information by such person to be necessary.

(3) An employee or agent of the department responsible for registering or licensing or approving the registration or licensing of a person, or to an individual providing care to an adult and regulated by the department.

(4) The legally authorized protection and advocacy agency recognized pursuant to section 135C.2 if a person identified in the information as a victim or a perpetrator of abuse resided in or receives services from a facility or agency because the person is diagnosed as having a developmental disability or a mental illness.

(5) To an administrator of an agency certified by the department of human services to provide services under a medical assistance home and community-based services waiver, if the information concerns a person employed by or being considered by the agency for employment.

(6) To the administrator of an agency providing mental health, mental retardation, or developmental disability services under a county management plan developed pursuant to section 331.439, if the information concerns a person employed by or being considered by the agency for employment.

(7) To an administrator of a hospital licensed under chapter 135B if the data concerns a person employed or being considered for employment by the hospital.

(8) An employee of an agency requested by the department to provide case management or other services to the dependent adult.

*d.* Relating to judicial and administrative proceedings, persons including all of the following:

(1) A court upon a finding that information is necessary for the resolution of an issue arising in any phase of a case involving dependent adult abuse.

(2) A court or agency hearing an appeal for correction of dependent adult abuse information as provided in section 235B.10.

(3) An expert witness at any stage of an appeal necessary for correction of dependent adult abuse information as provided in section 235B.10.

(4) A court or administrative agency making a determination regarding an unemployment compensation claim pursuant to section 96.6.



e. Other persons including all of the following:

(1) A person conducting bona fide research on dependent adult abuse, but without information identifying individuals named in a dependent adult abuse report, unless having that information open to review is essential to the research or evaluation and the authorized registry officials give prior written approval and the adult, the adult's guardian or guardian ad litem, and the person named in a report as having abused an adult give permission to release the information.

(2) Registry or department personnel when necessary to the performance of their official duties or a person or agency under contract with the department to carry out official duties and functions of the registry.

(3) The department of justice for the sole purpose of the filing of a claim for reparation pursuant to sections 915.21 and 915.84.

(4) A legally constituted adult protection agency of another state which is investigating or treating an adult named in a report as having been abused.

(5) The attorney for the department who is responsible for representing the department.

(6) A health care facility administrator or the administrator's designee, following the appeals process, for the purpose of hiring staff or continued employment of staff.

(7) To the administrator of an agency providing care to a dependent adult in another state, for the purpose of performing an employment background check.

(8) To the superintendent, or the superintendent's designee, of a school district or to the authorities in charge of an accredited nonpublic school for purposes of a volunteer or employment record check.

(9) The department of inspections and appeals for purposes of record checks of applicants for employment with the department of inspections and appeals.

(10) The long-term care resident's advocate if the victim resides in a long-term care facility or the alleged perpetrator is an employee of a long-term care facility.

(11) The state office or a local office of substitute decision maker as defined in section 231E.3, appointed by the court as a guardian or conservator of the adult named in a report as the victim of abuse or the person designated to be responsible for performing or obtaining protective services on behalf of a dependent adult pursuant to section 235B.18.

(12) A nursing program that is approved by the state board of nursing under section 152.5, if the information relates to a record check performed pursuant to section 152.5.

(13) To the board of educational examiners created under chapter 272 for purposes of determining whether a license, certificate, or authorization should be issued, denied, or revoked.

3. Access to unfounded dependent adult abuse information is authorized only to those persons identified in subsection 2, paragraph "a", paragraph "b", subparagraphs (2), (5), and (6), and paragraph "e", subparagraphs (2) and (10).

2007 Acts, ch 10, §167  
Subsection 2, paragraph b, subparagraph (7) amended

### **235B.9 Sealing and expungement of dependent adult abuse information.**

1. Dependent adult abuse information which is determined by a preponderance of the evidence to be founded, shall be sealed ten years after the receipt of the initial report of such abuse by the registry unless good cause is shown why the information should remain open to authorized access. If a subsequent report of founded dependent adult abuse involving the adult named in the initial report as the victim of abuse or a person named in such report as having abused an adult is received by the registry within the ten-year period, the information shall be sealed ten years after receipt of the subsequent report unless good cause is shown why the information should remain open to authorized access.

2. Dependent adult abuse information which is determined by a preponderance of the evidence to be unfounded shall be expunged one year from the date it is determined to be unfounded.

3. However, if a correction of dependent adult abuse information is requested under section 235B.10 and the issue is not resolved at the end of one year the information shall be retained until the issue is resolved and if the dependent adult abuse information is not determined to be founded, the information shall be expunged one year from the date it is determined to be unfounded.

4. The registry, at least annually, shall review and determine the current status of dependent adult abuse reports which are at least one year old and in connection with which no investigatory report has been filed by the department. If no investigatory report has been filed, the registry shall request the department to file a report. If a report is not filed within ninety days subsequent to a request, the report and relative information shall be sealed and remain sealed unless good cause is shown why the information should remain open to authorized access.

5. Dependent adult abuse information which is determined to be minor, isolated, and unlikely to reoccur shall be expunged five years after the receipt of the initial report by the department. If a subsequent report of dependent adult abuse committed by the caretaker responsible for the act or omission which was the subject of the previous report of dependent adult abuse which the department determined was minor, isolated, and unlikely to reoccur is received by the department within the five-year period, the information shall be sealed ten years after receipt of the subsequent report unless good cause can be shown why the infor-

mation should remain open to authorized access.

2007 Acts, ch 159, §16  
NEW subsection 5

**235B.16 Information, education, and training requirements.**

1. The department of elder affairs, in cooperation with the department, shall conduct a public information and education program. The elements and goals of the program include but are not limited to:

*a.* Informing the public regarding the laws governing dependent adult abuse and the reporting requirements for dependent adult abuse.

*b.* Providing caretakers with information regarding services to alleviate the emotional, psychological, physical, or financial stress associated with the caretaker and dependent adult relationship.

*c.* Affecting public attitudes regarding the role of a dependent adult in society.

2. The department, in cooperation with the department of elder affairs and the department of inspections and appeals, shall institute a program of education and training for persons, including members of provider groups and family members, who may come in contact with dependent adult abuse. The program shall include but is not limited to instruction regarding recognition of dependent adult abuse and the procedure for the reporting of suspected abuse.

3. The content of the continuing education required pursuant to chapter 272C for a licensed professional providing care or service to a dependent adult shall include, but is not limited to, the responsibilities, obligations, powers, and duties of a person regarding the reporting of suspected dependent adult abuse, and training to aid the professional in identifying instances of dependent adult abuse.

4. The department of inspections and appeals shall provide training to investigators regarding the collection and preservation of evidence in the case of suspected dependent adult abuse.

5. *a.* For the purposes of this subsection, “*licensing board*” means a board designated in section 147.13, the board of educational examiners created in section 272.2, or a licensing board as defined in section 272C.1.

*b.* A person required to report cases of dependent adult abuse pursuant to section 235B.3, other than a physician whose professional practice does not regularly involve providing primary health care to adults, shall complete two hours of training relating to the identification and reporting of dependent adult abuse within six months of initial employment or self-employment which involves the examination, attending, counseling, or treatment of adults on a regular basis. Within one month of initial employment or self-employment, the person shall obtain a statement of the abuse reporting requirements from the person’s employ-

er or, if self-employed, from the department. The person shall complete at least two hours of additional dependent adult abuse identification and reporting training every five years.

*c.* If the person is an employee of a hospital or similar public or private facility, the employer shall be responsible for providing the training. To the extent that the employer provides approved training on the employer’s premises, the hours of training completed by employees shall be included in the calculation of nursing or service hours required to be provided to a patient or resident per day. If the person is self-employed, employed in a licensed or certified profession, or employed by a facility or program that is subject to licensure, regulation, or approval by a state agency, the person shall obtain the training as provided in paragraph “*d*”.

*d.* The person may complete the initial or additional training requirements as a part of any of the following that are applicable to the person:

(1) A continuing education program required under chapter 272C and approved by the appropriate licensing board.

(2) A training program using a curriculum approved by the abuse education review panel established by the director of public health pursuant to section 135.11.

(3) A training program using such an approved curriculum offered by the department of human services, the department of elder affairs, the department of inspections and appeals, the Iowa law enforcement academy, or a similar public agency.

*e.* A person required to complete both child abuse and dependent adult abuse mandatory reporter training may complete the training through a program which combines child abuse and dependent adult abuse curricula and thereby meet the training requirements of both this subsection and section 232.69 simultaneously. A person who is a mandatory reporter for both child abuse and dependent adult abuse may satisfy the combined training requirements of this subsection and section 232.69 through completion of a two-hour training program, if the training program curriculum is approved by the appropriate licensing board or the abuse education review panel established by the director of public health pursuant to section 135.11.

*f.* A licensing board with authority over the license of a person required to report cases of dependent adult abuse pursuant to section 235B.3 shall require as a condition of licensure that the person is in compliance with the requirements for abuse training under this subsection. The licensing board shall require the person upon licensure renewal to accurately document for the licensing board the person’s completion of the training requirements. However, the licensing board may adopt rules providing for waiver or suspension of the compliance requirements, if the waiver or sus-

pension is in the public interest, applicable to a person who is engaged in active duty in the military service of this state or of the United States, to a person for whom compliance with the training requirements would impose a significant hardship, or to a person who is practicing a licensed profession outside this state or is otherwise subject to circumstances that would preclude the person from encountering dependent adult abuse in this state.

*g.* For persons required to report cases of dependent adult abuse pursuant to section 235B.3, who are not engaged in a licensed profession that is subject to the authority of a licensing board but are employed by a facility or program subject to licensure, registration, or approval by a state agency, the agency shall require as a condition of the renewal of the facility's or program's licensure, registration, or approval, that such persons employed by the facility or program are in compliance with

the training requirements of this subsection.

*h.* For peace officers, the elected or appointed official designated as the head of the agency employing the peace officer shall ensure compliance with the training requirements of this subsection.

*i.* For persons required to report cases of dependent adult abuse pursuant to section 235B.3 who are employees of state departments and political subdivisions of the state, the department director or the chief administrator of the political subdivision shall ensure the persons' compliance with the training requirements of this subsection.

6. The department shall require an educational program for employees of the registry on the proper use and control of dependent adult abuse information.

2007 Acts, ch 10, §168 – 170

Subsection 5, paragraph a amended

Subsection 5, paragraph d, subparagraph (1) amended

Subsection 5, paragraph e amended

## CHAPTER 237

### CHILD FOSTER CARE FACILITIES

Multidimensional treatment level foster care pilot project for children transitioning from psychiatric medical institutions for children; 2006 Acts, ch 1123, §1; 2007 Acts, ch 218, §46, 47

#### 237.3 Rules.

1. Except as otherwise provided by subsections 3 and 4, the administrator shall promulgate, after their adoption by the council on human services, and enforce in accordance with chapter 17A, administrative rules necessary to implement this chapter. Formulation of the rules shall include consultation with representatives of child foster care providers, and other persons affected by this chapter. The rules shall encourage the provision of child foster care in a single-family, home environment, exempting the single-family, home facility from inappropriate rules.

2. Rules applicable to licensees shall include but are not limited to:

*a.* Types of facilities which include but are not limited to group foster care facilities and family foster care homes.

*b.* The number, qualifications, character, and parenting ability of personnel necessary to assure the health, safety and welfare of children receiving child foster care.

*c.* Programs for education and in-service training of personnel.

*d.* The physical environment of a facility.

*e.* Policies for intake, assessment, admission and discharge.

*f.* Housing, health, safety, and medical care policies for children receiving child foster care. The medical care policies shall include but are not limited to all of the following:

(1) Provision by the department to the foster care provider at or before the time of a child's placement of the child's health records and any other information possessed or known about the health of the child or about a member of the child's family that pertains to the child's health.

(2) If the health records supplied in accordance with the child's case permanency plan to the foster care provider are incomplete, provision for obtaining additional health information from the child's parent or other source and supplying the additional information to the foster care provider.

(3) Provision for emergency health coverage of the child while the child is engaged in temporary out-of-state travel with the child's foster family.

*g.* The adequacy of programs available to children receiving child foster care provided by agencies, including but not limited to:

(1) Dietary services.

(2) Social services.

(3) Activity programs.

(4) Behavior management procedures.

(5) Educational programs, including special education as defined in section 256B.2, subsection 2 where appropriate, which are approved by the state board of education. The department shall not promulgate rules which regulate individual licensees in the subject areas enumerated in this paragraph.

*h.* Policies for involvement of biological parents.

*i.* Records a licensee is required to keep, and reports a licensee is required to make to the administrator.

*j.* Prior to the licensing of an individual as a foster family home, a required, written social assessment of the quality of the living situation in the home of the individual, and a required compilation of personal references for the individual other than those references given by the individual.

*k.* Elements of a foster care placement agreement outlining rights and responsibilities associated with an individual providing family foster care. The rights and responsibilities shall include but are not limited to all of the following:

(1) Receiving information prior to the child's placement regarding risk factors concerning the child that are known to the department.

(2) Having regularly scheduled meetings with each case manager assigned to the child.

(3) Receiving access to any reports prepared by a service provider who is working with the child unless the access is prohibited by state or federal law.

3. Rules governing fire safety in facilities with child foster care provided by agencies shall be promulgated by the state fire marshal pursuant to section 100.1, subsection 5 after consultation with the administrator.

4. Rules governing sanitation, water and waste disposal standards for facilities shall be promulgated by the Iowa department of public health pursuant to section 135.11, subsection 14, after consultation with the administrator.

5. In case of a conflict between rules promulgated pursuant to subsections 3 and 4 and local rules, the more stringent requirement applies.

6. Rules of the department shall not prohibit the licensing, as foster family homes, of individuals who are departmental employees not directly engaged in the administration of the child foster care program pursuant to this chapter.

7. If an agency is accredited by the joint commission on the accreditation of health care organizations under the commission's consolidated standards for residential settings or by the council on accreditation of services for families and children, the department shall modify facility licensure standards applied to the agency in order to avoid duplicating standards applied through accreditation.

8. The department, in consultation with the judicial branch, the division of criminal and juvenile justice planning of the department of human rights, residential treatment providers, the foster care provider association, and other parties which may be affected, shall review the licensing rules pertaining to residential treatment facilities, and examine whether the rules allow the facilities to accept and provide effective treatment to juveniles with serious problems who might not otherwise be

placed in those facilities.

9. The department shall adopt rules specifying the elements of a preadoptive care agreement outlining the rights and responsibilities associated with a person providing preadoptive care, as defined in section 232.2.

10. The department shall adopt rules to administer the exception to the definition of child care in section 237A.1, subsection 3, paragraph "m", allowing a child care facility, for purposes of providing respite care to a foster family home, to provide care, supervision, or guidance of a child for a period of twenty-four hours or more who is placed with the licensed foster family home.

Multidimensional treatment level foster care pilot project for children transitioning from psychiatric medical institutions for children; 2006 Acts, ch 1123, §1; 2007 Acts, ch 218, §46, 47

Section not amended; footnote revised

### **237.8 Personnel.**

1. A person shall not be allowed to provide services in a facility if the person has a disease which is transmissible to other persons through required contact in the workplace, which presents a significant risk of infecting other persons, which presents a substantial possibility of harming other persons, or for which no reasonable accommodation can eliminate the risk of infecting other persons.

2. *a.* (1) If a person is being considered for licensure under this chapter, or for employment involving direct responsibility for a child or with access to a child when the child is alone, by a licensee under this chapter, or if a person will reside in a facility utilized by a licensee, and if the person has been convicted of a crime or has a record of founded child abuse, the department and the licensee for an employee of the licensee shall perform an evaluation to determine whether the crime or founded child abuse warrants prohibition of licensure, employment, or residence in the facility. The department shall conduct criminal and child abuse record checks in this state and may conduct these checks in other states. The evaluation shall be performed in accordance with procedures adopted for this purpose by the department.

(2) For an individual subject to licensure under this chapter as a foster parent, in addition to the record checks conducted under subparagraph (1), the individual's fingerprints shall be provided to the department of public safety for submission through the state criminal history repository to the United States department of justice, federal bureau of investigation for a national criminal history check. The cost of the criminal history check conducted under this subparagraph is the responsibility of the department of human services.

(3) If the criminal and child abuse record checks conducted in this state under subparagraph (1) for an individual being considered for licensure as a foster parent have been completed and the individual either does not have a record of

crime or founded abuse or the department's evaluation of the record has determined that prohibition of the individual's licensure is not warranted, the individual may be provisionally approved for licensure pending the outcome of the fingerprint-based criminal history check conducted pursuant to subparagraph (2).

(4) An individual applying to be a foster parent licensee shall not be granted a license and an evaluation shall not be performed under this subsection if the individual has been convicted of any of the following felony offenses:

(a) Within the five-year period preceding the application date, a drug-related offense.

(b) Child endangerment or neglect or abandonment of a dependent person.

(c) Domestic abuse.

(d) A crime against a child, including but not limited to sexual exploitation of a minor.

(e) A forcible felony.

*b.* Except as otherwise provided in paragraph "a", if the department determines that a person has committed a crime or has a record of founded child abuse and is licensed, employed by a licensee, or resides in a licensed facility the department shall notify the licensee that an evaluation will be conducted to determine whether prohibition of the person's licensure, employment, or residence is warranted.

*c.* In an evaluation, the department and the licensee for an employee of the licensee shall consider the nature and seriousness of the crime or founded child abuse in relation to the position sought or held, the time elapsed since the commission of the crime or founded child abuse, the circumstances under which the crime or founded child abuse was committed, the degree of rehabilitation, the likelihood that the person will commit the crime or founded child abuse again, and the number of crimes or founded child abuses committed by the person involved. The department may permit a person who is evaluated to be licensed, employed, or to reside, or to continue to be li-

censed, employed, or to reside in a licensed facility, if the person complies with the department's conditions relating to the person's licensure, employment, or residence, which may include completion of additional training. For an employee of a licensee, these conditional requirements shall be developed with the licensee. The department has final authority in determining whether prohibition of the person's licensure, employment, or residence is warranted and in developing any conditional requirements under this paragraph.

*d.* If the department determines that the person has committed a crime or has a record of founded child abuse which warrants prohibition of licensure, employment, or residence, the person shall not be licensed under this chapter and shall not be employed by a licensee or reside in a licensed facility.

3. In addition to the record checks required under subsection 2, the department of human services may conduct dependent adult abuse record checks in this state and may conduct these checks in other states, on a random basis. The provisions of subsection 2, relative to an evaluation following a determination that a person has been convicted of a crime or has a record of founded child abuse, shall also apply to a random check conducted under this subsection.

4. On or after July 1, 1994, a licensee shall inform all new applicants for employment of the possibility of the performance of a record check and shall obtain, from the applicant, a signed acknowledgment of the receipt of the information.

5. On or after July 1, 1994, a licensee shall include the following inquiry in an application for employment: "Do you have a record of founded child or dependent adult abuse or have you ever been convicted of a crime, in this state or any other state?"

2007 Acts, ch 172, §12  
Subsection 2, paragraph a, NEW subparagraphs (2) and (3) and former subparagraph (2) renumbered as (4)

## CHAPTER 237A

### CHILD CARE FACILITIES

#### **237A.13 State child care assistance.**

1. A state child care assistance program is established in the department to assist children in families who meet eligibility guidelines and are described by any of the following circumstances:

*a.* The child's parent, guardian, or custodian is participating in approved academic or vocational training.

*b.* The child's parent, guardian, or custodian is seeking employment. Eligibility for assistance while seeking employment shall be limited to

thirty days during a twelve-month period.

*c.* The child's parent, guardian, or custodian is employed and the family income meets income requirements.

*d.* The child's parent, guardian, or custodian is absent for a limited period of time due to hospitalization, physical illness, or mental illness, or is present but is unable to care for the child for a limited period as verified by a physician.

*e.* The child needs protective services to prevent or alleviate child abuse or neglect.

*f.* The person's family circumstances are described in paragraph "a", "b", "c", or "d", the person is thirteen years of age or older but younger than sixteen years of age, and state child care assistance is approved for the person by the director or the director's designee based on a request for an exception to policy made by the person's parent, guardian, or custodian because special family circumstances exist that would place the safety and well-being of the person at risk if the person is left home alone. The definition of child in section 237A.1 does not apply to child care supported by state child care assistance approved pursuant to this lettered paragraph.

2. Services under the program may be provided in a licensed child care center, a child development home, the home of a relative, the child's own home, a child care home, or in a facility exempt from licensing or registration.

3. The department shall set reimbursement rates as authorized by appropriations enacted for payment of the reimbursements. The department shall conduct a statewide reimbursement rate survey to compile information on each county and the survey shall be conducted at least every two years. The department shall set rates in a manner so as to provide incentives for an unregistered provider to become registered.

4. The department's billing and payment provisions for the program shall allow providers to elect either biweekly or monthly billing and payment for child care provided under the program. The department shall remit payment to a provider within ten business days of receiving a bill or claim for services provided. However, if the department determines that a bill has an error or omission, the department shall notify the provider of the error or omission and identify any correction needed before issuance of payment to the provider. The department shall provide the notice within five business days of receiving the billing from the provider and shall remit payment to the provider within ten business days of receiving the corrected billing.

5. On or before July 1, 2007, the department shall implement a system for making program payments by electronic funds transfer or other electronic means.

6. The department shall not apply waiting list requirements to any of the following persons:

*a.* Persons deemed to be eligible for benefits under the state child care assistance program in accordance with section 239B.24.

*b.* A family that is receiving state child care assistance at the time a child is born into the family. The newborn child shall be approved for services when the family reports the birth of the child.

*c.* Children who need protective services to prevent or alleviate child abuse or neglect.

*d.* A child in a family that is eligible for state child care assistance and that receives a state adoption subsidy for the child.

7. Based upon the availability of the funding appropriated for state child care assistance for a fiscal year, the department shall establish waiting lists for state child care assistance in descending order of prioritization as follows:

*a.* Families with an income at or below one hundred percent of the federal poverty level whose members are employed at least twenty-eight hours per week, and parents with a family income at or below one hundred percent of the federal poverty level who are under the age of twenty-one years and are participating in an educational program leading to a high school diploma or the equivalent.

*b.* Parents with a family income at or below one hundred percent of the federal poverty level who are under the age of twenty-one years and are participating, at a satisfactory level, in an approved training program or in an educational program.

*c.* Families with an income of more than one hundred percent but not more than one hundred forty-five percent of the federal poverty level whose members are employed at least twenty-eight hours per week.

*d.* Families with an income at or below two hundred percent of the federal poverty level whose members are employed at least twenty-eight hours per week with a special needs child as a member of the family.

8. A child care facility that previously received child care wrap-around funding, meets the requirements for being a shared vision program except that a shared vision program is not operated in the county in which the facility is located, and is providing a child care wrap-around service that is included in the community empowerment area board's plan for the community empowerment area in which the facility is located shall be deemed to be qualified for child care wrap-around funding.

9. Nothing in this section shall be construed as or is intended as, or shall imply, a grant of entitlement for services to persons who are eligible for assistance due to an income level or other eligibility circumstance addressed in this section. Any state obligation to provide services pursuant to this section is limited to the extent of the funds appropriated for the purposes of state child care assistance.

2007 Acts, ch 172, §1; 2007 Acts, ch 215, §99

Subsection 1, NEW paragraph f

NEW subsection 4 and former subsections 4 – 8 renumbered as 5 – 9

## CHAPTER 238

### CHILD-PLACING AGENCIES

#### 238.18 Duty of licensee.

A child-placing agency licensed under this chapter shall keep a record and make reports in the form to be prescribed by the administrator. For a child being placed by the agency, the agency's duties shall include compliance with the requirements of section 232.108 relating to visitation or ongoing interaction between the child and the child's siblings.

2007 Acts, ch 67, §6  
Section amended

#### 238.20 Minimum inspection — record.

Authorized employees of the department of inspections and appeals shall visit and inspect the premises of licensed child-placing agencies at least once every twelve months and make and preserve written reports of the conditions found.

2007 Acts, ch 172, §11  
Section amended

## CHAPTER 239B

### FAMILY INVESTMENT PROGRAM

#### 239B.1 Definitions.

As used in this chapter, unless the context otherwise requires:

1. "Applicant" means a person who files an application for participation in the family investment program under this chapter.
2. "Assistance" means a family investment program payment.
3. "Child" means an unmarried person who is less than eighteen years of age or an unmarried person who is eighteen years of age and is engaged full-time in completing high school graduation or equivalency requirements in a manner which is reasonably expected to result in completion of the requirements prior to the person reaching nineteen years of age.
4. "Department" means the department of human services.
5. "Family" means a family unit that includes at least one child and at least one parent or other specified relative of the child.
6. "Family investment agreement" means the agreement developed with a participant in accordance with section 239B.8.
7. "Family investment program" means the family investment program under this chapter.
8. "Limited benefit plan" means a period of time in which a participant or member of a participant's family is either eligible for reduced assistance only or ineligible for any assistance under the family investment program, in accordance with section 239B.9.
9. "Minor parent" means an applicant or participant parent who is less than eighteen years of age and has never been married.
10. "Participant" means a person who is receiving full or partial family investment program assistance. For the purposes of sections 239B.8 and 239B.9, "participant" also includes each indi-

vidual who does not directly receive assistance but who is required to be engaged in work or training options specified in the participant's family investment agreement entered into under section 239B.8.

11. "PROMISE JOBS program" or "JOBS program" means the promoting independence and self-sufficiency through employment job opportunities and basic skills program created in section 239B.17.

12. "Specified relative" means a person who is, or was at any time, one of the following relatives of an applicant or participant child, by means of blood relationship, marriage, or adoption, or is a spouse of one of the following relatives:

- a. Parent.
- b. Grandparent.
- c. Great-grandparent.
- d. Great-great-grandparent.
- e. Stepparent of the child, but not the parent of the stepparent.
- f. Sibling.
- g. Stepsibling.
- h. Sibling by at least the half blood.
- i. Uncle or aunt by at least the half blood.
- j. Great-uncle or great-aunt.
- k. Great-great-uncle or great-great-aunt.
- l. First cousin.
- m. Nephew or niece.
- n. Second cousin.

2007 Acts, ch 124, §1  
Subsection 10 amended

#### 239B.4 Departmental role.

1. The department is the state entity designated to administer federal funds received for purposes of the family investment program and the JOBS program under this chapter, including but not limited to the funding received under the federal tem-

porary assistance for needy families block grant as authorized under the federal Personal Responsibility and Work Opportunity Reconciliation Act of 1996, Pub. L. No. 104-193, as reauthorized under the federal Deficit Reduction Act of 2005, Pub. L. No. 109-171, and as codified in 42 U.S.C. § 601 et seq., and as such is the lead agency in preparing and filing state plans, state plan amendments, and other reports required by federal law.

2. The department is responsible for a management information system, eligibility determination, participant grant calculations and issuance of payments, contracting for services, provision of an appeal or resolution process to applicants and participants, determining the suitability of a family home maintained by a specified relative applicant or participant, and other activities as necessary to administer the family investment program and the JOBS program.

3. The department shall develop and use a screening tool for determining the likely presence of family and domestic violence affecting applicant and participant families. The department shall require the use of the screening tool by trained employees.

4. The department shall continue to work with the department of workforce development and local community collaborative efforts to provide support services for participants. The support services shall be directed to those participant families who would benefit from the support services and are likely to have success in achieving economic independence.

5. The department shall continue to work with religious organizations and other charitable institutions to increase the availability of host homes, referred to as second chance homes, or other living arrangements under the federal Personal Responsibility and Work Opportunity Reconciliation Act of 1996, Pub. L. No. 104-193, § 103, and any successor legislation. The purpose of the homes or arrangements is to provide a supportive and supervised living arrangement for minor parents receiving assistance who may receive assistance while living in an alternative setting other than with their parent or legal guardian.

6. The department may adopt rules pursuant to chapter 17A as necessary to administer this chapter.

2007 Acts, ch 124, §2  
Subsection 1 amended

### **239B.7 Income and resource exemptions, deductions, and disregards.**

In determining a family's income and resources for purposes of the family's initial and continuing eligibility for assistance and for determining grant amounts, the provisions of this section shall apply to the family and individual family members.

1. *Work expense deduction.* If an individual's earned income is considered by the department, the individual shall be allowed a work expense de-

duction equal to twenty percent of the earned income. The work expense deduction is intended to include all work-related expenses other than child care. These expenses shall include but are not limited to all of the following: taxes, transportation, meals, uniforms, and other work-related expenses.

2. *Work-and-earn incentive.* If an individual's earned income is considered by the department, the individual shall be allowed a work-and-earn incentive. The incentive shall be equal to fifty-eight percent of the amount of earned income remaining after all other deductions are applied. The department shall disregard the incentive amount when considering the earned income available to the individual. The incentive shall not have a time limit. The work-and-earn incentive shall not be withdrawn as a penalty for failure to comply with family investment program requirements.

3. Reserved.

4. Reserved.

5. *Income consideration.* If an individual has timely reported an absence of income to the department, consideration of the individual's income shall cease beginning in the first month the income is absent.

6. *Interest income.* Interest income shall be disregarded.

7. *Individual development account deposits.* The department shall disregard as income any moneys an individual deposits in an individual development account established pursuant to chapter 541A.

8. *Motor vehicle disregard.* The department shall disregard the value of one motor vehicle. The countable equity value of any additional motor vehicle shall apply to the resource limitation established in subsection 9.

9. *Resource limitation.*

a. The resource limitation for an applicant family for the family investment program shall be two thousand dollars.

b. The resource limitation for a participant family shall be five thousand dollars.

c. The department shall disregard not more than ten thousand dollars of a self-employed individual's tools of the trade or capital assets in considering the individual's resources.

10. *Individual development account earnings and balance.* The department shall disregard any earnings and the balance of an individual development account established pursuant to chapter 541A in considering an individual's resources.

2007 Acts, ch 124, §3, 4, 6  
Subsections 1, 2, and 5 amended

### **239B.8 Family investment agreements.**

The department shall establish a policy regarding the implementation of family investment agreements which limits the period of eligibility for the family investment program based upon the



requirements of a family's plan for self-sufficiency. The policy shall require a family's plan to be specified in a family investment agreement between the family and the department. The department shall adopt rules to administer the policy. The components of the policy shall include but are not limited to all of the following:

1. *Participation — exemptions.* A parent living in a home with a child for whom an application for family investment program assistance has been made or for whom the assistance is provided, and all other individual members of the family whose needs are included in the assistance shall be subject to a family investment agreement unless exempt under rules adopted by the department or unless any of the following conditions exists:

a. The individual is less than sixteen years of age and is not a parent.

b. The individual is sixteen through eighteen years of age, is not a parent, and is attending elementary or secondary school, or the equivalent level of vocational or technical school, on a full-time basis. If an individual loses exempt status under this paragraph and the individual has signed a family investment agreement, the individual shall remain subject to the terms of the agreement until the terms are completed.

c. The individual is not a United States citizen and is not a qualified alien as defined in 8 U.S.C. § 1641.

2. *Agreement options.* A family investment agreement shall require an individual who is subject to the agreement to engage in one or more work or training options. An individual's level of engagement in one or more of the work or training options shall be equivalent to the level of commitment required for full-time employment or shall be significant so as to move the individual's level of engagement toward that level. The department shall adopt rules defining option requirements and establishing assistance provisions for child care, transportation, and other support services. A leave from engagement in work or training options shall be offered to a participant parent to address the birth of a child or the placement of a child with the participant parent for adoption or foster care. If such a leave is requested by the parent the combined duration of the leave shall not exceed the minimum leave duration, as outlined in the federal Family and Medical Leave Act of 1993, § 102(a) and (b)(1), as codified in 29 U.S.C. § 2612(a) and (b)(1). The terms of the leave shall be incorporated into the family investment agreement. The work or training options shall include but are not limited to all of the following:

a. *Employment.* Full-time or part-time employment.

b. *Employment search.* Active job search.

c. *JOBS.* Participation in the JOBS program.

d. *Education.* Participation in other educa-

tion or training programming.

e. *Family development.* Participation in a family development and self-sufficiency grant program under section 217.12 or other family development program.

f. *Work experience.* Work experience placement.

g. *Community service.* Unpaid community service.

h. *Parenting skills.* Participation in an arrangement which would strengthen the individual's ability to be a better parent, including but not limited to participation in a parenting education program.

i. *Family or domestic violence.* Participation in a safety plan to address or prevent family or domestic violence. The safety plan may include a temporary waiver period from required participation in the JOBS program or other employment-related activities, as appropriate for the situation of the applicant or participant. All applicants and participants shall be informed regarding the existence of this option. Participation in this option shall be subject to review in accordance with administrative rule.

j. *Incremental family investment agreements.* If an individual participant or the entire family has an acknowledged barrier, the plan for self-sufficiency may be specified in one or more incremental family investment agreements.

3. *Limited benefit plan.* If a participant fails to comply with the provisions of the participant's family investment agreement during the period of the agreement, the limited benefit plan provisions of section 239B.9 shall apply.

4. *Completion of agreement.*

a. Upon the completion of the terms of the agreement, family investment program assistance to a participant family covered by the agreement shall cease or be reduced in accordance with rules.

b. However, if the period in which a participant family is without cash assistance is one month or less and the participant family has not become exempt from JOBS program participation at the time the participant family reapplies for cash assistance, the participant family's family investment agreement shall be reinstated at the time the participant family reapplies. The reinstated agreement may be revised to accommodate changed circumstances present at the time of reapplication.

c. The department shall adopt rules to administer this subsection and to determine when a family is eligible to reenter the family investment program.

5. *Contracts.* The department may contract with the department of workforce development, department of economic development, or any other entity to provide services relating to a family investment agreement.

6. *Confidential information disclosure.* The

department may disclose confidential information described in section 217.30, subsection 1, to other state agencies or to any other entity which is not subject to the provisions of chapter 17A and is providing services to a participant family who is subject to a family investment agreement, if necessary in order for the participant family to receive the services. The department shall adopt rules establishing standards for disclosure of confidential information if disclosure is necessary in order for a participant to receive services.

2007 Acts, ch 124, §5  
Subsection 2 amended

**239B.11A Transitional benefits.**

The department shall provide a transitional benefits payment of one hundred dollars per month for up to three months to families with members who are employed at the time the family leaves the family investment program. Provision of the transitional benefits payment is subject to the availability of funding for the payment. The department shall adopt administrative rules for the transitional benefits.

2007 Acts, ch 218, §39  
NEW section

**239B.17 PROMISE JOBS program.**

1. *Program established.* The promoting independence and self-sufficiency through employment job opportunities and basic skills program is established for applicants and participants of the family investment program. The requirements of the JOBS program shall vary as provided in the family investment agreement applicable to a family. The department of workforce development, de-

partment of economic development, department of education, and all other state, county, and public educational agencies and institutions providing vocational rehabilitation, adult education, or vocational or technical training shall assist and cooperate in the JOBS program. The departments, agencies, and institutions shall make agreements and arrangements for maximum cooperation and use of all available resources in the program. The department of human services may contract with the department of workforce development, the department of economic development, or another appropriate entity to provide JOBS program services.

2. *Program activities.* The JOBS program shall include, but is not limited to, provision of the following activities:

- a. Placing applicants and participants in employment and on-the-job training.
- b. Institutional and work experience training for applicants and participants for whom the training is likely to lead to regular employment.
- c. Special work projects for applicants and participants for whom a job in the regular economy cannot be found.
- d. Incentives, opportunities, services, and other benefits to aid applicants and participants, which may include but are not limited to financial education.
- e. Providing services and payments for persons whose family investment program eligibility has ended, in order to help the persons to stabilize or improve their employment status.

2007 Acts, ch 218, §40  
Subsection 1 amended

CHAPTER 249A

MEDICAL ASSISTANCE

**249A.3 Eligibility.**

The extent of and the limitations upon eligibility for assistance under this chapter is prescribed by this section, subject to federal requirements, and by laws appropriating funds for assistance provided pursuant to this chapter.

1. Medical assistance shall be provided to, or on behalf of, any individual or family residing in the state of Iowa, including those residents who are temporarily absent from the state, who:

- a. Is a recipient of federal supplemental security income or who would be eligible for federal supplemental security income if living in their own home.
- b. Is an individual who is eligible for the family investment program or is an individual who would be eligible for unborn child payments under the family investment program, as authorized by Title IV-A of the federal Social Security Act, if the family investment program provided for unborn child

payments during the entire pregnancy.

c. Was a recipient of one of the previous categorical assistance programs as of December 31, 1973, and would continue to meet the eligibility requirements for one of the previous categorical assistance programs as the requirements existed on that date.

d. Is a child up to one year of age who was born on or after October 1, 1984, to a woman receiving medical assistance on the date of the child's birth, who continues to be a member of the mother's household, and whose mother continues to receive medical assistance.

e. Is a pregnant woman whose pregnancy has been medically verified and who qualifies under either of the following:

- (1) The woman would be eligible for cash assistance under the family investment program, if the child were born and living with the woman in the month of payment.

(2) The woman meets the income and resource requirements of the family investment program, provided the unborn child is considered a member of the household, and the woman's family is treated as though deprivation exists.

*f.* Is a child who is less than seven years of age and who meets the income and resource requirements of the family investment program.

*g.* (1) Is a child who is one through five years of age as prescribed by the federal Omnibus Budget Reconciliation Act of 1989, Pub. L. No. 101-239, § 6401, whose income is not more than one hundred thirty-three percent of the federal poverty level as defined by the most recently revised poverty income guidelines published by the United States department of health and human services.

(2) Is a child who has attained six years of age but has not attained nineteen years of age, whose income is not more than one hundred thirty-three percent of the federal poverty level, as defined by the most recently revised poverty income guidelines published by the United States department of health and human services.

*h.* Is a woman who, while pregnant, meets eligibility requirements for assistance under the federal Social Security Act, section 1902(l), and continues to meet the requirements except for income. The woman is eligible to receive assistance until sixty days after the date pregnancy ends.

*i.* Is a pregnant woman who is determined to be presumptively eligible by a health care provider qualified under the federal Omnibus Budget Reconciliation Act of 1986, Pub. L. No. 99-509, § 9407. The woman is eligible for ambulatory prenatal care assistance until the last day of the month following the month of the presumptive eligibility determination. If the department receives the woman's medical assistance application by the last day of the month following the month of the presumptive eligibility determination, the woman is eligible for ambulatory prenatal care assistance until the department actually determines the woman's eligibility or ineligibility for medical assistance. The costs of services provided during the presumptive eligibility period shall be paid by the medical assistance program for those persons who are determined to be ineligible through the regular eligibility determination process.

*j.* Is a pregnant woman or infant less than one year of age whose income does not exceed the federally prescribed percentage of the poverty level in accordance with the federal Medicare Catastrophic Coverage Act of 1988, Pub. L. No. 100-360, § 302.

*k.* Is a pregnant woman or infant whose income is more than the limit prescribed under the federal Medicare Catastrophic Coverage Act of 1988, Pub. L. No. 100-360, § 302, but not more than two hundred percent of the federal poverty level as defined by the most recently revised pov-

erty income guidelines published by the United States department of health and human services.

*l.* Is an infant whose income is not more than two hundred percent of the federal poverty level, as defined by the most recently revised income guidelines published by the United States department of health and human services.

*m.* Is a child for whom adoption assistance or foster care maintenance payments are paid under Title IV-E of the federal Social Security Act.

*n.* Is an individual or family who is ineligible for the family investment program because of requirements that do not apply under Title XIX of the federal Social Security Act.

*o.* Was a federal supplemental security income or a state supplementary assistance recipient, as defined by section 249.1, and a recipient of federal social security benefits at one time since August 1, 1977, and would be eligible for federal supplemental security income or state supplementary assistance but for the increases due to the cost of living in federal social security benefits since the last date of concurrent eligibility.

*p.* Is an individual whose spouse is deceased and who is ineligible for federal supplemental security income or state supplementary assistance, as defined by section 249.1, due to the elimination of the actuarial reduction formula for federal social security benefits under the federal Social Security Act and subsequent cost of living increases.

*q.* Is an individual who is at least sixty years of age and is ineligible for federal supplemental security income or state supplementary assistance, as defined by section 249.1, because of receipt of social security widow or widower benefits and is not eligible for federal Medicare, part A coverage.

*r.* Is an individual with a disability, and is at least eighteen years of age, who receives parental social security benefits under the federal Social Security Act and is not eligible for federal supplemental security income or state supplementary assistance, as defined by section 249.1, because of the receipt of the social security benefits.

*s.* Is an individual who is no longer eligible for the family investment program due to earned income. The department shall provide transitional medical assistance to the individual for the maximum period allowed for federal financial participation under federal law.

*t.* Is an individual who is no longer eligible for the family investment program due to the receipt of child or spousal support. The department shall provide transitional medical assistance to the individual for the maximum period allowed for federal financial participation under federal law.

2. Medical assistance may also, within the limits of available funds and in accordance with section 249A.4, subsection 1, be provided to, or on behalf of, other individuals and families who are not excluded under subsection 5 of this section and whose incomes and resources are insufficient to

meet the cost of necessary medical care and services in accordance with the following order of priorities:

*a.* As allowed under 42 U.S.C. § 1396a(a)(10)(A)(ii)(XIII), individuals with disabilities, who are less than sixty-five years of age, who are members of families whose income is less than two hundred fifty percent of the most recently revised official poverty guidelines published by the United States department of health and human services for the family, who have earned income and who are eligible for medical assistance or additional medical assistance under this section if earnings are disregarded. As allowed by 42 U.S.C. § 1396a(r)(2), unearned income shall also be disregarded in determining whether an individual is eligible for assistance under this paragraph. For the purposes of determining the amount of an individual's resources under this paragraph and as allowed by 42 U.S.C. § 1396a(r)(2), a maximum of ten thousand dollars of available resources shall be disregarded, and any additional resources held in a retirement account, in a medical savings account, or in any other account approved under rules adopted by the department shall also be disregarded. Individuals eligible for assistance under this paragraph, whose individual income exceeds one hundred fifty percent of the official poverty guidelines published by the United States department of health and human services for an individual, shall pay a premium. The amount of the premium shall be based on a sliding fee schedule adopted by rule of the department and shall be based on a percentage of the individual's income. The maximum premium payable by an individual whose income exceeds one hundred fifty percent of the official poverty guidelines shall be commensurate with the cost of state employees' group health insurance in this state.

*b.* As provided under the federal Breast and Cervical Cancer Prevention and Treatment Act of 2000, Pub. L. No. 106-354, women who meet all of the following criteria:

(1) Are not described in 42 U.S.C. § 1396a(a)(10)(A)(i).

(2) Have not attained age sixty-five.

(3) Have been screened for breast and cervical cancer under the United States centers for disease control and prevention breast and cervical cancer early detection program established under 42 U.S.C. § 300k et seq., in accordance with the requirements of 42 U.S.C. § 300n, and need treatment for breast or cervical cancer. A woman is considered screened for breast and cervical cancer under this subparagraph if the woman is screened by any provider or entity, and the state grantee of the United States centers for disease control and prevention funds under Title XV of the federal Public Health Services Act has elected to include screening activities by that provider or entity as screening activities pursuant to Title XV of the federal

Public Health Services Act. This screening includes but is not limited to breast or cervical cancer screenings or related diagnostic services provided by family planning or community health centers and breast cancer screenings funded by the Susan G. Komen foundation which are provided to women who meet the eligibility requirements established by the state grantee of the United States centers for disease control and prevention funds under Title XV of the federal Public Health Services Act.

(4) Are not otherwise covered under creditable coverage as defined in 42 U.S.C. § 300gg(c).

A woman who meets the criteria of this paragraph shall be presumptively eligible for medical assistance.

*c.* Individuals who are receiving care in a hospital or in a basic nursing home, intermediate nursing home, skilled nursing home or extended care facility, as defined by section 135C.1, and who meet all eligibility requirements for federal supplemental security income except that their income exceeds the allowable maximum therefor, but whose income is not in excess of the maximum established by subsection 4 for eligibility for medical assistance and is insufficient to meet the full cost of their care in the hospital or health care facility on the basis of standards established by the department.

*d.* Individuals under twenty-one years of age living in a licensed foster home, or in a private home pursuant to a subsidized adoption arrangement, for whom the department accepts financial responsibility in whole or in part and who are not eligible under subsection 1.

*e.* Individuals who are receiving care in an institution for mental diseases, and who are under twenty-one years of age and whose income and resources are such that they are eligible for the family investment program, or who are sixty-five years of age or older and who meet the conditions for eligibility in paragraph "a" of this subsection.

*f.* Individuals and families whose incomes and resources are such that they are eligible for federal supplemental security income or the family investment program, but who are not actually receiving such public assistance.

*g.* Individuals who are receiving state supplementary assistance as defined by section 249.1 or other persons whose needs are considered in computing the recipient's assistance grant.

*h.* Individuals under twenty-one years of age who qualify on a financial basis for, but who are otherwise ineligible to receive assistance under the family investment program.

*i.* As allowed under 42 U.S.C. § 1396a(a)(10)(A)(ii)(XVII), individuals under twenty-one years of age who were in foster care under the responsibility of the state on the individual's eighteenth birthday, and whose income is less than two hundred percent of the most recently revised official poverty guidelines published by

the United States department of health and human services. Medical assistance may be provided for an individual described by this paragraph regardless of the individual's resources.

*j.* Women eligible for family planning services under a federally approved demonstration waiver.

*k.* Individuals and families who would be eligible under subsection 1 or 2 of this section except for excess income or resources, or a reasonable category of those individuals and families.

*l.* Individuals who have attained the age of twenty-one but have not yet attained the age of sixty-five who qualify on a financial basis for, but who are otherwise ineligible to receive, federal supplemental security income or assistance under the family investment program.

Notwithstanding the provisions of this subsection establishing priorities for individuals and families to receive medical assistance, the department may determine within the priorities listed in this subsection which persons shall receive medical assistance based on income levels established by the department, subject to the limitations provided in subsection 4.

3. Additional medical assistance may, within the limits of available funds and in accordance with section 249A.4, subsection 1, be provided to, or on behalf of, either:

*a.* Only those individuals and families described in subsection 1 of this section; or

*b.* Those individuals and families described in both subsections 1 and 2.

4. Discretionary medical assistance, within the limits of available funds and in accordance with section 249A.4, subsection 1, may be provided to or on behalf of those individuals and families described in subsection 2, paragraph "k" of this section.

5. Assistance shall not be granted under this chapter to:

*a.* An individual or family whose income, considered to be available to the individual or family, exceeds federally prescribed limitations.

*b.* An individual or family whose resources, considered to be available to the individual or family, exceed federally prescribed limitations.

5A. In determining eligibility for children under subsection 1, paragraphs "b", "f", "g", "j", "k", "n", and "s"; subsection 2, paragraphs "c", "e", "f", "h", and "k"; and subsection 5, paragraph "b", all resources of the family, other than monthly income, shall be disregarded.

5B. In determining eligibility for adults under subsection 1, paragraphs "b", "e", "h", "j", "k", "n", "s", and "t"; subsection 2, paragraphs "d", "e", "h", "k", and "t"; and subsection 5, paragraph "b", one motor vehicle per household shall be disregarded.

6. In determining the eligibility of an individual for medical assistance under this chapter, for resources transferred to the individual's spouse before October 1, 1989, or to a person other than the individual's spouse before July 1, 1989, the depart-

ment shall include, as resources still available to the individual, those nonexempt resources or interests in resources, owned by the individual within the preceding twenty-four months, which the individual gave away or sold at less than fair market value for the purpose of establishing eligibility for medical assistance under this chapter.

*a.* A transaction described in this subsection is presumed to have been for the purpose of establishing eligibility for medical assistance under this chapter unless the individual furnishes convincing evidence to establish that the transaction was exclusively for some other purpose.

*b.* The value of a resource or an interest in a resource in determining eligibility under this subsection is the fair market value of the resource or interest at the time of the transaction less the amount of any compensation received.

*c.* If a transaction described in this subsection results in uncompensated value exceeding twelve thousand dollars, the department shall provide by rule for a period of ineligibility which exceeds twenty-four months and has a reasonable relationship to the uncompensated value above twelve thousand dollars.

7. In determining the eligibility of an individual for medical assistance under this chapter, the department shall consider resources transferred to the individual's spouse on or after October 1, 1989, or to a person other than the individual's spouse on or after July 1, 1989, and prior to August 11, 1993, as provided by the federal Medicare Catastrophic Coverage Act of 1988, Pub. L. No. 100-360, § 303(b), as amended by the federal Family Support Act of 1988, Pub. L. No. 100-485, § 608(d)(16)(B), (D), and the federal Omnibus Budget Reconciliation Act of 1989, Pub. L. No. 101-239, § 6411(e)(1).

8. Medicare cost sharing shall be provided in accordance with the provisions of Title XIX of the federal Social Security Act, section 1902(a)(10)(E), as codified in 42 U.S.C. § 1396a(a)(10)(E), to or on behalf of an individual who is a resident of the state or a resident who is temporarily absent from the state, and who is a member of any of the following eligibility categories:

*a.* A qualified Medicare beneficiary as defined under Title XIX of the federal Social Security Act, section 1905(p)(1), as codified in 42 U.S.C. § 1396d(p)(1).

*b.* A qualified disabled and working person as defined under Title XIX of the federal Social Security Act, section 1905(s), as codified in 42 U.S.C. § 1396d(s).

*c.* A specified low-income Medicare beneficiary as defined under Title XIX of the federal Social Security Act, section 1902(a)(10)(E)(iii), as codified in 42 U.S.C. § 1396a(a)(10)(E)(iii).

*d.* An additional specified low-income Medicare beneficiary as described under Title XIX of the federal Social Security Act, section 1902(a)(10)(E)(iv)(I), as codified in 42 U.S.C.

§ 1396a(a)(10)(E)(iv)(I).

*e.* An additional specified low-income Medicare beneficiary described under Title XIX of the federal Social Security Act, section 1902(a)(10)(E)(iv)(II), as codified in 42 U.S.C. § 1396a(a)(10)(E)(iv)(II).

9. Beginning October 1, 1990, in determining the eligibility of an institutionalized individual for assistance under this chapter, the department shall establish a minimum community spouse resource allowance amount of twenty-four thousand dollars to be retained for the benefit of the institutionalized individual's community spouse in accordance with the federal Social Security Act, section 1924(f) as codified in 42 U.S.C. § 1396r-5(f).

10. Group health plan cost sharing shall be provided as required by Title XIX of the federal Social Security Act, section 1906, as codified in 42 U.S.C. § 1396e.

11. *a.* In determining the eligibility of an individual for medical assistance, the department shall consider transfers of assets made on or after August 11, 1993, as provided by the federal Social Security Act, section 1917(c), as codified in 42 U.S.C. § 1396p(c).

*b.* The department shall exercise the option provided in 42 U.S.C. § 1396p(c) to provide a period of ineligibility for medical assistance due to a transfer of assets by a noninstitutionalized individual or the spouse of a noninstitutionalized individual. For noninstitutionalized individuals, the number of months of ineligibility shall be equal to the total, cumulative uncompensated value of all assets transferred by the individual or the individual's spouse on or after the look-back date specified in 42 U.S.C. § 1396p(c)(1)(B)(i), divided by the average monthly cost to a private patient for nursing facility services in Iowa at the time of application. The services for which noninstitutionalized individuals shall be made ineligible shall include any long-term care services for which medical assistance is otherwise available. Notwithstanding section 17A.4, the department may adopt rules providing a period of ineligibility for medical assistance due to a transfer of assets by a noninstitutionalized individual or the spouse of a noninstitutionalized individual without notice of opportunity for public comment, to be effective immediately upon filing under section 17A.5, subsection 2, paragraph "b", subparagraph (1).

*c.* A disclaimer of any property, interest, or right pursuant to section 633E.5 constitutes a transfer of assets for the purpose of determining eligibility for medical assistance in an amount equal to the value of the property, interest, or right disclaimed.

*d.* Unless a surviving spouse is precluded from making an election under the terms of a premarital agreement, the failure of a surviving spouse to take an elective share pursuant to chapter 633, division V, constitutes a transfer of assets for the

purpose of determining eligibility for medical assistance to the extent that the value received by taking an elective share would have exceeded the value of the inheritance received under the will.

12. In determining the eligibility of an individual for medical assistance, the department shall consider income or assets relating to trusts or similar legal instruments or devices established on or before August 10, 1993, as available to the individual, in accordance with the federal Comprehensive Omnibus Budget Reconciliation Act of 1986, Pub. L. No. 99-272, § 9506(a), as amended by the federal Omnibus Budget Reconciliation Act of 1986, Pub. L. No. 99-509, § 9435(c).

13. In determining the eligibility of an individual for medical assistance, the department shall consider income or assets relating to trusts or similar legal instruments or devices established after August 10, 1993, as available to the individual, in accordance with 42 U.S.C. § 1396p(d) and sections 633C.2 and 633C.3.

2007 Acts, ch 218, §41 - 43

Spousal support debt for medical assistance to institutionalized spouse; community spouse resource allowance; chapter 249B

For future amendments to subsection 1 effective upon receipt of discretionary funding from the health resources and services administration of the United States department of health and human services, see 2007 Acts, ch 218, §124, 126

Subsection 2, paragraphs i - k amended

Subsection 2, NEW paragraph "l"

Subsections 4, 5A, and 5B amended

#### **249A.12 Assistance to persons with mental retardation — state cases.**

1. Assistance may be furnished under this chapter to an otherwise eligible recipient who is a resident of a health care facility licensed under chapter 135C and certified as an intermediate care facility for persons with mental retardation.

2. A county shall reimburse the department on a monthly basis for that portion of the cost of assistance provided under this section to a recipient with legal settlement in the county, which is not paid from federal funds, if the recipient's placement has been approved by the appropriate review organization as medically necessary and appropriate. The department's goal for the maximum time period for submission of a claim to a county is not more than sixty days following the submission of the claim by the provider of the service to the department. The department's goal for completion and crediting of a county for cost settlement for the actual costs of a service under a home and community-based services waiver is within two hundred seventy days of the close of a fiscal year for which cost reports are due from providers. The department shall place all reimbursements from counties in the appropriation for medical assistance, and may use the reimbursed funds in the same manner and for any purpose for which the appropriation for medical assistance may be used.

3. If a county reimburses the department for medical assistance provided under this section and the amount of medical assistance is subse-

quently repaid through a medical assistance income trust or a medical assistance special needs trust as defined in section 633C.1, the department shall reimburse the county on a proportionate basis. The department shall adopt rules to implement this subsection.

4. *a.* Effective July 1, 1995, the state shall be responsible for all of the nonfederal share of the costs of intermediate care facility for persons with mental retardation services provided under medical assistance to minors. Notwithstanding subsection 2 and contrary provisions of section 222.73, effective July 1, 1995, a county is not required to reimburse the department and shall not be billed for the nonfederal share of the costs of such services provided to minors.

*b.* Effective July 1, 1995, the state shall be responsible for all of the nonfederal share of medical assistance home and community-based services waivers for persons with mental retardation services provided to minors and a county is not required to reimburse the department and shall not be billed for the nonfederal share of the costs of the services.

*c.* Effective February 1, 2002, the state shall be responsible for all of the nonfederal share of the costs of intermediate care facility for persons with mental retardation services provided under medical assistance attributable to the assessment fee for intermediate care facilities for individuals with mental retardation imposed pursuant to section 249A.21. Notwithstanding subsection 2, effective February 1, 2003, a county is not required to reimburse the department and shall not be billed for the nonfederal share of the costs of such services attributable to the assessment fee.

5. *a.* The mental health, mental retardation, developmental disabilities, and brain injury commission shall recommend to the department the actions necessary to assist in the transition of individuals being served in an intermediate care facility for persons with mental retardation, who are appropriate for the transition, to services funded under a medical assistance home and community-based services waiver for persons with mental retardation in a manner which maximizes the use of existing public and private facilities. The actions may include but are not limited to submitting any of the following or a combination of any of the following as a request for a revision of the medical assistance home and community-based services waiver for persons with mental retardation in effect as of June 30, 1996:

(1) Allow for the transition of intermediate care facilities for persons with mental retardation licensed under chapter 135C as of June 30, 1996, to services funded under the medical assistance home and community-based services waiver for persons with mental retardation. The request shall be for inclusion of additional persons under the waiver associated with the transition.

(2) Allow for reimbursement under the waiver

for day program or other service costs.

(3) Allow for exception provisions in which an intermediate care facility for persons with mental retardation which does not meet size and other facility-related requirements under the waiver in effect on June 30, 1996, may convert to a waiver service for a set period of time such as five years. Following the set period of time, the facility would be subject to the waiver requirements applicable to services which were not operating under the exception provisions.

*b.* In implementing the provisions of this subsection, the mental health, mental retardation, developmental disabilities, and brain injury commission shall consult with other states. The waiver revision request or other action necessary to assist in the transition of service provision from intermediate care facilities for persons with mental retardation to alternative programs shall be implemented by the department in a manner that can appropriately meet the needs of individuals at an overall lower cost to counties, the federal government, and the state. In addition, the department shall take into consideration significant federal changes to the medical assistance program in formulating the department's actions under this subsection. The department shall consult with the mental health, mental retardation, developmental disabilities, and brain injury commission in adopting rules for oversight of facilities converted pursuant to this subsection. A transition approach described in paragraph "a" may be modified as necessary to obtain federal waiver approval.

6. *a.* Effective July 1, 2003, the provisions of the home and community-based services waiver for persons with mental retardation shall include adult day care, prevocational, and transportation services. Transportation shall be included as a separately payable service.

*b.* The department of human services shall seek federal approval to amend the home and community-based services waiver for persons with mental retardation to include day habilitation services. Inclusion of day habilitation services in the waiver shall take effect upon receipt of federal approval and no later than July 1, 2004.

*c.* The person's county of legal settlement shall pay for the nonfederal share of the cost of services provided under the waiver, and the state shall pay for the nonfederal share of such costs if the person has no legal settlement or the legal settlement is unknown so that the person is deemed to be a state case.

*d.* The county of legal settlement shall pay for one hundred percent of the nonfederal share of the costs of care provided for adults which is reimbursed under a home and community-based services waiver that would otherwise be approved for provision in an intermediate care facility for persons with mental retardation provided under the medical assistance program.

7. When paying the necessary and legal expenses for intermediate care facility for persons with mental retardation services, the cost requirements of section 222.60 shall be considered fulfilled when payment is made in accordance with the medical assistance payment rates established by the department for intermediate care facilities for persons with mental retardation, and the state or a county of legal settlement shall not be obligated for any amount in excess of the rates.

8. If a person with mental retardation has no legal settlement or the legal settlement is unknown so that the person is deemed to be a state case and services associated with the mental retardation can be covered under a medical assistance home and community-based services waiver or other medical assistance program provision, the nonfederal share of the medical assistance program costs for such coverage shall be paid from the appropriation made for the medical assistance program.

2007 Acts, ch 22, §56  
Appropriations to fund the costs under subsection 4 from the property tax relief fund; see §426B.1(3)  
Subsection 8 amended

**249A.26 State and county participation in funding for services to persons with disabilities — case management.**

1. The state shall pay for one hundred percent of the nonfederal share of the services paid for under any prepaid mental health services plan for medical assistance implemented by the department as authorized by law.

2. *a.* Except as provided for disallowed costs in section 249A.27, the county of legal settlement shall pay for fifty percent of the nonfederal share of the cost and the state shall have responsibility for the remaining fifty percent of the nonfederal share of the cost of case management provided to adults, day treatment, and partial hospitalization provided under the medical assistance program for persons with mental retardation, a developmental disability, or chronic mental illness. For purposes of this section, persons with mental disorders resulting from Alzheimer's disease or substance abuse shall not be considered chronically mentally ill. To the maximum extent allowed under federal law and regulations, the department shall consult with and inform a county of legal settlement's central point of coordination process, as defined in section 331.440, regarding the necessity for and the provision of any service for which the county is required to provide reimbursement under this subsection.

*b.* The state shall pay for one hundred percent of the nonfederal share of the costs of case management provided for adults, day treatment, partial hospitalization, and the home and community-based services waiver services for persons who have no legal settlement or the legal settlement is unknown so that the persons are deemed

to be state cases.

*c.* The case management services specified in this subsection shall be paid for by a county only if the services are provided outside of a managed care contract.

3. To the maximum extent allowed under federal law and regulations, a person with mental illness or mental retardation shall not be eligible for any service which is funded in whole or in part by a county share of the nonfederal portion of medical assistance funds unless the person is referred through the central point of coordination process, as defined in section 331.440. However, to the extent federal law allows referral of a medical assistance recipient to a service without approval of the central point of coordination process, the county of legal settlement shall be billed for the nonfederal share of costs for any adult person for whom the county would otherwise be responsible.

4. The county of legal settlement shall pay for one hundred percent of the nonfederal share of the cost of services provided to adult persons with chronic mental illness who qualify for habilitation services in accordance with the rules adopted for the services. The state shall pay for one hundred percent of the nonfederal share of the cost of such services provided to such persons who have no legal settlement or the legal settlement is unknown so that the persons are deemed to be state cases.

5. The state shall pay for the entire nonfederal share of the costs for case management services provided to persons seventeen years of age or younger who are served in a home and community-based services waiver program under the medical assistance program for persons with mental retardation.

6. Funding under the medical assistance program shall be provided for case management services for eligible persons seventeen years of age or younger residing in counties with child welfare decategorization projects implemented in accordance with section 232.188, provided these projects have included these persons in the service plan and the decategorization project county is willing to provide the nonfederal share of the costs.

7. Unless a county has paid or is paying for the nonfederal share of the costs of a person's home and community-based waiver services or placement in an intermediate care facility for persons with mental retardation under the county's mental health, mental retardation, and developmental disabilities services fund, or unless a county of legal settlement would become liable for the costs of services for a person at the level of care provided in an intermediate care facility for persons with mental retardation due to the person reaching the age of majority, the state shall pay for the nonfederal share of the costs of an eligible person's services under the home and community-based services waiver for persons with brain injury.



8. If a dispute arises between different counties or between the department and a county as to the legal settlement of a person who receives medical assistance for which the nonfederal share is payable in whole or in part by a county of legal settlement, and cannot be resolved by the parties, the dispute shall be resolved as provided in section 225C.8.

9. Notwithstanding section 8.39, the department may transfer funds appropriated for the medical assistance program to a separate account established in the department's case management unit in an amount necessary to pay for expenditures required to provide case management for mental health, mental retardation, and developmental disabilities services under the medical assistance program which are jointly funded by the state and county, pending final settlement of the expenditures. Funds received by the case management unit in settlement of the expenditures shall be used to replace the transferred funds and are available for the purposes for which the funds were originally appropriated.

2007 Acts, ch 218, §119  
Subsection 4 amended

**249A.26A State and county participation in funding for rehabilitation services for persons with chronic mental illness.** Repealed by 2007 Acts, ch 218, § 122. See § 249A.26.

**249A.30A Medical assistance — personal needs allowance.**

The personal needs allowance under the medical assistance program, which may be retained by a resident of a nursing facility, an intermediate care facility for persons with mental retardation, or an intermediate care facility for persons with mental illness, as defined in section 135C.1, or who is a resident of a psychiatric medical institution for children as defined in section 135H.1, shall be fifty dollars per month. A resident who has income of less than fifty dollars per month shall receive a supplement from the state in the amount necessary to receive a personal needs allowance of fifty dollars per month, if funding is specifically appropriated for this purpose.

2007 Acts, ch 218, §44  
2007-2008 allocation for monthly personal needs allowance of fifty dollars; 2007 Acts, ch 218, §11  
Section amended

**249A.31 Cost-based reimbursement.**

Providers of individual case management services for persons with mental retardation, a developmental disability, or chronic mental illness shall receive cost-based reimbursement for one hundred percent of the reasonable costs for the provision of the services in accordance with standards adopted by the mental health, mental retardation, developmental disabilities, and brain injury commission pursuant to section 225C.6.

2007 Acts, ch 218, §120  
Section amended

## CHAPTER 249J

### IOWACARE

Chapter to be repealed June 30, 2010; see §249J.26

**249J.8 Expansion population members — financial participation.**

1. Each expansion population member whose family income exceeds one hundred percent of the federal poverty level as defined by the most recently revised poverty income guidelines published by the United States department of health and human services shall pay a monthly premium not to exceed one-twelfth of five percent of the member's annual family income. Each expansion population member whose family income is equal to or less than one hundred percent of the federal poverty level as defined by the most recently revised poverty income guidelines published by the United States department of health and human services shall not be subject to payment of a monthly premium. All premiums shall be paid on the last day of the month of coverage. The department shall deduct the amount of any monthly premiums paid by an expansion population member for benefits under the healthy and well kids in Iowa program when computing the amount of monthly pre-

miums owed under this subsection. An expansion population member shall pay the monthly premium during the entire period of the member's enrollment. Regardless of the length of enrollment, the member is subject to payment of the premium for a minimum of four consecutive months. However, an expansion population member who complies with the requirement of payment of the premium for a minimum of four consecutive months during a consecutive twelve-month period of enrollment shall be deemed to have complied with this requirement for the subsequent consecutive twelve-month period of enrollment and shall only be subject to payment of the monthly premium on a month-by-month basis. Timely payment of premiums, including any arrearages accrued from prior enrollment, is a condition of receiving any expansion population services. Premiums collected under this subsection shall be deposited in the premiums subaccount of the account for health care transformation created pursuant to section 249J.23. An expansion population member shall

also pay the same copayments required of other adult recipients of medical assistance.

2. The department may reduce the required out-of-pocket expenditures for an individual expansion population member based upon the member's increased wellness activities such as smoking cessation or compliance with the personal health improvement plan completed by the member. The department shall also waive the required out-of-pocket expenditures for an individual expansion population member based upon a hardship that would accrue from imposing such required expenditures. Information regarding the premium payment obligation and the hardship exemption, including the process by which a prospective enrollee may apply for the hardship exemption, shall be provided to a prospective enrollee at the time of application. The prospective enrollee shall acknowledge, in writing, receipt and understanding of the information provided.

3. The department shall submit to the governor and the general assembly by March 15, 2006, a design for each of the following:

a. An insurance cost subsidy program for expansion population members who have access to employer health insurance plans, provided that the design shall require that no less than fifty percent of the cost of such insurance shall be paid by the employer.

b. A health care account program option for individuals eligible for enrollment in the expansion population. The health care account program option shall be available only to adults who have been enrolled in the expansion population for at least twelve consecutive calendar months. Under the health care account program option, the indi-

vidual would agree to exchange one year's receipt of benefits under the expansion population, to which the individual would otherwise be entitled, for a credit to obtain any medical assistance program covered service up to a specified amount. The balance in the health care account at the end of the year, if any, would be available for withdrawal by the individual.

4. The department shall track the impact of the out-of-pocket expenditures on expansion population enrollment and shall report the findings on at least a quarterly basis to the medical assistance projections and assessment council established pursuant to section 249J.20. The findings shall include estimates of the number of expansion population members complying with payment of required out-of-pocket expenditures, the number of expansion population members not complying with payment of required out-of-pocket expenditures and the reasons for noncompliance, any impact as a result of the out-of-pocket requirements on the provision of services to the populations previously served, the administrative time and cost associated with administering the out-of-pocket requirements, and the benefit to the state resulting from the out-of-pocket expenditures. To the extent possible, the department shall track the income level of the member, the health condition of the member, and the family status of the member relative to the out-of-pocket information.

2007 Acts, ch 218, §104, 112

Department of human services notified that medical assistance waiver amendment not required for implementation of 2007 Acts, ch 218, §104, changes to subsection 1; implementation scheduled for July 1, 2007; 2007 Acts, ch 218, §112

Subsection 1 amended

## CHAPTER 249K

### NURSING FACILITY CONSTRUCTION OR EXPANSION

Chapter to be implemented only if the department of human services receives approval from centers for Medicare and Medicaid services of the United States department of health and human services for medical assistance state plan amendment; approval of instant relief or nondirect care limit exception dependent on extent of available funding; 2007 Acts, ch 219, §41

#### 249K.1 Purpose — intent.

The purpose of this chapter is to provide a mechanism to support the appropriate number of nursing facility beds for the state's citizens and to financially assist nursing facilities in remaining compliant with applicable regulations. It is the intent of this chapter that the administrative burden on both the state and nursing facilities be minimal.

2007 Acts, ch 219, §35, 41, 43

Section to be implemented only if the department of human services receives approval from centers for Medicare and Medicaid services of the United States department of health and human services for medical assis-

tance state plan amendment; approval of instant relief or nondirect care limit exception dependent on extent of available funding; 2007 Acts, ch 219, §41

NEW section

#### 249K.2 Definitions.

As used in this chapter, unless the context otherwise requires:

1. "Complete replacement" means completed construction on a new nursing facility to replace an existing licensed and certified facility. The replacement facility shall be located in the same geographical service area as the facility that is re-

placed and shall have the same number or fewer licensed beds than the original facility.

2. “*Department*” means the department of human services.

3. “*Iowa Medicaid enterprise*” means Iowa Medicaid enterprise as defined in section 249J.3.

4. “*Major renovations*” means construction or facility improvements to a nursing facility in which the total amount expended exceeds one million five hundred thousand dollars.

5. “*Medical assistance*” or “*medical assistance program*” means the medical assistance program created pursuant to chapter 249A.

6. “*New construction*” means the construction of a new nursing facility which does not replace an existing licensed and certified facility and requires the provider to obtain a certificate of need pursuant to chapter 135, division VI.

7. “*Nondirect care component*” means the portion of the reimbursement rate under the medical assistance program attributable to administrative, environmental, property, and support care costs reported on the provider’s financial and statistical report.

8. “*Nursing facility*” means a nursing facility as defined in section 135C.1.

9. “*Provider*” means a current or future owner or operator of a nursing facility that provides medical assistance program services.

10. “*Rate determination letter*” means the letter that is distributed quarterly by the Iowa Medicaid enterprise to each nursing facility, which is based on previously submitted financial and statistical reports from each nursing facility.

2007 Acts, ch 219, §36, 41, 43

Section to be implemented only if the department of human services receives approval from centers for Medicare and Medicaid services of the United States department of health and human services for medical assistance state plan amendment; approval of instant relief or nondirect care limit exception dependent on extent of available funding; 2007 Acts, ch 219, §41

NEW section

### **249K.3 General provisions — instant relief — nondirect care limit exception.**

1. A provider that constructs a complete replacement, makes major renovations to, or newly constructs a nursing facility may be entitled to the rate relief and exceptions provided under this chapter. The total period during which a provider may participate in any relief shall not exceed two years. The total period during which a provider may participate in any nondirect care limit exception shall not exceed ten years. A provider seeking assistance under this chapter may request both instant relief and the nondirect care limit exception.

2. If the provider requests instant relief, the following provisions shall apply:

a. The provider shall submit a written request for instant relief to the Iowa Medicaid enterprise explaining the nature, timing, and goals of the project and the time period during which the relief is requested. The written request shall clearly

state if the provider is also requesting the nondirect care limit exception. The written request for instant relief shall be submitted no earlier than thirty days prior to the placement of the provider’s assets in service. The written request for relief shall provide adequate details to calculate the estimated value of relief including but not limited to the total cost of the project, the estimated annual depreciation expenses using generally accepted accounting principles, the estimated useful life based upon existing medical assistance and Medicare provisions, and a copy of the most current depreciation schedule. If interest expenses are included, a copy of the general terms of the debt service and the estimated annual amount of the interest expenses shall be submitted with the written request for relief.

b. The following shall apply to the value of relief amount:

(1) If interest expenses are disclosed, the amount of these expenses shall be added to the value of relief.

(2) The calculation of the estimated value of relief shall take into consideration the removal of existing assets and debt service.

(3) The calculation of the estimated value of relief shall be demonstrated as an amount per patient day to be added to the nondirect care component for the relevant period. The estimated annual patient days for this calculation shall be determined based upon budgeted amounts or the most recent annual total as demonstrated on the provider’s Medicaid financial and statistical report. For the purposes of calculating the per diem relief, total patient days shall be the greater of the estimated annual patient days or eighty-five percent of the facility’s estimated licensed capacity.

(4) The combination of the nondirect care component and the estimated value of relief shall not exceed one hundred and ten percent of the nondirect care median for the relevant period. If a nondirect care limit exception has been requested and granted, the combination of the nondirect care component and the estimated value of relief shall not exceed one hundred twenty percent of the nondirect care median for the relevant period.

c. Instant relief granted under this subsection shall begin the first day of the calendar quarter following placement of the provider’s assets in service. If the required information to calculate the instant relief, as specified in paragraph “a”, is not submitted prior to the first day of the calendar quarter following placement of the provider’s assets in service, instant relief shall instead begin on the first day of the calendar quarter following receipt of the required information.

d. Instant relief granted under this subsection shall be terminated at the time of the provider’s subsequent biannual rebasing when the submission of the annual cost report for the provider includes the new replacement costs and the annual property costs reflect the new assets.

e. During the period in which instant relief is granted, the Iowa Medicaid enterprise shall recalculate the value of the instant relief based on allowable costs and patient days reported on the annual financial and statistical report. For purposes of calculating the per diem relief, total patient days shall be the greater of actual annual patient days or eighty-five percent of the facility's licensed capacity. The actual value of relief shall be added to the nondirect care component for the relevant period, not to exceed one hundred ten percent of the nondirect care median for the relevant period or not to exceed one hundred twenty percent of the nondirect care median for the relevant period if the nondirect care limit exception is requested and granted. The provider's quarterly rates for the relevant period shall be retroactively adjusted to reflect the revised nondirect care rate. All claims with dates of service from the date that instant relief is granted to the date that the instant relief is terminated shall be repriced to reflect the actual value of the instant relief per diem utilizing a mass adjustment.

3. If the provider requests the nondirect care limit exception, all of the following shall apply:

a. The nondirect care limit for the rate setting period shall be increased to one hundred and twenty percent of the median for the relevant period.

b. The exception period shall not exceed a period of two years. If the provider is requesting only the nondirect care limit exception, the request shall be submitted within sixty days of the release of the July 1 rate determination letters following each biannual rebasing cycle, and shall be effective the first day of the month following receipt of the request. If applicable, the provider shall identify any time period in which instant relief was granted and shall indicate how many times the instant relief or nondirect care limit exception was granted previously.

2007 Acts, ch 219, §37, 41, 43  
Section to be implemented only if the department of human services receives approval from centers for Medicare and Medicaid services of the United States department of health and human services for medical assistance state plan amendment; approval of instant relief or nondirect care limit exception dependent on extent of available funding; 2007 Acts, ch 219, §41

NEW section

#### **249K.4 Preliminary evaluation.**

1. A provider preparing cost or other feasibility projections for a request for relief or an exception pursuant to section 249K.3 may submit a request for preliminary evaluation.

2. The request shall contain all of the information required for the type of assistance sought pursuant to section 249K.3.

3. The provider shall estimate the timing of the initiation and completion of the project to allow the department to respond with estimates of both instant relief and the nondirect care limit exception.

4. The department shall respond to a request

for preliminary evaluation under this section within thirty days of receipt of the request. A preliminary evaluation does not guarantee approval of instant relief or the nondirect care limit exception upon submission of a formal request. A preliminary evaluation provides only an estimate of value of the instant relief or nondirect care limit exception based only on the projections.

2007 Acts, ch 219, §38, 41, 43  
Section to be implemented only if the department of human services receives approval from centers for Medicare and Medicaid services of the United States department of health and human services for medical assistance state plan amendment; approval of instant relief or nondirect care limit exception dependent on extent of available funding; 2007 Acts, ch 219, §41

NEW section

#### **249K.5 Participation criteria.**

1. The Iowa Medicaid enterprise shall administer this chapter. The department of human services shall adopt rules, pursuant to chapter 17A, to administer this chapter.

2. A provider requesting instant relief or a nondirect care limit exception under this chapter shall meet one of the following criteria:

a. The nursing facility for which relief or an exception is requested is in violation of life safety code requirements and changes are necessary to meet regulatory compliance.

b. The nursing facility for which relief or an exception is requested is proposing development of a home and community-based services waiver program service that meets the following requirements:

(1) The service is provided on the direct site and is a nonnursing service.

(2) The service is provided in an underserved area, which may include a rural area, and the nursing facility provides documentation of this.

(3) The service meets all federal and state requirements.

(4) The service is adult day care, consumer directed attendant care, assisted living, day habilitation, home delivered meals, personal emergency response, or respite.

3. In addition to any other factors to be considered in determining if a provider is eligible to participate under this chapter, the Iowa Medicaid enterprise shall consider all of the following:

a. The history of the provider's regulatory compliance.

b. The historical access to nursing facility services for medical assistance program beneficiaries.

c. The provider's dedication to and participation in quality of care, considering all quality programs in which the provider has participated.

d. The provider's plans to facilitate person-directed care.

e. The provider's plans to facilitate dementia units and specialty post-acute services.

4. a. Any relief or exception granted under this chapter is temporary and shall be immediately terminated if all of the participation require-

ments under this chapter are not met.

b. If a provider's medical assistance program or Medicare certification is revoked, any existing exception or relief shall be terminated and the provider shall not be eligible to request subsequent relief or an exception under this chapter.

5. Following a change in ownership, relief or an exception previously granted shall continue and future rate calculations shall be determined

under the provisions of 441 IAC 81.6(12) relating to termination or change of ownership of a nursing facility.

2007 Acts, ch 219, §39, 41, 43

Section to be implemented only if the department of human services receives approval from centers for Medicare and Medicaid services of the United States department of health and human services for medical assistance state plan amendment; approval of instant relief or nondirect care limit exception dependent on extent of available funding; 2007 Acts, ch 219, §41

NEW section

## CHAPTER 252B

### CHILD SUPPORT RECOVERY

#### 252B.5 Services of unit.

The child support recovery unit shall provide the following services:

1. Assistance in the location of an absent parent or any other person who has an obligation to support the child of the resident parent.

2. Aid in establishing paternity and securing a court or administrative order for support pursuant to chapter 252A, 252C, 252F, or 600B, or any other chapter providing for the establishment of paternity or support.

3. Aid in enforcing through court or administrative proceedings an existing court order for support issued pursuant to chapter 252A, 252C, 252F, 598, or 600B, or any other chapter under which child or medical support is granted. The director may enter into a contract with a private collection agency to collect support payments for cases which have been identified by the department as difficult collection cases if the department determines that this form of collection is more cost-effective than departmental collection methods. The department shall utilize, to the maximum extent possible, every available automated process to collect support payments prior to referral of a case to a private collection agency. A private collection agency with whom the department enters a contract under this subsection shall comply with state and federal confidentiality requirements and debt collection laws. The director may use a portion of the state share of funds collected through this means to pay the costs of any contract authorized under this subsection.

4. Assistance to set off against a debtor's income tax refund or rebate any support debt, which is assigned to the department of human services or which the child support recovery unit is attempting to collect on behalf of any individual not eligible as a public assistance recipient, which has accrued through written contract, subrogation, or court judgment, and which is in the form of a liquidated sum due and owing for the care, support, or maintenance of a child. Unless the periodic payment plan provisions for a retroactive modification pursuant to section 598.21C apply, the entire

amount of a judgment for accrued support, notwithstanding compliance with a periodic payment plan or regardless of the date of entry of the judgment, is due and owing as of the date of entry of the judgment and is delinquent for the purposes of set-off, including for setoff against a debtor's federal income tax refund or other federal nontax payment. The department of human services shall adopt rules pursuant to chapter 17A necessary to assist the department of administrative services in the implementation of the child support setoff as established under section 8A.504.

5. Determine periodically whether an individual receiving unemployment compensation benefits under chapter 96 owes a support obligation which is being enforced by the unit, and enforce the support obligation through court or administrative proceedings to have specified amounts withheld from the individual's unemployment compensation benefits.

6. Assistance in obtaining medical support as defined in chapter 252E.

7. At the request of either parent who is subject to the order of support or upon its own initiation, review the amount of the support award in accordance with the guidelines established pursuant to section 598.21B, and Title IV-D of the federal Social Security Act, as amended, and take action to initiate modification proceedings if the criteria established pursuant to this section are met. However, a review of a support award is not required if the child support recovery unit determines that such a review would not be in the best interest of the child and neither parent has requested such review.

The department shall adopt rules no later than October 13, 1990, setting forth the process for review of requests for modification of support obligations and the criteria and process for taking action to initiate modification proceedings.

8. a. Assistance, in consultation with the department of administrative services, in identifying and taking action against self-employed individuals as identified by the following conditions:

(1) The individual owes support pursuant to a

court or administrative order being enforced by the unit and is delinquent in an amount equal to or greater than the support obligation amount assessed for one month.

(2) The individual has filed a state income tax return in the preceding twelve months.

(3) The individual has no reported tax withholding amount on the most recent state income tax return.

(4) The individual has failed to enter into or comply with a formalized repayment plan with the unit.

(5) The individual has failed to make either all current support payments in accordance with the court or administrative order or to make payments against any delinquency in each of the preceding twelve months.

b. Notwithstanding section 252B.9, the unit may forward information to the department of administrative services as necessary to implement this subsection, including but not limited to both of the following:

(1) The name and social security number of the individual.

(2) Support obligation information in the specific case, including the amount of the delinquency.

9. The review and adjustment, modification, or alteration of a support order pursuant to chapter 252H upon adoption of rules pursuant to chapter 17A and periodic notification, at a minimum of once every three years, to parents subject to a support order of their rights to these services.

10. The unit shall not establish orders for spousal support. The unit shall enforce orders for spousal support only if the spouse is the custodial parent of a child for whom the unit is also enforcing a child support or medical support order.

11. a. Comply with federal procedures to periodically certify to the secretary of the United States department of health and human services, a list of the names of obligors determined by the unit to owe delinquent support, under a support order as defined in section 252J.1, in excess of two thousand five hundred dollars. The certification of the delinquent amount owed may be based upon one or more support orders being enforced by the unit if the delinquent support owed exceeds two thousand five hundred dollars. The certification shall include any amounts which are delinquent pursuant to the periodic payment plan when a modified order has been retroactively applied. The certification shall be in a format and shall include any supporting documentation required by the secretary.

b. All of the following shall apply to an action initiated by the unit under this subsection:

(1) The obligor shall be sent a notice by regular mail in accordance with federal law and regulations and the notice shall remain in effect until support delinquencies have been paid in full. The

notice shall include all of the following:

(a) A statement regarding the amount of delinquent support owed by the obligor.

(b) A statement providing information that if the delinquency is in excess of two thousand five hundred dollars, the United States secretary of state may apply a passport sanction by revoking, restricting, limiting, or refusing to issue a passport as provided in 42 U.S.C. § 652(k).

(c) Information regarding the procedures for challenging the certification by the unit.

(2) (a) A challenge shall be based upon mistake of fact. For the purposes of this subsection, "mistake of fact" means a mistake in the identity of the obligor or a mistake in the amount of the delinquent child support owed if the amount did not exceed two thousand five hundred dollars on the date of the unit's decision on the challenge.

If the obligor chooses to challenge the certification, the obligor shall notify the unit within the time period specified in the notice to the obligor. The obligor shall include any relevant information with the challenge.

(b) Upon timely receipt of the challenge, the unit shall review the certification for a mistake of fact, or refer the challenge for review to the child support agency in the state chosen by the obligor as provided by federal law.

(c) Following the unit's review of the certification, the unit shall send a written decision to the obligor within ten days of timely receipt of the challenge.

(i) If the unit determines that a mistake of fact exists, the unit shall send notification in accordance with federal procedures withdrawing the certification for passport sanction.

(ii) If the unit determines that a mistake of fact does not exist, the obligor may contest the determination within ten days following the issuance of the decision by submitting a written request for a contested case proceeding pursuant to chapter 17A.

(3) Following issuance of a final decision under chapter 17A that no mistake of fact exists, the obligor may request a hearing before the district court pursuant to chapter 17A. The department shall transmit a copy of its record to the district court pursuant to chapter 17A. The scope of the review by the district court shall be limited to demonstration of a mistake of fact. Issues related to visitation, custody, or other provisions not related to the support provisions of a support order are not grounds for a hearing under this subsection.

c. Following certification to the secretary, if the unit determines that an obligor no longer owes delinquent support in excess of two thousand five hundred dollars, the unit shall provide information and notice as the secretary requires to withdraw the certification for passport sanction.

12. a. Beginning October 1, 2007, implement the provision of the federal Deficit Reduction Act

of 2005, Pub. L. No. 109-171 § 7310, requiring an annual collections fee of twenty-five dollars in child support cases in which the family has never received assistance under Title IV-A of the federal Social Security Act for whom the unit has collected at least five hundred dollars. After the first five hundred dollars in support is collected in each year for a family, the fee shall be collected from the obligor by retaining twenty-five dollars from subsequent collections. If five hundred dollars but less than five hundred twenty-five dollars is collected in any year, any unpaid portion of the annual fee shall not accumulate and is not due. Any amount retained to pay the twenty-five dollar fee shall not reduce the amount of support due under the support order. The unit shall send information regarding the requirements of this subsection by regular mail to the last known address of an affected obligor or obligee, or may include the information for an obligee in an application for services signed by the obligee. In addition, the unit shall take steps necessary regarding the fee to qualify for federal funds in conformity with the provisions of Title IV-D of the federal Social Security Act, including receiving and accounting for fee payments, as appropriate, through the collection services center created in section 252B.13A.

b. Fees collected pursuant to this subsection shall be considered repayment receipts as defined in section 8.2, and shall be used for the purposes of the unit. The director shall maintain an accurate record of the fees collected and expended under this subsection.

c. If any requirement in paragraph “a” for implementation of the annual fee does not conform to federal law, the fee shall instead be implemented in conformance with federal law. Additionally, if federal law does not permit collection of the annual fee from the obligor as provided in paragraph “a”, the fee shall be collected from the obligee by retaining a twenty-five dollar fee from support paid

by the obligor.

2007 Acts, ch 218, §45, 137 – 141

For future amendments to subsection 2 effective March 1, 2008, see 2007 Acts, ch 218, §157, 187

For transition provisions applicable to existing child support recovery unit rules, procedures, definitions, and requirements, and for nullification of 441 IAC rule 98.3, see 2007 Acts, ch 218, §186

2007 amendments to subsection 11 take effect October 1, 2007; 2007 Acts, ch 218, §141

Subsection 11, paragraph a amended

Subsection 11, paragraph b, subparagraph (1), subparagraph subdivision (b) amended

Subsection 11, paragraph b, subparagraph (2), subparagraph subdivision (a), unnumbered paragraph 1 amended

Subsection 11, paragraph c amended

NEW subsection 12

### 252B.26 Service of process.

Notwithstanding any provision of law to the contrary, the unit may serve a petition, notice, or rule to show cause under chapter 252A, 252C, 252F, 252H, 252K, 598, or 665 as specified in each chapter, or as follows:

1. The unit may serve a petition, notice, or rule to show cause by certified mail. Return acknowledgment is required to prove service by certified mail, rules of civil procedure 1.303(5) and 1.308(5) shall not apply, and the return acknowledgment shall be filed with the clerk of court.

2. The unit may serve a notice of intent under chapter 252H, or a notice of decision under section 252H.14A, upon any party or parent who is receiving family investment program assistance for the parent or child by sending the notice by regular mail to the address maintained by the department. Rules of civil procedure 1.303(5) and 1.308(5) shall not apply and the unit shall file proof of service as provided in chapter 252H. If the notice is determined to be undeliverable, the unit shall serve the notice as otherwise provided in this section or by personal service.

2007 Acts, ch 218, §142, 156

2007 amendments to this section take effect October 1, 2007; 2007 Acts, ch 218, §156

Section amended

## CHAPTER 252C

### CHILD SUPPORT DEBTS — ADMINISTRATIVE PROCEDURES

#### 252C.1 Definitions.

As used in this chapter, unless the context otherwise requires:

1. “*Administrator*” means the administrator of the child support recovery unit of the department of human services, or the administrator’s designee.

2. “*Caretaker*” means a parent, relative, guardian, or another person who is responsible for paying foster care costs pursuant to chapter 234 or whose needs are included in an assistance payment made pursuant to chapter 239B.

3. “*Court order*” means a judgment or order of

a court of this state or another state requiring the payment of a set or determinable amount of monetary support. For orders entered on or after July 1, 1990, unless the court specifically orders otherwise, medical support, as defined in section 252E.1, is not included in the amount of monetary support.

4. “*Department*” means the department of human services.

5. “*Dependent child*” means a person who meets the eligibility criteria established in chapter 234 or 239B and whose support is required by chapter 234, 239B, 252A, 252F, 598, or 600B.

6. “*Medical support*” means either the provision of coverage under a health benefit plan, including a group or employment-related or an individual health benefit plan, or a health benefit plan provided pursuant to chapter 514E, to meet the medical needs of a dependent and the cost of any premium required by a health benefit plan, or the payment to the obligee of a monetary amount in lieu of providing coverage under a health benefit plan, either of which is an obligation separate from any monetary amount of child support ordered to be paid.

7. “*Public assistance*” means foster care costs paid by the department pursuant to chapter 234 or assistance provided pursuant to chapter 239B.

8. “*Responsible person*” means a parent, relative, guardian, or another person legally liable for the support of a child or a child’s caretaker.

For future amendments to subsection 6 effective March 1, 2008, see 2007 Acts, ch 218, §158, 187

For transition provisions applicable to existing child support recovery unit rules, procedures, definitions, and requirements, and for nullification of 441 IAC rule 98.3, see 2007 Acts, ch 218, §186

Section not amended; footnotes added

### **252C.3 Notice of support debt — failure to respond — hearing — order.**

1. The administrator may issue a notice stating the intent to secure an order for either payment of medical support established as defined in chapter 252E or payment of an accrued or accruing support debt due and owed to the department or an individual under section 252C.2, or both. The notice shall be served upon the responsible person in accordance with the rules of civil procedure. The notice shall include all of the following:

*a.* A statement that the support obligation will be set pursuant to the child support guidelines established pursuant to section 598.21B, and the criteria established pursuant to section 252B.7A, and that the responsible person is required to provide medical support in accordance with chapter 252E.

*b.* The name of a public assistance recipient and the name of the dependent child or caretaker for whom the public assistance is paid.

*c.* (1) A statement that if the responsible person desires to discuss the amount of support that the responsible person should be required to pay, the responsible person may, within ten days after being served, contact the office of the child support recovery unit which sent the notice and request a negotiation conference.

(2) A statement that if a negotiation conference is requested, then the responsible person shall have ten days from the date set for the negotiation conference or thirty days from the date of service of the original notice, whichever is later, to send a request for a hearing to the office of the child support recovery unit which issued the notice.

(3) A statement that after the holding of the

negotiation conference, the administrator may issue a new notice and finding of financial responsibility for child support or medical support, or both, to be sent to the responsible person by regular mail addressed to the responsible person’s last known address, or if applicable, to the last known address of the responsible person’s attorney.

(4) A statement that if the administrator issues a new notice and finding of financial responsibility for child support or medical support, or both, then the responsible person shall have thirty days from the date of issuance of the new notice to send a request for a hearing to the office of the child support recovery unit which issued the notice. If the administrator does not issue a new notice and finding of financial responsibility for child support or medical support, or both, the responsible party shall have ten days from the date of issuance of the conference report to send a request for a hearing to the office of the child support recovery unit which issued the conference report.

*d.* A statement that if the responsible person objects to all or any part of the notice or finding of financial responsibility for child support or medical support, or both, and a negotiation conference is not requested, the responsible person shall, within thirty days of the date of service send to the office of the child support recovery unit which issued the notice a written response setting forth any objections and requesting a hearing.

*e.* A statement that if a timely written request for a hearing is received by the office of the child support recovery unit which issued the notice, the responsible person shall have the right to a hearing to be held in district court; and that if no timely written response is received, the administrator may enter an order in accordance with the notice and finding of financial responsibility for child support or medical support, or both.

*f.* A statement that, as soon as the order is entered, the property of the responsible person is subject to collection action, including but not limited to wage withholding, garnishment, attachment of a lien, and execution.

*g.* A statement that the responsible person shall notify the administrator of any change of address, employment, or medical coverage as required by chapter 252E.

*h.* A statement that if the responsible person has any questions, the responsible person should telephone or visit an office of the child support recovery unit or consult an attorney.

*i.* Such other information as the administrator finds appropriate.

2. The time limitations for requesting a hearing in subsection 1 may be extended by the administrator.

3. If a timely written response setting forth objections and requesting a hearing is received by the appropriate office of the child support recovery unit, a hearing shall be held in district court.



4. If timely written response and request for hearing is not received by the appropriate office of the child support recovery unit, the administrator may enter an order in accordance with the notice, and shall specify all of the following:

a. The amount of monthly support to be paid, with directions as to the manner of payment.

b. The amount of the support debt accrued and accruing in favor of the department.

c. The name of the custodial parent or agency having custody of the dependent child and the name and birth date of the dependent child for whom support is to be paid.

d. That the property of the responsible person is subject to collection action, including but not limited to wage withholding, garnishment, attachment of a lien, and execution.

e. The medical support required pursuant to chapter 598 and rules adopted pursuant to chapter 252E.

5. The responsible person shall be sent a copy of the order by regular mail addressed to the responsible person's last known address, or if applicable, to the last known address of the responsible person's attorney. The order is final, and action by the administrator to enforce and collect upon the order, including arrearages and medical support, or both, may be taken from the date of approval of

the order by the court pursuant to section 252C.5.

For future amendments to subsection 1, unnumbered paragraph 1 and paragraph c, subparagraph (1), effective March 1, 2008, see 2007 Acts, ch 218, §159, 160, 187

For transition provisions applicable to existing child support recovery unit rules, procedures, definitions, and requirements, and for nullification of 441 IAC rule 98.3, see 2007 Acts, ch 218, §186

Section not amended; footnotes added

#### **252C.12 Waiver of time limitations by responsible person.**

1. A responsible person may waive the time limitations established in section 252C.3.

2. Upon receipt of a signed statement from the responsible person waiving the time limitations established in section 252C.3, the administrator may proceed to enter an order for support and the court may approve the order, whether or not the time limitations have expired.

3. If a responsible person waives the time limitations established in section 252C.3 and an order for support is entered under this chapter, the signed statement of the responsible person waiving the time limitations shall be filed with the order for support.

For future amendments to subsection 2 effective March 1, 2008, see 2007 Acts, ch 218, §161, 187

For transition provisions applicable to existing child support recovery unit rules, procedures, definitions, and requirements, and for nullification of 441 IAC rule 98.3, see 2007 Acts, ch 218, §186

Section not amended; footnotes added

## CHAPTER 252D

### SUPPORT PAYMENTS — INCOME WITHHOLDING

#### **252D.1 Delinquent support payments.**

If support payments ordered under this chapter or chapter 232, 234, 252A, 252C, 252E, 252F, 598, 600B, or any other applicable chapter, or under a comparable statute of a foreign jurisdiction, as certified to the child support recovery unit established in section 252B.2, are not paid to the clerk of the district court or the collection services center pursuant to section 598.22 and become delinquent in an amount equal to the payment for one month, the child support recovery unit may enter an ex parte order or, upon application of a person entitled to receive the support payments, the district court may enter an ex parte order, notifying the person whose income is to be withheld, of the delinquent amount, of the amount of income to be withheld, and of the procedure to file a motion to quash the order for income withholding, and ordering the withholding of specified sums to be deducted from the delinquent person's income as defined in section 252D.16 sufficient to pay the support obligation and, except as provided in section 598.22, requiring the payment of such sums to the clerk of the district court or the collection services center. Beginning October 1, 1999, all income withholding payments shall be paid to the collec-

tion services center. Notification of income withholding shall be provided to the obligor and to the payor of income pursuant to section 252D.17.

2007 Acts, ch 22, §57

Section amended

#### **252D.18A Multiple income withholding orders — amounts withheld by payor.**

When the obligor is responsible for paying more than one support obligation and the payor of income has received more than one income withholding order or notice of an order for the obligor, the payor shall withhold amounts in accordance with all of the following:

1. The total of all amounts withheld shall not exceed the amounts specified in 15 U.S.C. § 1673(b). For orders or notices issued by the child support recovery unit, the limit for the amount to be withheld shall be specified in the order or notice.

2. As reimbursement for the payor's processing costs, the payor may deduct a fee of no more than two dollars for each payment withheld in addition to the amount withheld for support.

3. Priority shall be given to the withholding of current support rather than delinquent support.

The payor shall not allocate amounts withheld in a manner which results in the failure to withhold an amount for one or more of the current support obligations.

*a.* To arrive at the amount to be withheld for each obligee, the payor shall total the amounts due for current support under the income withholding orders and the notices of orders and determine the proportionate share for each obligee. The proportionate share shall be determined by dividing the amount due for current support for each order or notice of order by the total due for current support for all orders and notices of orders. The results are the percentages of the obligor's net income which shall be withheld for each obligee.

*b.* If, after completing the calculation in paragraph "a", the withholding limit specified under subsection 1 has not been attained, the payor shall total the amounts due for arrearages and determine the proportionate share for each obligee. The

proportionate share amounts shall be established utilizing the procedures established in paragraph "a" for current support obligations.

4. The payor shall identify and report payments by the obligor's name, account number, amount, and date withheld pursuant to section 252D.17. Until October 1, 1999, if payments for multiple obligees are combined, the portion of the payment attributable to each obligee shall be specifically identified. Beginning October 1, 1999, if payments for multiple obligees are combined, the portion of the payment attributable to each obligee shall be specifically identified only if the payor is directed to do so by the child support recovery unit.

For future amendments to this section effective March 1, 2008, see 2007 Acts, ch 218, §162, 187

For transition provisions applicable to existing child support recovery unit rules, procedures, definitions, and requirements, and for nullification of 441 IAC rule 98.3, see 2007 Acts, ch 218, §186

Section not amended; footnotes added

## CHAPTER 252E

### MEDICAL SUPPORT

#### 252E.1 Definitions.

As used in this chapter, unless the context otherwise requires:

1. "Accessible" means any of the following, unless otherwise provided in the support order:

*a.* The health benefit plan does not have service area limitations or provides an option not subject to service area limitations.

*b.* The health benefit plan has service area limitations and the dependent lives within thirty miles or thirty minutes of a network primary care provider.

2. "Basic coverage" means coverage provided under a health benefit plan that at a minimum provides coverage for emergency care, inpatient and outpatient hospital care, physician services whether provided within or outside a hospital setting, and laboratory and x-ray services.

3. "Child" means a person for whom child or medical support may be ordered pursuant to chapter 234, 239B, 252A, 252C, 252F, 252H, 252K, 598, 600B, or any other chapter of the Code or pursuant to a comparable statute of a foreign jurisdiction.

4. "Department" means the department of human services, which includes but is not limited to the child support recovery unit, or any comparable support enforcement agency of another state.

5. "Dependent" means a child, or an obligee for whom a court may order coverage by a health benefit plan pursuant to section 252E.3.

6. "Enroll" means to be eligible for and covered by a health benefit plan.

7. "Health benefit plan" means any policy or contract of insurance, indemnity, subscription or

membership issued by an insurer, health service corporation, health maintenance organization, or any similar corporation, organization, or a self-insured employee benefit plan, for the purpose of covering medical expenses. These expenses may include but are not limited to hospital, surgical, major medical insurance, dental, optical, prescription drugs, office visits, or any combination of these or any other comparable health care expenses.

8. "Insurer" means any entity which provides a health benefit plan.

9. "Medical support" means either the provision of a health benefit plan, including a group or employment-related or an individual health benefit plan, or a health benefit plan provided pursuant to chapter 514E, to meet the medical needs of a dependent and the cost of any premium required by a health benefit plan, or the payment to the obligee of a monetary amount in lieu of a health benefit plan, either of which is an obligation separate from any monetary amount of child support ordered to be paid. Medical support is not alimony.

10. "National medical support notice" means a notice as prescribed under 42 U.S.C. § 666(a)(19) or a substantially similar notice, that is issued and forwarded by the department to enforce medical support provisions of a support order.

11. "Obligee" means a parent or another natural person legally entitled to receive a support payment on behalf of a child.

12. "Obligor" means a parent or another natural person legally responsible for the support of a dependent.

13. “*Order*” means a support order entered pursuant to chapter 234, 252A, 252C, 252F, 252H, 252K, 598, 600B, or any other support chapter, or pursuant to a comparable statute of a foreign jurisdiction, or an ex parte order entered pursuant to section 252E.4. “*Order*” also includes a notice of such an order issued by the department.

14. “*Plan administrator*” means the employer or sponsor that offers the health benefit plan or the person to whom the duty of plan administrator is delegated by the employer or sponsor offering the health benefit plan, by written agreement of the parties.

15. “*Primary care provider*” means a physician who provides primary care who is a family or general practitioner, a pediatrician, an internist, an obstetrician, or a gynecologist.

For future amendments to this section effective March 1, 2008, see 2007 Acts, ch 218, §163, 187

For transition provisions applicable to existing child support recovery unit rules, procedures, definitions, and requirements, and for nullification of 441 IAC rule 98.3, see 2007 Acts, ch 218, §186

Section not amended; footnotes added

#### **252E.1A Reserved.**

For future text of this section effective March 1, 2008, see 2007 Acts, ch 218, §164, 187

For transition provisions applicable to existing child support recovery unit rules, procedures, definitions, and requirements, and for nullification of 441 IAC rule 98.3, see 2007 Acts, ch 218, §186

#### **252E.2A Reserved.**

For future text of this section effective March 1, 2008, see 2007 Acts, ch 218, §165, 187

For transition provisions applicable to existing child support recovery unit rules, procedures, definitions, and requirements, and for nullification of 441 IAC rule 98.3, see 2007 Acts, ch 218, §186

#### **252E.4 Order to employer.**

1. When a support order requires an obligor to provide coverage under a health benefit plan, the district court or the department may enter an ex parte order directing an employer to take all actions necessary to enroll an obligor’s dependent for coverage under a health benefit plan or may include the provisions in an ex parte income withholding order or notice of income withholding pursuant to chapter 252D. The child support recovery unit, where appropriate, shall issue a national medical support notice to an employer within two business days after the date information regarding a newly hired employee is entered into the centralized employee registry and matched with a noncustodial parent in the case being enforced by the unit. The department may amend the information in the ex parte order or may amend or terminate the national medical support notice regarding health insurance provisions if necessary to comply with health insurance requirements including but not limited to the provisions of section 252E.2, subsection 2, or to correct a mistake of fact.

2. The obligee, district court, or department may forward either the support order containing the provision for coverage under a health benefit

plan or the ex parte order provided for in subsection 1 to the obligor’s employer.

3. This chapter shall be constructive notice to the obligor of enforcement and further notice prior to enforcement is not required.

4. The order requiring coverage is binding on all future employers or insurers if the dependent is eligible to be enrolled in the health benefit plan under the applicable plan terms and conditions.

For future amendments to subsection 1 effective March 1, 2008, see 2007 Acts, ch 218, §166, 187

For transition provisions applicable to existing child support recovery unit rules, procedures, definitions, and requirements, and for nullification of 441 IAC rule 98.3, see 2007 Acts, ch 218, §186

Section not amended; footnotes added

#### **252E.5 Effect of order on employer.**

1. When the order has been forwarded to the obligor’s employer pursuant to section 252E.4, the order is binding on the employer and the employer’s insurer to the extent that the dependent is eligible to be enrolled in the plan under the applicable terms and conditions of the health benefit plan and the standard enrollment guidelines of the insurer. The employer shall allow enrollment of the dependent at any time, notwithstanding any enrollment season restrictions. If a provision of this section conflicts with a provision in the national medical support notice, or in subsection 8, the provision in the notice and subsection 8 shall apply.

2. The employer shall forward a copy of the order to the insurer and request enrollment of the dependent in the health benefit plan. If the obligor fails to apply to obtain coverage for the dependent, the employer shall accept an application to enroll a dependent which has been signed by the obligee or other legal custodian of a child or by the department. Within sixty days of receipt of the order or within sixty days of receipt of application, whichever is earlier, the insurer shall determine whether the dependent is eligible for enrollment under the plan and shall notify the employer of the dependent’s eligibility status. If more than one plan is offered by the employer, the dependent shall be enrolled in the health benefit plan in which the obligor is enrolled. However, if more than one plan is offered to the obligor, the plan selected shall provide coverage which is accessible to the dependent.

3. The employer shall withhold from the employee’s compensation, the employee’s share, if any, of premiums for the health benefit plan in an amount that does not exceed the amount specified in the national medical support notice or the amount specified in 15 U.S.C. § 1673(b) and which is consistent with federal law. The employer shall forward the amount withheld to the insurer.

4. Within thirty days of receipt of an order that requires an obligor to enroll a dependent in a health benefit plan, the obligor’s employer shall provide the following information, as applicable, regarding the enrollment status of the dependent to the obligor, the obligee, or other legal custodian

of the child, and the department:

*a.* That the dependent has been enrolled in a health benefit plan.

*b.* That the dependent is not eligible for enrollment and the reasons that the dependent is not eligible to be enrolled.

*c.* That the order has been forwarded to the insurer and a determination of eligibility for enrollment has not been made.

5. If the dependent has been enrolled in a health benefit plan, all of the following information shall be provided:

*a.* The name of the insurer providing the health benefit plan.

*b.* The dependent's effective date of coverage.

*c.* The health benefit plan or account number.

*d.* The type of health benefit plan under which the dependent has been enrolled, including whether dental, optical, office visits, and prescription drugs are covered services. Additionally, the response shall include a brief description of the applicable deductibles, coinsurance, waiting periods for preexisting medical conditions, and other significant terms or conditions which materially affect the coverage.

6. An employer shall not revoke enrollment or eliminate coverage for a dependent unless the employer is provided with satisfactory written evidence that one of the following conditions exists:

*a.* A court or administrative order requiring coverage in a health benefit plan is no longer in effect.

*b.* The dependent is eligible for or will be enrolled in a comparable health benefit plan which will take effect no later than the effective date of revocation of enrollment in the other plan.

*c.* The employer has eliminated dependent health coverage for all employees.

Nothing in this section requires an employer to maintain coverage for the dependent if the premiums are no longer being paid by the obligor because the employer no longer owes compensation to the obligor or because the obligor's employment has been terminated and the obligor has not elected to continue coverage.

If an order requiring that the obligor provide coverage under a health benefit plan for the dependent has been forwarded to the obligor's employer pursuant to section 252E.4, and the obligor's employment is terminated, the employer shall provide notice to the obligee and the department within ten days of termination of the obligor's employment.

7. If an order requiring that the obligor provide coverage under a health benefit plan for the dependent has been forwarded to the obligor's employer pursuant to section 252E.4, and the employer's health benefit plan is terminated either in its entirety or with respect to the obligor's insurance classification, or the employer has changed its insurer or become self-insured, the employer shall provide notice to the obligee or other legal

custodian of the child and the department ten days prior to the termination or change in insurer.

8. If the department issues a national medical support notice to an employer or plan administrator, all of the following shall apply:

*a.* The employer and plan administrator shall comply with the provisions in the notice.

*b.* The employer and the plan administrator shall treat the notice as an application by the department for health benefit plan coverage for the dependent to the extent such application is required by the health benefit plan.

*c.* If the obligor named in the notice is not an employee of the employer, or if a health benefit plan is not offered or available to the employee, the employer shall notify the department, as provided in the notice, within twenty business days after the date of the notice.

*d.* If a health benefit plan is offered or available to the employee, the employer shall send the plan administrator's portion of the notice to each appropriate plan administrator within twenty business days after the date of the notice.

*e.* Upon notification from the plan administrator that the dependent is enrolled, the employer shall either withhold and forward the premiums as provided in subsection 3, or shall notify the department that the enrollment cannot be completed due to limits established for withholding as provided in subsection 3.

*f.* If the plan administrator notifies the employer that the obligor is subject to a waiting period that expires more than ninety days from the date of receipt of the notice by the plan administrator or that the obligor is subject to a waiting period that is measured in a manner other than the passage of time, the employer shall notify the plan administrator when the obligor becomes eligible to enroll in the plan and that the notice requires enrollment in the plan of the dependent named in the notice.

*g.* The plan administrator shall enroll the dependent, and if necessary to enrollment of the dependent shall also enroll the obligor, in the plan selected in accordance with this paragraph. All of the following shall apply to the selection of the plan:

(1) If the obligor is enrolled in a health benefit plan that offers dependent coverage, that plan shall be selected.

(2) If the obligor is not enrolled in a plan or is not enrolled in a plan that offers dependent coverage, and if only one plan with dependent coverage is offered by the employer, that plan shall be selected.

(3) If the obligor is not enrolled in a health benefit plan or is not enrolled in a health benefit plan that offers dependent coverage, if more than one plan with dependent coverage is offered by the employer, and if the notice is issued by the child support recovery unit, all of the following shall apply:

(a) If only one of the plans is accessible to the

dependent, that plan shall be selected. If none of the plans with dependent coverage is accessible to the dependent, the unit shall amend or terminate the notice.

(b) If more than one of the plans is accessible to the dependent, the plan selected shall be the plan that provides basic coverage for which the employee's share of the premium is lowest.

(c) If more than one of the plans is accessible to the dependent but none of the accessible plans provides basic coverage, the plan selected shall be a plan that is accessible and for which the employee's share of the premium is lowest.

(d) If the employee's share of the premiums is the same under all plans described in subparagraph (b) or (c), the unit shall attempt to consult with the obligee when selecting the plan. If the obligee does not respond within ten days of the unit's attempt, the unit shall select a plan which shall be the plan's default option, if any, or the plan with the lowest deductibles and copayment requirements.

(4) If the obligor is not enrolled in a health benefit plan or is not enrolled in a health benefit plan that offers dependent coverage, if more than one plan with dependent coverage is offered by the employer, and if the notice is issued by the child support enforcement agency of another state, that agency shall select the plan as provided in paragraph "h", subparagraph (3).

*h.* Within forty business days after the date of the notice, the plan administrator shall do all of the following as directed by the notice:

(1) Complete the appropriate portion of the notice and return the portion to the department.

(2) If the dependent is or is to be enrolled, notify the obligor, the obligee, and the child and furnish the obligee with necessary information. Provide the child support recovery unit with the type of health benefit plan under which the dependent has been enrolled, including whether dental, optical, office visits, and prescription drugs are covered services.

(3) If more than one health benefit plan is

available to the obligor and the obligor is not enrolled, forward plan descriptions and documents to the department and enroll the dependent, and if necessary the obligor, in the plan selected by the department or in any default option if the plan administrator has not received a selection from the department within twenty business days of the date the plan administrator returned the national medical support notice response to the department.

(4) If the obligor is subject to a waiting period that expires more than ninety days from the date of receipt of the notice by the plan administrator or if the obligor has not completed a waiting period that is measured in a manner other than the passage of time, notify the employer, the department, the obligor, and the obligee. Upon satisfaction of the period or requirement, complete the enrollment.

(5) Upon completion of the enrollment, notify the employer for a determination of whether the necessary employee share of the premium is available.

(6) If the plan administrator is subject to the federal Employee Retirement Income Security Act, as codified in 29 U.S.C. § 1169, or is subject to the federal Child Support Performance and Incentive Act of 1998, Pub. L. No. 105-200, § 401, subsection (e) or (f), and the plan administrator determines the notice does not constitute a qualified medical child support order, complete and send the response to the department and notify the obligor, the obligee, and the child of the specific reason for the determination.

9. This chapter does not preclude the exchange of required information between the department and employers or insurers through electronic data transfer.

For future amendments to subsection 3 effective March 1, 2008, see 2007 Acts, ch 218, §167, 187

For transition provisions applicable to existing child support recovery unit rules, procedures, definitions, and requirements, and for nullification of 441 IAC rule 98.3, see 2007 Acts, ch 218, §186

Section not amended; footnotes added

## CHAPTER 252F

### ADMINISTRATIVE ESTABLISHMENT OF PATERNITY

#### 252F.1 Definitions.

As used in this chapter unless the context otherwise requires:

1. "*Administrator*" means the administrator of the child support recovery unit of the department of human services or the administrator's designee.

2. "*Child*" means a person who is less than age eighteen or a person who is age eighteen but less than age nineteen and is engaged full-time in completing high school graduation or equivalency re-

quirements in a manner which is reasonably expected to result in completion of the requirements prior to the person reaching age nineteen.

3. "*Mother*" means a mother of the child for whom paternity is being established.

4. "*Paternity is at issue*" means any of the following conditions:

*a.* A child was not born or conceived within marriage.

*b.* A child was born or conceived within mar-

riage but a court has declared that the child is not the issue of the marriage.

5. “*Paternity test*” means and includes any form of blood, tissue, or genetic testing administered to determine the biological father of a child.

6. “*Putative father*” means a person alleged to be the biological father of a child.

7. “*Unit*” means the child support recovery unit created in section 252B.2.

For future amendments to this section effective March 1, 2008, see 2007 Acts, ch 218, §168, 187

For transition provisions applicable to existing child support recovery unit rules, procedures, definitions, and requirements, and for nullification of 441 IAC rule 98.3, see 2007 Acts, ch 218, §186

Section not amended; footnotes added

### **252F.3 Notice of alleged paternity and support debt — conference — request for hearing.**

1. The unit may prepare a notice of alleged paternity and support debt to be served on the putative father if the mother of the child provides a written statement to the unit certifying in accordance with section 622.1 that the putative father is or may be the biological father of the child or children involved. The notice shall be accompanied by a copy of the statement and served on the putative father in accordance with rule of civil procedure 1.305. Service upon the mother shall not constitute valid service upon the putative father. The notice shall include or be accompanied by all of the following:

*a.* The name of the recipient of services under chapter 252B and the name and birth date of the child or children involved.

*b.* A statement that the putative father has been named as the biological father of the child or children named.

*c.* A statement that if paternity is established, the amount of the putative father’s monthly support obligation and the amount of the support debt accrued and accruing will be established in accordance with the guidelines established in section 598.21B, and the criteria established pursuant to section 252B.7A.

*d.* A statement that if paternity is established, the putative father has a duty to provide accrued and accruing medical support to the child or children in accordance with chapter 252E.

*e.* A written explanation of the procedures for determining the child support obligation and a request for financial or income information as necessary for application of the child support guidelines established pursuant to section 598.21B.

*f.* (1) The right of the putative father to request a conference with the unit to discuss paternity establishment and the amount of support that the putative father may be required to pay, within ten days of the date of service of the original notice or, if paternity is contested and paternity testing is conducted, within ten days of the date the paternity test results are issued or mailed to the puta-

tive father by the unit.

(2) A statement that if a conference is requested, the putative father shall have one of the following time frames, whichever is the latest, to send a written request for a court hearing on the issue of support to the unit:

(a) Ten days from the date set for the conference.

(b) Twenty days from the date of service of the original notice.

(c) If paternity was contested and paternity testing was conducted, and the putative father does not deny paternity after the testing or challenge the paternity test results, twenty days from the date paternity test results are issued or mailed by the unit to the putative father.

(3) A statement that after the holding of the conference, the unit shall issue a new notice of alleged paternity and finding of financial responsibility for child support or medical support, or both, to be provided in person to the putative father or sent to the putative father by regular mail addressed to the putative father’s last known address or, if applicable, to the last known address of the putative father’s attorney.

(4) A statement that if the unit issues a new notice of alleged paternity and finding of financial responsibility for child support or medical support, or both, the putative father shall have one of the following time frames, whichever is the latest, to send a written request for a court hearing on the issue of support to the unit:

(a) Ten days from the date of issuance of the new notice.

(b) Twenty days from the date of service of the original notice.

(c) If paternity was contested and paternity testing conducted, and the putative father does not deny paternity after the testing or challenge the paternity test results, twenty days from the date the paternity test results are issued or mailed to the putative father by the unit.

*g.* A statement that if a conference is not requested, and the putative father does not deny paternity or challenge the results of any paternity testing conducted but objects to the finding of financial responsibility or the amount of child support or medical support, or both, the putative father shall send a written request for a court hearing on the issue of support to the unit within twenty days of the date of service of the original notice, or, if paternity was contested and paternity testing conducted, and the putative father does not deny paternity after the testing or challenge the paternity test results, within twenty days from the date the paternity test results are issued or mailed to the putative father by the unit, whichever is later.

*h.* A statement that if a timely written request for a hearing on the issue of support is received by the unit, the putative father shall have the right

to a hearing to be held in district court and that if no timely written request is received and paternity is not contested, the administrator shall enter an order establishing the putative father as the father of the child or children and establishing child support or medical support, or both, in accordance with the notice of alleged paternity and support debt.

*i.* A written explanation of the rights and responsibilities associated with the establishment of paternity.

*j.* A written explanation of the putative father's right to deny paternity, the procedures for denying paternity, and the consequences of the denial.

*k.* A statement that if the putative father contests paternity, the putative father shall have twenty days from the date of service of the original notice to submit a written denial of paternity to the unit.

*l.* A statement that if paternity is contested, the unit shall, at the request of the party contesting paternity or on its own initiative, enter an administrative order requiring the putative father, mother, and child or children involved, to submit to paternity testing.

*m.* A statement that if paternity tests are conducted, the unit shall provide a copy of the test results to the putative father in person or send a copy to the putative father by regular mail, addressed to the putative father's last known address, or, if applicable, to the last known address of the putative father's attorney.

*n.* A statement setting forth the time frames for contesting paternity after paternity tests are conducted.

*o.* Other information as the unit finds appropriate.

2. The time limitations established for the notice provisions under subsection 1 are binding unless otherwise specified in this chapter or waived pursuant to section 252F.8.

3. If notice is served on the putative father, the unit shall file a true copy of the notice and the original return of service with the appropriate clerk of the district court as follows:

*a.* In the county in which the child or children reside if the action is for purposes of establishing paternity and future child or medical support, or both.

*b.* In the county in which the child or children involved last received public assistance benefits in the state, if the action is for purposes of establishing paternity and child or medical support, or both, only for prior periods of time when the child or children received public assistance, and no ongoing child or medical support obligation is to be established by this action.

*c.* If the action is the result of a request from a foreign jurisdiction to establish paternity of a putative father located in Iowa, in the county in which the putative father resides.

All subsequent documents filed or court hearings held related to the action shall be in the district court in the county in which notice was filed pursuant to this subsection. The clerk shall file and docket the action.

4. A putative father or the child support recovery unit may request a court hearing regarding establishment of paternity or a determination of support, or both.

*a.* Upon receipt of a timely written response requesting a hearing or on its own initiative, the unit shall certify the matter for hearing in the district court in the county where the original notice of alleged paternity and support debt is filed, in accordance with section 252F.5.

*b.* If paternity establishment was contested and paternity tests conducted, a court hearing on the issue of paternity shall be held no earlier than thirty days from the date paternity test results are issued to all parties by the unit, unless the parties mutually agree to waive the time frame pursuant to section 252F.8.

*c.* Any objection to the results of paternity tests shall be filed no later than twenty days after the date paternity test results are issued or mailed to the putative father by the unit. Any objection to paternity test results filed by a party more than twenty days after the date paternity tests are issued or mailed to the putative father by the unit shall not be accepted or considered by the court.

5. If a timely written response and request for a court hearing is not received by the unit and the putative father does not deny paternity, the administrator shall enter an order in accordance with section 252F.4.

6. *a.* If a party contests the establishment of paternity, the party shall submit, within twenty days of service of the notice on the putative father under subsection 1, a written statement contesting paternity establishment to the unit. Upon receipt of a written challenge of paternity establishment, or upon initiation by the unit, the administrator shall enter *ex parte* administrative orders requiring the mother, child or children involved, and the putative father to submit to paternity testing. Either the mother or putative father may contest paternity under this chapter.

*b.* The orders shall be filed with the clerk of the district court in the county where the notice was filed and have the same force and effect as a court order for paternity testing.

*c.* The unit shall issue copies of the respective administrative orders for paternity testing to the mother and putative father in person, or by regular mail to the last known address of each, or if applicable, to the last known address of the attorney for each.

*d.* If a paternity test is ordered under this section, the administrator shall direct that inherited characteristics be analyzed and interpreted, and shall appoint an expert qualified as an examiner of genetic markers to analyze and interpret the re-

sults. The test shall be of a type generally acknowledged as reliable by accreditation entities designated by the secretary of the United States department of health and human services and shall be performed by a laboratory approved by an accreditation entity.

*e.* The party contesting paternity shall be provided one opportunity to reschedule the paternity testing appointment if the testing is rescheduled prior to the date of the originally scheduled appointment.

*f.* An original copy of the test results shall be filed with the clerk of the district court in the county where the notice was filed. The child support recovery unit shall issue a copy of the filed test results to the putative father and mother of the child or children in person, or by regular mail to the last known address of each, or if applicable, to the last known address of the attorney for each. However, if the action is the result of a request from a foreign jurisdiction, the unit shall issue a copy of the results to the initiating agency in that foreign jurisdiction.

*g.* Verified documentation of the chain of custody of the blood or genetic specimens is competent evidence to establish the chain of custody. The testimony of the appointed expert is not required. A verified expert's report of test results which indicate a statistical probability of paternity is sufficient authenticity of the expert's conclusion.

*h.* A verified expert's report shall be admitted as evidence to establish administrative paternity, and, if a court hearing is scheduled to resolve the issue of paternity, shall be admitted as evidence and is admissible at trial.

*i.* If the verified expert concludes that the test results show that the putative father is not excluded and that the probability of the putative father's paternity is ninety-five percent or higher, there shall be a rebuttable presumption that the putative father is the biological father, and the evidence shall be sufficient as a basis for administrative establishment of paternity.

(1) In order to challenge the presumption of paternity, a party shall file a written notice of the challenge with the district court within twenty days from the date the paternity test results are issued or mailed to all parties by the unit. Any challenge to a presumption of paternity resulting from paternity tests, or to paternity test results filed after the lapse of the twenty-day time frame shall not be accepted or admissible by the unit or the court.

(2) A copy of the notice challenging the presumption of paternity shall be provided to any other party in person, or by mailing the notice to the last known address of each party, or if applicable, to the last known address of each party's attorney.

(3) The party challenging the presumption of paternity has the burden of proving that the putative father is not the father of the child.

(4) The presumption of paternity may be rebutted only by clear and convincing evidence.

*j.* If the verified expert concludes that the test results indicate that the putative father is not excluded and that the probability of the putative father's paternity is less than ninety-five percent, the administrator shall order a subsequent administrative paternity test or certify the case to the district court for resolution in accordance with the procedures and time frames specified in paragraph "i" and section 252F.5.

*k.* If the results of the test or the verified expert's analysis are timely challenged as provided in this subsection, the administrator, upon the request of a party and advance payment by the contestant or upon the unit's own initiative, shall order that an additional test be performed by the same laboratory or an independent laboratory. If the party requesting additional testing does not advance payment, the administrator shall certify the case to the district court in accordance with paragraph "i" and section 252F.5.

*l.* When a subsequent paternity test is conducted, the time frames in this chapter associated with paternity tests shall apply to the most recently completed test.

*m.* If the paternity test results exclude the putative father as a potential biological father of the child or children, and additional tests are not requested by either party or conducted on the unit's initiative, or if additional tests exclude the putative father as a potential biological father, the unit shall withdraw its action against the putative father and shall file a notice of the withdrawal with the clerk of the district court, and shall provide a copy of the notice to the putative father in person, or by regular mail sent to the putative father's last known address, or if applicable, the last known address of the putative father's attorney.

*n.* Except as provided in paragraph "k", the unit shall advance the costs of genetic testing. If paternity is established and paternity testing was conducted, the unit shall enter an order or, if the action proceeded to a court hearing, request that the court enter a judgment for the costs of the paternity tests consistent with applicable federal law. In a proceeding under this chapter, a copy of a bill for genetic testing shall be admitted as evidence without requiring third-party foundation testimony and shall constitute prima facie evidence of the amount incurred for genetic testing.

For future amendments to this section effective March 1, 2008, see 2007 Acts, ch 218, §169 – 175, 187

For transition provisions applicable to existing child support recovery unit rules, procedures, definitions, and requirements, and for nullification of 441 IAC rule 98.3, see 2007 Acts, ch 218, §186

Section not amended; footnotes added

#### **252F.4 Entry of order.**

1. If the putative father fails to respond to the initial notice within twenty days after the date of service of the notice or fails to appear at a confer-



ence pursuant to section 252F.3 on the scheduled date of the conference, and paternity has not been contested and the putative father fails to timely request a court hearing on the issue of support, the administrator shall enter an order against the putative father, declaring the putative father to be the legal father of the child or children involved and assessing any accrued and accruing child support obligation pursuant to the guidelines established under section 598.21B, and medical support pursuant to chapter 252E, against the father.

2. If paternity is contested pursuant to section 252F.3, subsection 6, and the party contesting paternity fails to appear for a paternity test and fails to request a rescheduling pursuant to section 252F.3, or fails to appear for both the initial and the rescheduled paternity tests and the putative father fails to timely request a court hearing on the issue of support, the administrator shall enter an order against the putative father declaring the putative father to be the legal father of the child or children involved and assessing any accrued and accruing child support obligation pursuant to the guidelines established under section 598.21B, and medical support pursuant to chapter 252E, against the father.

3. If the putative father appears at a conference pursuant to section 252F.3, and paternity is not contested, and the putative father fails to timely request a court hearing on the issue of support, the administrator shall enter an order against the putative father after the second notice has been sent declaring the putative father to be the legal father of the child or children involved and assessing any accrued and accruing child support obligation pursuant to the guidelines established under section 598.21B, and medical support pursuant to chapter 252E, against the father.

4. If paternity was contested and paternity testing was performed and the putative father was not excluded, if the test results indicate that the probability of the putative father's paternity is ninety-five percent or greater, if the test results are not timely challenged, and if the putative father fails to timely request a court hearing on the issue of support, the administrator shall enter an order against the putative father declaring the putative father to be the legal father of the child or children involved and assessing any accrued and accruing child support obligation pursuant to the guidelines established under section 598.21B, and medical support pursuant to chapter 252E, against the father.

5. The administrator shall establish a support obligation under this section based upon the best information available to the unit and pursuant to section 252B.7A.

6. The order shall contain all of the following:

- a. A declaration of paternity.
- b. The amount of monthly support to be paid, with direction as to the manner of payment.

c. The amount of accrued support.

d. The name of the custodial parent or caretaker.

e. The name and birth date of the child or children to whom the order applies.

f. A statement that property of the father is subject to income withholding, liens, garnishment, tax offset, and other collection actions.

g. The medical support required pursuant to chapter 598 and chapter 252E.

h. A statement that the father is required to inform the child support recovery unit, on a continuing basis, of the name and address of the father's current employer, whether the father has access to health insurance coverage through employment or at reasonable cost through other sources, and if so, the health insurance policy information.

i. If paternity was contested, the amount of any judgment assessed to the father for costs of paternity tests conducted pursuant to this chapter.

j. Statements as required pursuant to section 598.22B.

7. If paternity is not contested but the putative father does wish to challenge the issues of child or medical support, the administrator shall enter an order establishing paternity and reserving the issues of child or medical support for determination by the district court.

For future amendments to this section effective March 1, 2008, see 2007 Acts, ch 218, §176, 187

For transition provisions applicable to existing child support recovery unit rules, procedures, definitions, and requirements, and for nullification of 441 IAC rule 98.3, see 2007 Acts, ch 218, §186

Section not amended; footnotes added

### **252F.5 Certification to district court.**

1. Actions initiated under this chapter are not subject to contested case proceedings or further review pursuant to chapter 17A.

2. An action under this chapter may be certified to the district court if a party timely contests paternity establishment or paternity test results, or if the putative father requests a court hearing on the issues of child or medical support, or both, or upon the initiation of the unit as provided in this chapter. Review by the district court shall be an original hearing before the court.

3. In any action brought under this chapter, the action shall not be certified to the district court in a contested paternity action unless all of the following have occurred:

a. Paternity testing has been completed.

b. The results of the paternity test have been issued to all parties.

c. A timely written objection to paternity establishment or paternity test results has been received from a party, or a timely written request for a court hearing on the issue of support has been received from the putative father by the unit, or the unit has requested a court hearing on the unit's own initiative.

4. A matter shall be certified to the district court in the county in which the notice was filed pursuant to section 252F.3, subsection 3.

5. The court shall set the matter for hearing and notify the parties of the time of and place for hearing.

6. If the court determines that the putative father is the legal father, the court shall establish the amount of the accrued and accruing child support pursuant to the guidelines established under section 598.21B, and shall establish medical support pursuant to chapter 252E.

7. If the putative father or another party contesting paternity fails to appear at the hearing, upon a showing that proper notice has been provided to the party, the court shall find the party in default and enter an appropriate order establishing paternity and support.

For future amendments to subsection 2 and subsection 3, paragraph c, effective March 1, 2008, see 2007 Acts, ch 218, §177, 178, 187

For transition provisions applicable to existing child support recovery unit rules, procedures, definitions, and requirements, and for nullification of 441 IAC rule 98.3, see 2007 Acts, ch 218, §186

Section not amended; footnotes added

## CHAPTER 252H

### ADJUSTMENT AND MODIFICATION OF SUPPORT ORDERS

#### 252H.2 Definitions.

As used in this chapter, unless the context otherwise requires, “*administrator*”, “*caretaker*”, “*court order*”, “*department*”, “*dependent child*”, “*medical support*”, and “*responsible person*” mean the same as defined in section 252C.1.

As used in this chapter, unless the context otherwise requires:

1. “*Act*” means the federal Social Security Act.
2. “*Adjustment*” applies only to the child support provisions of a support order and means either of the following:
  - a. A change in the amount of child support based upon an application of the child support guidelines established pursuant to section 598.21B.
  - b. An addition of or change to provisions for medical support as defined in section 252E.1.
3. “*Child*” means a child as defined in section 252B.1.
4. “*Child support agency*” means any state, county, or local office or entity of another state that has the responsibility for providing child support enforcement services under Title IV-D of the Act.
5. “*Child support recovery unit*” or “*unit*” means the child support recovery unit created pursuant to section 252B.2.
6. “*Cost-of-living alteration*” means a change in an existing child support order which equals an amount which is the amount of the support obligation following application of the percentage change of the consumer price index for all urban consumers, United States city average, as published in the federal register by the federal department of labor, bureau of labor statistics.
7. “*Determination of controlling order*” means the process of identifying a child support order which must be recognized pursuant to section 252K.207 and 28 U.S.C. § 1738B, when more than one state has issued a support order for the same child and the same obligor. Registration of a foreign order is not necessary for a court or the unit

to make a determination of controlling order.

8. “*Modification*” means either of the following:

- a. A change, correction, or termination of an existing support order.
- b. The establishment of a child or medical support obligation in a previously established order entered pursuant to chapter 234, 252A, 252C, 598, 600B, or any other support proceeding, in which such support was not previously established, or in which support was previously established and subsequently terminated prior to the emancipation of the children affected.

9. “*Parent*” means, for the purposes of requesting a review of a support order and for being entitled to notice under this chapter:

- a. The individual ordered to pay support pursuant to the order.
- b. An individual or entity entitled to receive current or future support payments pursuant to the order, or pursuant to a current assignment of support including but not limited to an agency of this or any other state that is currently providing public assistance benefits to the child for whom support is ordered and any child support agency. Service of notice of an action initiated under this chapter on an agency is not required, but the agency may be advised of the action by other means.

10. “*Public assistance*” means benefits received in this state or any other state, under Title IV-A (temporary assistance to needy families), IV-E (foster care), or XIX (Medicaid) of the Act.

11. “*Review*” means an objective evaluation conducted through a proceeding before a court, administrative body, or an agency, of information necessary for the application of a state’s mandatory child support guidelines to determine:

- a. The appropriate monetary amount of support.
  - b. Provisions for medical support.
12. “*State*” means “*state*” as defined in section 252K.101.

13. “*Support order*” means a “*court order*” as defined in section 252C.1 or an order establishing support entered pursuant to an administrative or quasi-judicial process if authorized by law.

For future amendments to subsections 2 and 13, effective March 1, 2008, see 2007 Acts, ch 218, §179, 180, 187

For transition provisions applicable to existing child support recovery unit rules, procedures, definitions, and requirements, and for nullification of 441 IAC rule 98.3, see 2007 Acts, ch 218, §186

Section not amended; footnotes added

### 252H.3A Reserved.

For future text of this section effective March 1, 2008, see 2007 Acts, ch 218, §181, 187

For transition provisions applicable to existing child support recovery unit rules, procedures, definitions, and requirements, and for nullification of 441 IAC rule 98.3, see 2007 Acts, ch 218, §186

### 252H.7 Waiver of notice periods and time limitations.

1. A parent may waive the thirty-day prereview waiting period provided for in section 252H.16.

a. Upon receipt of signed requests from both parents waiving the prereview waiting period, the unit may conduct a review of the support order prior to the expiration of the thirty-day period provided in section 252H.16.

b. If the parents jointly waive the prereview waiting period and the order under review is subsequently adjusted, the signed statements of both parents waiving the waiting period shall be filed in the court record with the order adjusting the support obligation.

2. A parent may waive the postreview waiting period provided for in section 252H.8, subsection 2 or 7, for a court hearing or in section 252H.17 for requesting of a second review.

a. Upon receipt of signed requests from both parents subject to the order reviewed, waiving the postreview waiting period, the unit may enter an administrative order adjusting the support order, if appropriate, prior to the expiration of the postreview waiting period.

b. If the parents jointly waive the postreview waiting period and an administrative order to adjust the support order is entered, the signed statements of both parents waiving the waiting period shall be filed in the court record with the administrative order adjusting the support obligation.

3. A parent may waive the time limitations established in section 252H.8, subsection 3, for requesting a court hearing, or in section 252H.20 for requesting a conference.

a. Upon receipt of signed requests from both parents who are subject to the order to be modified, waiving the time limitations, the unit may proceed to enter an administrative modification order.

b. If the parents jointly waive the time limitations and an administrative modification order is entered under this chapter, the signed statements of both parents waiving the time limitations shall be filed in the court record with the administrative

modification order.

2007 Acts, ch 218, §143, 156

2007 amendment to subsection 2 takes effect October 1, 2007; 2007 Acts, ch 218, §156

Subsection 2, unnumbered paragraph 1 amended

### 252H.8 Certification to court — hearing — default.

1. For actions initiated under section 252H.15, either parent or the unit may request a court hearing within thirty days from the date of issuance of the notice of decision under section 252H.16, or within ten days of the date of issuance of the second notice of decision under section 252H.17, whichever is later.

2. For actions initiated under section 252H.14A, either parent or the unit may request a court hearing within ten days of the issuance of the second notice of decision under section 252H.17.

3. For actions initiated under subchapter III, either parent or the unit may request a court hearing within the latest of any of the following time periods:

a. Twenty days from the date of successful service of the notice of intent to modify required under section 252H.19.

b. Ten days from the date scheduled for a conference to discuss the modification action.

c. Ten days from the date of issuance of a second notice of a proposed modification action.

4. The time limitations for requesting a court hearing under this section may be extended by the unit.

5. If a timely written request for a hearing is received by the unit, a hearing shall be held in district court, and the unit shall certify the matter to the district court in the county in which the order subject to adjustment or modification is filed. The certification shall include the following, as applicable:

a. Copies of the notice of intent to review or notice of intent to modify.

b. The return of service, proof of service, acceptance of service, or signed statement by the parent requesting review and adjustment or requesting modification, waiving service of the notice.

c. Copies of the notice of decision and any revised notice as provided in section 252H.16.

d. Copies of any written objections to and request for a second review or conference or hearing.

e. Copies of any second notice of decision issued pursuant to section 252H.17, or second notice of proposed modification action issued pursuant to section 252H.20.

f. Copies of any financial statements and supporting documentation provided by the parents including proof of a substantial change in circumstances for a request filed pursuant to section 252H.18A.

g. Copies of any computation worksheet prepared by the unit to determine the amount of sup-

port calculated using the mandatory child support guidelines established under section 598.21B, and, if appropriate and the social security disability provisions of sections 598.22 and 598.22C apply, a determination of the amount of delinquent support due.

*h.* A certified copy of each order, issued by another state, considered in determining the controlling order.

6. The court shall set the matter for hearing and notify the parties of the time and place of the hearing.

7. For actions initiated under section 252H.15, a hearing shall not be held for at least thirty-one days following the date of issuance of the notice of decision unless the parents have jointly waived, in writing, the thirty-day postreview period.

8. Pursuant to section 252H.3, the district court shall review the matter as an original hearing before the court.

9. Issues subject to review by the court in any hearing resulting from an action initiated under this chapter shall be limited to the issues identified in section 252H.3.

10. Notwithstanding any other law to the contrary, if more than one support order exists involving children with the same legally established parents, one hearing on all of the affected support orders shall be held in the district court in the county where the unit files the action. For the purposes of this subsection, the district court hearing the matter shall have jurisdiction over all other support orders entered by a court of this state and affected under this subsection.

11. The court shall establish the amount of child support pursuant to section 598.21B, or medical support pursuant to chapter 252E, or both.

12. If a party fails to appear at the hearing, upon a showing of proper notice to the party, the court may find the party in default and enter an appropriate order.

2007 Acts, ch 218, §144 - 147, 156  
2007 amendments to this section take effect October 1, 2007; 2007 Acts, ch 218, §156

Subsection 1 amended  
NEW subsection 2 and former subsections 2 - 11 renumbered as 3 - 12  
Subsection 5, paragraph b amended  
Subsection 7 amended

### **252H.9 Filing and docketing of administrative adjustment or modification order — order effective as district court order.**

1. If timely request for a court hearing is not made pursuant to section 252H.8, the unit shall prepare and present an administrative order for adjustment or modification, as applicable, for review and approval, *ex parte*, to the district court where the order to be adjusted or modified is filed. Notwithstanding any other law to the contrary, if more than one support order exists involving children with the same legally established parents, for the purposes of this subsection, the district court reviewing and approving the matter shall

have jurisdiction over all other support orders entered by a court of this state and affected under this subsection.

2. For orders to which subchapter II or III is applicable, the unit shall determine the appropriate amount of the child support obligation using the current child support guidelines established pursuant to section 598.21B and the criteria established pursuant to section 252B.7A and shall determine the provisions for medical support pursuant to chapter 252E.

3. The administrative order prepared by the unit shall specify all of the following:

*a.* The amount of support to be paid and the manner of payment.

*b.* The name of the custodian of any child for whom support is to be paid.

*c.* The name of the parent ordered to pay support.

*d.* The name and birth date of any child for whom support is to be paid.

*e.* That the property of the responsible person is subject to collection action, including but not limited to wage withholding, garnishment, attachment of a lien, and other methods of execution.

*f.* Provisions for medical support.

*g.* If applicable, the order determined to be the controlling order.

*h.* If applicable, the amount of delinquent support due based upon the receipt of social security disability payments as provided in sections 598.22 and 598.22C.

4. Supporting documents as described in section 252H.8, subsection 5, may be presented to the court with the administrative order, as applicable.

5. Unless defects appear on the face of the order or on the attachments, the district court shall approve the order. Upon filing, the approved order shall have the same force, effect, and attributes of an order of the district court.

6. Upon filing, the clerk of the district court shall enter the order in the judgment docket and judgment lien index.

7. A copy of the order shall be sent by regular mail within fourteen days after filing to each parent's last known address, or if applicable, to the last known address of the parent's attorney.

8. The order is final, and action by the unit to enforce and collect upon the order, including arrearages and medical support, or both, may be taken from the date of the entry of the order by the district court.

2007 Acts, ch 218, §148, 156  
2007 amendment to subsection 1 takes effect October 1, 2007; 2007 Acts, ch 218, §156

Subsection 1 amended

### **252H.10 Effective date of adjustment — modification.**

1. Pursuant to section 598.21C, any administrative or court order resulting from an action ini-

tiated under this chapter may be made retroactive only from three months after the date that all parties were successfully served the notice required under section 252H.14A, 252H.15, or section 252H.19, as applicable.

2. The periodic due date established under a prior order for payment of child support shall not be changed in any order modified as a result of an action initiated under this chapter, unless the child support recovery unit or the court determines that good cause exists to change the periodic due date. If the unit or the court determines that good cause exists, the unit or the court shall include the rationale for the change in the modified order and shall address the issue of reconciliation of any payments due or made under a prior order which would result in payment of the child support obligation under both the prior and the modified orders.

2007 Acts, ch 218, §149, 156  
2007 amendment to subsection 1 takes effect October 1, 2007; 2007 Acts, ch 218, §156  
Former unnumbered paragraph 1 amended and editorially numbered as subsection 1  
Former unnumbered paragraph 2 editorially numbered as subsection 2

### 252H.11 Concurrent actions.

This chapter does not prohibit or affect the ability or right of a parent or the parent's attorney to file a modification action at the parent's own initiative. If a modification action is filed by a parent concerning an order for which an action has been initiated but has not yet been completed by the unit under this chapter, the unit shall terminate any action initiated under this chapter, subject to the following:

1. The modification action filed by the parent must address the same issues as the action initiated under this chapter.

2. If the modification action filed by the parent is subsequently dismissed before being heard by the court, the unit shall continue the action previously initiated under subchapter II or III, or initiate a new action as follows:

*a.* If the unit previously initiated an action under subchapter II, and had not issued a notice of decision as required under section 252H.14A or 252H.16, the unit shall proceed as follows:

(1) If notice of intent to review was served ninety days or less prior to the date the modification action filed by the parent is dismissed, the unit shall complete the review and issue the notice of decision.

(2) If the modification action filed by the parent is dismissed more than ninety days after the original notice of intent to review was served, the unit shall serve or issue a new notice of intent to review and conduct the review.

(3) If the unit initiated a review under section 252H.14A, the unit may issue the notice of decision.

*b.* If the unit previously initiated an action un-

der subchapter II and had issued the notice of decision as required under section 252H.14A or 252H.16, the unit shall proceed as follows:

(1) If the notice of decision was issued ninety days or less prior to the date the modification action filed by the parent is dismissed, the unit shall request, obtain, and verify any new or different information concerning the financial circumstances of the parents and issue a revised notice of decision to each parent, or if applicable, to the parent's attorney.

(2) If the modification action filed by the parent is dismissed more than ninety days after the date of issuance of the notice of decision, the unit shall serve or issue a new notice of intent to review pursuant to section 252H.15 and conduct a review pursuant to section 252H.16, or conduct a review and serve a new notice of decision under section 252H.14A.

*c.* If the unit previously initiated an action under subchapter III, the unit shall proceed as follows:

(1) If the modification action filed by the parent is dismissed more than ninety days after the original notice of intent to modify was served, the unit shall serve a new notice of intent to modify pursuant to section 252H.19.

(2) If the modification action filed by the parent is dismissed ninety days or less after the original notice of intent to modify was served, the unit shall complete the original modification action initiated by the unit under this subchapter.

(3) Each parent shall be allowed at least twenty days from the date the administrative modification action is reinstated to request a court hearing as provided for in section 252H.8.

3. If an action initiated under this chapter is terminated as the result of a concurrent modification action filed by one of the parents or the parent's attorney, the unit shall advise each parent, or if applicable, the parent's attorney, in writing, that the action has been terminated and the provisions of subsection 2 of this section for continuing or initiating a new action under this chapter. The notice shall be issued by regular mail to the last known mailing address of each parent, or if applicable, each parent's attorney.

4. If an action initiated under this chapter by the unit is terminated as the result of a concurrent action filed by one of the parents and is subsequently reinstated because the modification action filed by the parent is dismissed, the unit shall advise each parent, or if applicable, each parent's attorney, in writing, that the unit is continuing the prior administrative adjustment or modification action. The notice shall be issued by regular mail to the last known mailing address of each parent, or if applicable, each parent's attorney.

2007 Acts, ch 218, §150, 156  
2007 amendment to subsection 2 takes effect October 1, 2007; 2007 Acts, ch 218, §156  
Subsection 2 amended

**252H.14 Reviews initiated by the child support recovery unit.**

1. The unit may periodically initiate a review of support orders meeting the conditions in section 252H.12 in accordance with the following:

*a.* The right to any ongoing child support obligation is currently assigned to the state due to the receipt of public assistance.

*b.* The right to any ongoing medical support obligation is currently assigned to the state due to the receipt of public assistance unless:

(1) The support order already includes provisions requiring the parent ordered to pay child support to also provide medical support.

(2) The parent entitled to receive support has satisfactory health insurance coverage for the children, excluding coverage resulting from the receipt of public assistance benefits.

*c.* The review is otherwise necessary to comply with the Act.

2. The unit may periodically initiate a request to a child support agency of another state to conduct a review of a support order entered in that state when the right to any ongoing child or medical support obligation due under the order is currently assigned to the state of Iowa.

3. The unit shall adopt rules establishing criteria to determine the appropriateness of initiating a review.

4. The unit shall initiate reviews under this section in accordance with the Act.

For future amendments to subsection 1, paragraph b, and subsection 2, effective March 1, 2008, see 2007 Acts, ch 218, §182, 183, 187

For transition provisions applicable to existing child support recovery unit rules, procedures, definitions, and requirements, and for nullification of 441 IAC rule 98.3, see 2007 Acts, ch 218, §186

Section not amended; footnotes added

**252H.14A Reviews initiated by the child support recovery unit — abbreviated method.**

1. Notwithstanding section 252H.15, to assist the unit in meeting the requirement for reviews and adjustments under the federal Deficit Reduction Act of 2005, Pub. L. No. 109-171, the unit may use procedures under this section to review a support order if all the following apply:

*a.* The right to ongoing child support is assigned to the state of Iowa due to the receipt of family investment program assistance, and a review of the support order is required under section 7302 of the federal Deficit Reduction Act of 2005, Pub. L. No. 109-171.

*b.* The unit has access to information concerning the financial circumstances of each parent and one of the following applies:

(1) The parent is a recipient of family investment program assistance, medical assistance, or food assistance from the department.

(2) The parent's income is from supplemental security income paid pursuant to 42 U.S.C. § 1381a.

(3) The parent is a recipient of disability bene-

fits under the Act because of the parent's disability.

(4) The parent is an inmate of an institution under the control of the department of corrections.

2. If the conditions of subsection 1 are met, the unit may conduct a review and determine whether an adjustment is appropriate using information accessible by the unit without issuing a notice under section 252H.15 or requesting additional information from the parent.

3. Upon completion of the review, the unit shall issue a notice of decision to each parent, or if applicable, to each parent's attorney. The notice shall be served in accordance with the rules of civil procedure or as provided in section 252B.26.

4. All of the following shall be included in the notice of decision:

*a.* The legal basis and purpose of the action, including an explanation of the procedures for determining child support, the criteria for determining the appropriateness of an adjustment, and a statement that the unit used the child support guidelines established pursuant to section 598.21B and the provisions for medical support pursuant to chapter 252E.

*b.* Information sufficient to identify the affected parties and the support order or orders affected.

*c.* An explanation of the legal rights and responsibilities of the affected parties, including time frames in which the parties must act.

*d.* A statement indicating whether the unit finds that an adjustment is appropriate and the basis for the determination.

*e.* Procedures for contesting the action, including that if a parent requests a second review both parents will be requested to submit financial or income information as necessary for application of the child support guidelines established pursuant to section 598.21B.

*f.* Other information as appropriate.

5. Section 252H.16, subsection 5, regarding a revised notice of decision shall apply to a notice of decision issued under this section.

6. Each parent shall have the right to challenge the notice of decision issued under this section by requesting a second review by the unit as provided in section 252H.17. If there is no new or different information to consider for the second review, the unit shall issue a second notice of decision based on prior information. Each parent shall have the right to challenge the second notice of decision by requesting a court hearing as provided in section 252H.8.

2007 Acts, ch 218, §151, 156

Section takes effect October 1, 2007; existing rules relating to review and adjustment apply until amended; exception for conflicting time limits, notices, or other conflicting procedures; 2007 Acts, ch 218, §155, 156

NEW section

**252H.15 Notice of intent to review and adjust.**

1. Unless an action is initiated under section 252H.14A, prior to conducting a review of a sup-

port order, the unit shall issue a notice of intent to review and adjust to each parent, or if applicable, to each parent's attorney. However, notice to a child support agency or an agency entitled to receive child or medical support payments as the result of an assignment of support rights is not required.

2. Notice shall be served upon each parent in accordance with the rules of civil procedure, except that a parent requesting a review pursuant to section 252H.13 shall waive the right to personal service of the notice in writing and accept service by regular mail. If the service by regular mail does not occur within ninety days of the written waiver of personal service, personal service of the notice is required unless a new waiver of personal service is obtained.

3. The unit shall adopt rules pursuant to chapter 17A to ensure that all of the following are included in the notice:

- a. The legal basis and purpose of the action.
- b. Information sufficient to identify the affected parties and the support order or orders affected.
- c. An explanation of the procedures for determining child support and a request for financial or income information as necessary for application of the child support guidelines established pursuant to section 598.21B.
- d. An explanation of the legal rights and responsibilities of the affected parties, including the time frames in which the parties must act.
- e. Criteria for determining appropriateness of an adjustment and a statement that the unit will use the child support guidelines established pursuant to section 598.21B and the provisions for medical support pursuant to chapter 252E to adjust the order.
- f. Procedures for contesting the action.
- g. An explanation of the right to request a court hearing, and the applicable time frames and procedures to follow in requesting a court hearing.
- h. Other information as appropriate.

2007 Acts, ch 218, §152, 156  
2007 amendment to subsection 1 is effective October 1, 2007; 2007 Acts, ch 218, §156  
Subsection 1 amended

#### **252H.16 Conducting the review — notice of decision.**

1. For actions initiated under section 252H.15, the unit shall conduct the review and determine whether an adjustment is appropriate. As necessary, the unit shall make a determination of the controlling order or the amount of delinquent support due based upon the receipt of social security disability payments as provided in sections 598.22 and 598.22C.

2. Unless both parents have waived the pre-review notice period as provided for in section 252H.7, the review shall not be conducted for at least thirty days from the date both parents were successfully served with the notice required in sec-

tion 252H.15.

3. Upon completion of the review, the unit shall issue a notice of decision by regular mail to the last known address of each parent, or if applicable, each parent's attorney.

4. The unit shall adopt rules pursuant to chapter 17A to ensure that all of the following are included in the notice:

- a. Information sufficient to identify the affected parties and the support order or orders affected.
- b. A statement indicating whether the unit finds that an adjustment is appropriate and the basis for the determination.
- c. Other information, as appropriate.

5. A revised notice of decision shall be issued when the unit receives or becomes aware of new or different information affecting the results of the review after the notice of decision has been issued and before the entry of an administrative order adjusting the support order, when new or different information is not received in conjunction with a request for a second review, or subsequent to a request for a court hearing. If a revised notice of decision is issued, the time frames for requesting a second review or court hearing shall apply from the date of issuance of the revised notice.

2007 Acts, ch 218, §153, 156  
2007 amendment to subsection 1 takes effect October 1, 2007; rules; 2007 Acts, ch 218, §155, 156  
Subsection 1 amended

#### **252H.17 Challenging the notice of decision — second review — notice.**

1. Each parent shall have the right to challenge the notice of decision issued under section 252H.14A or 252H.16, by requesting a second review by the unit.

2. A challenge shall be submitted, in writing, to the local child support office that issued the notice of decision, within thirty days of service of the notice of decision under section 252H.14A or within ten days of the issuance of the notice of decision under section 252H.16.

3. A parent challenging the notice of decision shall submit any new or different information, not previously considered by the unit in conducting the review, with the challenge and request for second review.

4. A parent challenging the notice of decision shall submit any required fees with the challenge. Any request submitted without full payment of the required fee shall be denied.

5. If a timely challenge along with any necessary fee is received, the unit shall issue by regular mail to the last known address of each parent, or if applicable, to each parent's attorney, a notice that a second review will be conducted. The unit shall adopt rules pursuant to chapter 17A to ensure that all of the following are included in the notice:

- a. A statement of purpose of the second review.
- b. Information sufficient to identify the affect-

ed parties and the support order or orders affected.

c. A statement of the information that is eligible for consideration at the second review.

d. The procedures and time frames in conducting and completing a second review, including a statement that only one second review shall be conducted as the result of a challenge received from either or both parents.

e. An explanation of the right to request a court hearing, and the applicable time frames and procedures to follow in requesting a court hearing.

f. Other information, as appropriate.

6. The unit shall conduct a second review, utilizing any new or additional information provided or available since issuance of the notice of decision under section 252H.14A or under section 252H.16, to determine whether an adjustment is appropriate.

7. Upon completion of the review, the unit shall issue a second notice of decision by regular mail to the last known address of each parent, or if applicable, to each parent’s attorney. The unit shall adopt rules pursuant to chapter 17A to ensure that all of the following are included in the notice:

a. Information sufficient to identify the affect-

ed parties and the support order or orders affected.

b. The unit’s finding resulting from the second review indicating whether the unit finds that an adjustment is appropriate, the basis for the determination, and the impact on the first review.

c. An explanation of the right to request a court hearing, and the applicable time frames and procedures to follow in requesting a court hearing.

d. Other information, as appropriate.

8. If the determination resulting from the first review is revised or reversed by the second review, the following shall be issued to each parent along with the second notice of decision and the amount of any proposed adjustment:

a. Any updated or revised financial statements provided by either parent.

b. A computation prepared by the local child support office issuing the notice, demonstrating how the amount of support due under the child support guidelines was calculated, and a comparison of the newly computed amount with the current support obligation amount.

2007 Acts, ch 218, §154, 156  
2007 amendments to subsections 1, 2, and 6 take effect October 1, 2007;  
rules; 2007 Acts, ch 218, §155, 156  
Subsections 1, 2, and 6 amended

## CHAPTER 252I

### SUPPORT PAYMENTS — LEVIES AGAINST ACCOUNTS

#### 252I.1 Definitions.

As used in this chapter, unless the context otherwise requires:

1. “*Account*” means “account” as defined in section 524.103, “share account or shares” as defined in section 534.102, the savings or deposits of a member received or being held by a credit union, or certificates of deposit. “*Account*” also includes deposits held by an agent, a broker-dealer, or an issuer as defined in section 502.102 and money-market mutual fund accounts and “account” as defined in 42 U.S.C. § 666(a)(17). However, “*account*” does not include amounts held by a financial institution as collateral for loans extended by the financial institution.

2. “*Bank*” means “bank”, “insured bank”, and “state bank” as defined in section 524.103.

3. “*Court order*” means “support order” as defined in section 252J.1.

4. “*Credit union*” means “credit union” as defined in section 533.102.

5. “*Financial institution*” means “financial in-

stitution” as defined in 42 U.S.C. § 669A(d)(1). “*Financial institution*” also includes an institution which holds deposits for an agent, broker-dealer, or an issuer as defined in section 502.102.

6. “*Obligor*” means a person who has been ordered by a court or administrative authority to pay support.

7. “*Savings and loan association*” means “association” as defined in section 534.102.

8. “*Support*” or “*support payments*” means “support” or “support payments” as defined in section 252D.16.

9. “*Unit*” or “*child support recovery unit*” means the child support recovery unit created in section 252B.2.

10. “*Working days*” means only Monday, Tuesday, Wednesday, Thursday, and Friday, but excluding the holidays specified in section 1C.2, subsections 1 through 9.

2007 Acts, ch 174, §91  
Subsection 4 amended



## CHAPTER 256

## DEPARTMENT OF EDUCATION

**256.7 Duties of state board.**

Except for the college student aid commission and the public broadcasting board and division, the state board shall:

1. Adopt and establish policy for programs and services of the department pursuant to law.
2. Constitute the state board for vocational education under chapter 258.
3. Prescribe standards and procedures for the approval of practitioner preparation programs and professional development programs offered in this state by practitioner preparation institutions located within or outside this state and by area education agencies. Procedures provided for approval of programs shall include procedures for enforcement of the prescribed standards and shall not include a procedure for the waiving of any of the standards prescribed. The board may establish by rule and collect from practitioner preparation institutions located outside this state an amount equivalent to the department's necessary travel and actual expenses incurred while engaged in the program approval process for the institution located outside this state. Amounts collected under this subsection shall be deposited in the general fund of the state.
4. Adopt, and update annually, a five-year plan for the achievement of educational goals in Iowa.
5. Adopt rules under chapter 17A for carrying out the responsibilities of the department.
6. Hear appeals of persons aggrieved by decisions of boards of directors of school corporations under chapter 290 and other appeals prescribed by law. The state board may review the record and shall review the decision of the director of the department of education or the administrative law judge designated for any appeals heard and decided by the director under chapter 290, and may affirm, modify, or vacate the decision, or may direct a rehearing before the director.
7. Adopt rules under chapter 17A for the use of telecommunications as an instructional tool for students enrolled in kindergarten through grade twelve and served by local school districts, accredited or approved nonpublic schools, area education agencies, community colleges, institutions of higher education under the state board of regents, and independent colleges and universities in elementary and secondary school classes and courses. The rules shall include but need not be limited to rules relating to programs, educational policy, instructional practices, staff development, use of pilot projects, curriculum monitoring, and the accessibility of licensed teachers.

When curriculum is provided by means of telecommunications, it shall be taught by an appropri-

ately licensed teacher. The teacher shall either be present in the classroom, or be present at the location at which the curriculum delivered by means of telecommunications originates.

The rules shall provide that when the curriculum is taught by an appropriately licensed teacher at the location at which the telecommunications originates, the curriculum received at a remote site shall be under the supervision of a licensed teacher. The licensed teacher at the originating site may provide supervision of students at a remote site or the school district in which the remote site is located may provide for supervision at the remote site if the school district deems it necessary or if requested to do so by the licensed teacher at the originating site. For the purposes of this subsection, "supervision" means that the curriculum is monitored by a licensed teacher and the teacher is accessible to the students receiving the curriculum by means of telecommunications.

The state board shall establish an advisory committee to make recommendations for rules required under this subsection on the use of telecommunications as an instructional tool. The committee shall be composed of representatives from community colleges, area education agencies, accredited or approved nonpublic schools, and local school districts from various enrollment categories. The representatives shall include board members, school administrators, teachers, parents, students, and associations interested in education.

For the purpose of the rules adopted by the state board, telecommunications means narrowcast communications through systems that are directed toward a narrowly defined audience and includes interactive live communications.

8. Rules adopted under this section shall provide that telecommunications shall not be used by school districts as the exclusive means to provide any course which is required by the minimum educational standards for accreditation.

9. Develop evaluation procedures that will measure the effects of instruction by means of telecommunications on student achievement, socialization, intellectual growth, motivation, and other related factors deemed relevant by the state board, for the development of an educational database. The state board shall consult with the state board of regents and the practitioner preparation departments at its institutions, other practitioner preparation departments located within private colleges and universities, educational research agencies or facilities, and other agencies deemed appropriate by the state board, in developing these procedures.

10. Adopt rules pursuant to chapter 17A relat-

ing to educational programs and budget limitations for educational programs pursuant to sections 282.29, 282.30, 282.31, and 282.33.

11. Prescribe guidelines for facility standards, maximum class sizes, and maximum in classroom pupil-teacher and teacher-aide ratios for grades kindergarten through three and before and after school and summer child care programs provided under the direction of the school district. The department also shall indicate modifications to such guidelines necessary to address the needs of at-risk children.

12. Elect to a two-year term, from its members in each even-numbered year, a president of the state board, who shall serve until a successor is elected and qualified.

13. Adopt rules and a procedure for accrediting all apprenticeship programs in the state which receive state or federal funding. In developing the rules, the state board shall consult with schools and labor or trade organizations affected by or currently operating apprenticeship or training programs. Rules adopted shall be the same or similar to criteria established for the operation of apprenticeship programs at community colleges.

14. Adopt rules which require each community college which establishes a new jobs training project or projects and receives funds derived from or associated with the project or projects to establish a separate account to act as a repository for any funds received and to report annually, by January 15, to the general assembly on funds received and disbursed during the preceding fiscal year in the form required by the department.

15. If funds are appropriated by the general assembly for the program, adopt rules for the administration of the teacher exchange program, including, but not limited to, rules for application to participate in the program, rules relating to the number of times that a given applicant may participate in the program, and rules describing reimbursable expenses and establishing honoraria for teacher participants.

16. Adopt rules that set standards for approval of family support preservice and in-service training programs, offered by area education agencies and practitioner preparation institutions, and family support programs offered by or through local school districts.

17. Receive and review the budget and unified plan of service submitted by the division of libraries and information services.

18. Adopt rules that include children who retain some sight but who have a medically diagnosed expectation of visual deterioration within the definition of children requiring special education pursuant to section 256B.2, subsection 1. Rules adopted pursuant to this subsection shall provide for or include, but are not limited to, the following:

*a.* A presumption that proficiency in braille reading and writing is essential for satisfactory

educational progress for a visually impaired student who is not able to communicate in print with the same level of proficiency as a student of otherwise comparable ability at the same grade level. This presumption includes a student as defined in paragraph "b". A student for whom braille services are appropriate, as defined in this subsection, is entitled to instruction in braille reading and writing that is sufficient to enable the pupil to communicate with the same level of proficiency as a pupil of otherwise comparable ability at the same grade level.

*b.* A pupil who retains some sight but who has a medically diagnosed expectation of visual deterioration in adolescence or early adulthood may qualify for instruction in braille reading and writing.

*c.* Instruction in braille reading and writing may be used in combination with other special education services appropriate to a pupil's educational needs.

*d.* The annual review of a pupil's individual education plan shall include discussion of instruction in braille reading and writing and a written explanation of the reasons why the pupil is using a given reading and writing medium or media. If the reasons have not changed since the previous year, the written explanation for the current year may refer to the fuller explanation from the previous year.

*e.* A pupil as defined in paragraph "b" whose primary learning medium is expected to change may begin instruction in the new medium before it is the only medium the pupil can effectively use.

*f.* A pupil who receives instruction in braille reading and writing pursuant to this subsection shall be taught by a teacher licensed to teach students with visual impairments.

19. Define the minimum school day as a day consisting of five and one-half hours of instructional time for grades one through twelve. The minimum hours shall be exclusive of the lunch period, but may include passing time between classes. Time spent on parent-teacher conferences shall be considered instructional time. A school or school district may record a day of school with less than the minimum instructional hours as a minimum school day if any of the following apply:

*a.* If emergency health or safety factors require the late arrival or early dismissal of students on a specific day.

*b.* If the total hours of instructional school time for grades one through twelve for any five consecutive school days equal a minimum of twenty-seven and one-half hours, even though any one day of school is less than the minimum instructional hours because of a staff development opportunity provided for the professional instructional staff or because parent-teacher conferences have been scheduled beyond the regular school day. Furthermore, if the total hours of instructional time for the first four consecutive days equal at

least twenty-seven and one-half hours because parent-teacher conferences have been scheduled beyond the regular school day, a school or school district may record zero hours of instructional time on the fifth consecutive school day as a minimum school day.

20. Adopt rules that require the board of directors of a school district to waive school fees for indigent families.

21. Develop and adopt rules incorporating accountability for, and reporting of, student achievement into the standards and accreditation process described in section 256.11. The rules shall provide for all of the following:

a. Requirements that all school districts and accredited nonpublic schools develop, implement, and file with the department a comprehensive school improvement plan that includes, but is not limited to, demonstrated school, parental, and community involvement in assessing educational needs, establishing local education standards and student achievement levels, and, as applicable, the consolidation of federal and state planning, goal-setting, and reporting requirements.

b. A set of core academic indicators in mathematics and reading in grades four, eight, and eleven, a set of core academic indicators in science in grades eight and eleven, and another set of core indicators that includes, but is not limited to, graduation rate, postsecondary education, and successful employment in Iowa. Annually, the department shall report state data for each indicator in the condition of education report.

c. A requirement that all school districts and accredited nonpublic schools annually report to the department and the local community the district-wide progress made in attaining student achievement goals on the academic and other core indicators and the district-wide progress made in attaining locally established student learning goals. The school districts and accredited nonpublic schools shall demonstrate the use of multiple assessment measures in determining student achievement levels. The school districts and accredited nonpublic schools shall also report the number of students who graduate, utilizing the definition of graduation rate specified by the national governors association; the number of students who drop out of school; the number of students pursuing a high school equivalency diploma pursuant to chapter 259A; the number of students who were enrolled in the district within the past five years and who received a high school equivalency diploma; the percentage of students who receive a high school diploma and who were not proficient in reading, mathematics, and science in grade eleven; the number of students in the prior year who were enrolled as high school juniors who are within four units of meeting the district's graduation requirements; the number of students who are tested and the percentage of students who are so tested annually; and the percentage of students

who graduated during the prior school year and who completed a core curriculum. The board shall develop and adopt uniform definitions consistent with the federal No Child Left Behind Act of 2001, Pub. L. No. 107-110 and any federal regulations adopted pursuant to the federal Act. The school districts and accredited nonpublic schools may report on other locally determined factors influencing student achievement. The school districts and accredited nonpublic schools shall also report to the local community their results by individual attendance center.

22. Adopt rules and a procedure for the approval of para-educator preparation programs offered by a public school district, area education agency, community college, institution of higher education under the state board of regents, or an accredited private institution as defined in section 261.9, subsection 1. The programs shall train and recommend individuals for para-educator certification under section 272.12.

23. Adopt rules directing the community colleges to annually and uniformly submit data from the most recent fiscal year to the division of community colleges and workforce preparation, using criteria determined and prescribed by the division via the management information system. Financial data submitted to the division by a community college shall be broken down by fund. Community colleges shall provide data to the division by a deadline set by the division. The deadline shall be set for a date that permits the division to include the data in a report submitted for state board approval and for review by December 15 of each year by the house and senate standing education committees and the joint subcommittee on education appropriations.

24. Adopt rules on or before January 1, 2001, to require school districts and accredited nonpublic schools to adopt local policies relating to health services, media services programs, and guidance programs, as part of the general accreditation standards applicable to school districts pursuant to section 256.11. This subsection shall be applicable strictly for reporting purposes and shall not be interpreted to require school districts and accredited nonpublic schools to provide or offer health services, media services programs, or guidance programs.

25. Adopt rules establishing standards for school district and area education agency professional development programs and for individual teacher professional development plans in accordance with section 284.6.

26. Adopt rules that establish a voluntary model core curriculum and requiring, beginning with the students in the 2010 – 2011 school year graduating class, high school graduation requirements for all students in school districts and accredited nonpublic schools that include a minimum satisfactory completion of four years of English and language arts, three years of mathemat-

ics, three years of science, and three years of social studies. The voluntary model core curriculum adopted shall address the core content standards in subsection 28 and the skills and knowledge students need to be successful in the twenty-first century. The voluntary model core curriculum shall include social studies and twenty-first century learning skills which include but are not limited to civic literacy, health literacy, technology literacy, financial literacy, and employability skills; and shall address the curricular needs of students in kindergarten through grade twelve in those areas. The state board shall continue the inclusive process begun during the initial development of a voluntary model core curriculum for grades nine through twelve including stakeholder involvement, including but not limited to representatives from the private sector and the business community, and alignment of the voluntary model core curriculum to other recognized sets of national and international standards. The state board shall also recommend quality assessments to school districts and accredited nonpublic schools to measure the voluntary model core curriculum.

27. Adopt by rule the Iowa standards for school administrators, including the knowledge and skill criteria developed by the director in accordance with section 256.9, subsection 55.

28. Adopt a set of core content standards applicable to all students in kindergarten through grade twelve in every school district and accredited nonpublic school. For purposes of this subsection, “*core content standards*” includes reading, mathematics, and science. The core content standards shall be identical to the core content standards included in Iowa’s approved 2006 standards and assessment system under Title I of the federal Elementary and Secondary Education Act of 1965, 20 U.S.C. § 6301 et seq., as amended by the federal No Child Left Behind Act of 2001, Pub. L. No. 107-110. School districts and accredited nonpublic schools shall include, at a minimum, the core content standards adopted pursuant to this subsection in any set of locally developed content standards. School districts and accredited nonpublic schools are strongly encouraged to include the voluntary model core curriculum or set higher expectations in local standards. As changes in federal law or regulation occur, the state board is authorized to amend the core content standards as appropriate.

2007 Acts, ch 108, §1, 2; 2007 Acts, ch 214, §16, 17  
Subsections 25 and 26 amended  
NEW subsections 27 and 28

### 256.9 Duties of director.

Except for the college student aid commission and the public broadcasting board and division, the director shall:

1. Carry out programs and policies as determined by the state board.
2. Recommend to the state board rules neces-

sary to implement programs and services of the department.

3. Establish divisions of the department as necessary or desirable in addition to divisions required by law. The organization of the department shall promote coordination of functions and services relating to administration, supervision, and improvement of instruction.

4. Employ personnel and assign duties and responsibilities of the department. The director shall appoint a deputy director and division administrators deemed necessary. They shall be appointed on the basis of their professional qualifications, experience in administration, and background. Members of the professional staff are not subject to the merit system provisions of chapter 8A, subchapter IV, and are subject to section 256.10.

5. Transmit to the department of management information about the distribution of state and federal funds pursuant to state law and rules of the department.

6. Develop a budget and transmit to the department of management estimates of expenditure requirements for all functions and services of the department.

7. Accept and administer federal funds apportioned to the state for educational and rehabilitation purposes and accept surplus commodities for distribution when made available by a governmental agency. The director may also accept grants and gifts on behalf of the department.

8. Cooperate with other governmental agencies and political subdivisions in the development of rules and enforcement of laws relating to education.

9. Conduct research on education matters.

10. Submit to each regular session of the general assembly recommendations relating to revisions or amendments to the school laws.

11. Approve, coordinate, and supervise the use of electronic data processing by school districts, area education agencies, and merged areas.

12. Act as the executive officer of the state board.

13. Act as custodian of a seal for the director’s office and authenticate all true copies of decisions or documents.

14. Appoint advisory committees, in addition to those required by law, to advise in carrying out the programs, services, and functions of the department.

15. Provide the same educational supervision for the schools maintained by the director of human services as is provided for the public schools of the state and make recommendations to the director of human services for the improvement of the educational program in those institutions.

16. Interpret the school laws and rules relating to the school laws.

17. Hear and decide appeals arising from the

school laws not otherwise specifically granted to the state board.

18. Prepare forms and procedures as necessary to be used by area education agency boards, district boards, school officials, principals, teachers, and other employees, and to insure uniformity, accuracy, and efficiency in keeping records in both pupil and cost accounting, the execution of contracts, and the submission of reports, and notify the area education agency board, district board, or school authorities when a report has not been filed in the manner or on the dates prescribed by law or by rule that the school will not be accredited until the report has been properly filed.

19. Determine by inspection, supervision, or otherwise, the condition, needs, and progress of the schools under the supervision of the department, make recommendations to the proper authorities for the correction of deficiencies and the educational and physical improvement of the schools, and request a state audit of the accounts of a school district, area education agency, school official, or school employee handling school funds when it is apparent that an audit should be made.

20. Preserve reports, documents, and correspondence that may be of a permanent value, which shall be open for inspection under reasonable conditions.

21. Keep a record of the business transacted by the director.

22. Endeavor to promote among the people of the state an interest in education.

23. Classify and define the various schools under the supervision of the department, formulate suitable courses of study, and publish and distribute the classifications and courses of study and promote their use.

24. Report biennially to the governor, at the time provided by law, the condition of the schools under the department's supervision, including the number of school districts, the number and value of schoolhouses, the enrollment and attendance in each district for the previous year, any measures proposed for the improvement of the public schools, financial and statistical information of public importance, and general information relating to educational affairs and conditions within the state or elsewhere. The report shall also review the programs and services of the department.

25. Direct area education agency administrators to arrange for professional teachers' meetings, demonstration teaching, or other field work for the improvement of instruction as best fits the needs of the public schools in each area.

26. Cause to be printed in book form, during the months of June and July in the year 1987 and every four years thereafter, if deemed necessary, all school laws then in force with forms, rulings, decisions, notes, and suggestions which may aid school officers in the proper discharge of their duties. A sufficient number shall be furnished to school officers, directors, superintendents, area

administrators, members of the general assembly, and others as reasonably requested.

27. Direct that any amendments or changes in the school laws, with necessary notes and suggestions, be distributed as prescribed in subsection 26 annually.

28. Prepare and submit to each regular session of the general assembly a report containing the recommendations of the state board as to revisions, amendments, and new provisions of school laws.

29. Reserved.

30. Approve the salaries of area education agency administrators.

31. Develop criteria and procedures to assist in the identification of at-risk children and their developmental needs.

32. Develop, in conjunction with the child development coordinating council or other similar agency, child-to-staff ratio recommendations and standards for at-risk programs based on national literature and test results and Iowa longitudinal test results.

33. Develop programs in conjunction with the center for early development education to be made available to the school districts to assist them in identification of at-risk children and their developmental needs.

34. Conduct or direct the area education agency to conduct feasibility surveys and studies, if requested under section 282.11, of the school districts within the area education agency service areas and all adjacent territory, including but not limited to contiguous districts in other states, for the purpose of evaluating and recommending proposed whole grade sharing agreements requested under section 282.7 and section 282.10, subsections 1 and 4. The surveys and studies shall be revised periodically to reflect reorganizations which may have taken place in the area education agency, adjacent territory, and contiguous districts in other states. The surveys and studies shall include a cover page containing recommendations and a short explanation of the recommendations. The factors to be used in determining the recommendations include, but are not limited to:

a. The possibility of long-term survival of the proposed alliance.

b. The adequacy of the proposed educational programs versus the educational opportunities offered through a different alliance.

c. The financial strength of the new alliance.

d. Geographical factors.

e. The impact of the alliance on surrounding schools.

Copies of the completed surveys and studies shall be transmitted to the affected districts' school boards.

35. Develop standards and instructional materials to do all of the following:

a. Assist school districts in developing appropriate before and after school programs for ele-

mentary school children.

b. Assist school districts in the development of child care services and programs to complement half-day and all-day kindergarten programs.

c. Assist school districts in the development of appropriate curricula for all-day, everyday kindergarten programs.

d. Assist school districts in the development of appropriate curricula for the early elementary grades one through three.

e. Assist prekindergarten instructors in the development of appropriate curricula and teaching practices.

Standards and materials developed shall include materials which employ developmentally appropriate practices and incorporate substantial parental involvement. The materials and standards shall include alternative teaching approaches including collaborative teaching and alternative dispute resolution training. The department shall consult with the child development coordinating council, the state child care advisory council, the department of human services, the state board of regents center for early developmental education, the area education agencies, the department of child development in the college of family and consumer sciences at Iowa state university of science and technology, the early childhood elementary division of the college of education at the university of Iowa, and the college of education at the university of northern Iowa, in developing these standards and materials.

For purposes of this section “*substantial parental involvement*” means the physical presence of parents in the classroom, learning experiences designed to enhance the skills of parents in parenting and in providing for their children’s learning and development, or educational materials which may be borrowed for home use.

36. Develop, or direct the area education agencies to develop, a statewide technical assistance support network to provide school districts or district subcontractors under section 279.49 with assistance in creating developmentally appropriate programs under section 279.49.

37. Administer and approve grants to school districts which provide innovative in-school programming for at-risk children in grades kindergarten through three, in addition to regular school curricula for children participating in the program, with the funds for the grants being appropriated for at-risk children by the general assembly. Grants approved shall be for programs in schools with a high percentage of at-risk children. Preference shall be given to programs which integrate at-risk children with the rest of the school population, which agree to limit class size and pupil-teacher ratios, which include parental involvement, which demonstrate community support, which cooperate with other community agencies, which provide appropriate guidance counseling services, and which use teachers with an early

childhood endorsement. Grant programs shall contain an evaluation component that measures student outcomes.

38. Develop a model written publications code including reasonable provisions for the regulation of the time, place, and manner of student expression.

39. Provide educational resources and technical assistance to schools relating to the implementation of the nutritional guidelines for food and beverages sold on public school grounds or on the grounds of nonpublic schools receiving funds under section 283A.10.

40. Reserved.

41. Explore, in conjunction with the state board of regents, the need for coordination between school districts, area education agencies, regents institutions, and community colleges for purposes of delivery of courses, use of telecommunications, transportation, and other similar issues. Coordination may include, but is not limited to, coordination of calendars, programs, schedules, or telecommunications emissions.

42. Develop an application and review process for approval of administrative and program sharing agreements between two or more community colleges or a community college and an institution of higher education under the board of regents entered into pursuant to section 260C.46.

43. Prepare a plan and a report for ensuring that all Iowa children will be able to satisfy the requirements for high school graduation. The plan and report shall include a statement of the dimensions of the dropout problem in Iowa; a survey of existing programs geared to dropout prevention; a plan for use of competency-based outcome methods and measures; proposals for alternative means for satisfying graduation requirements including alternative high school settings, supervised vocational experiences, education experiences within the correctional system, screening and assessment mechanisms for identifying students who are at risk of dropping out and the development of an individualized education plan for identified students; a requirement that schools provide information to students who drop out of school on options for pursuing education at a later date; the development of basic materials and information for schools to present to students leaving school; a requirement that students notify their school districts of residence when the student discontinues school, including the reasons for leaving school and future plans for career development; a requirement that, unless a student chooses to make the information relating to the student leaving school confidential, schools make the information available to community colleges, area education agencies, and other educational institutions upon request; recommendations for the establishment of pilot projects for the development of model alternative options education programs; a plan for implementation of any recommended

courses of action to attain a zero dropout rate by the year 2000; and other requirements necessary to achieve the goals of this subsection. Alternative means for satisfying graduation requirements which relate to the development of individualized education plans for students who have dropped out of the regular school program shall include, but are not limited to, a tracking component that requires a school district to maintain periodic contact with a student, assistance to a dropout in curing any of the student's academic deficiencies, an assessment of the student's employability skills and plans to improve those skills, and treatment or counseling for a student's social needs. The department shall also prepare a cost estimate associated with implementation of proposals to attain a zero dropout rate, including but not limited to evaluation of existing funding sources and a recommended allocation of the financial burden among federal, state, local, and family resources.

44. If funds are appropriated by the general assembly for the program, administer the teacher exchange program, develop forms for requests to participate in the program, and process requests from teacher participants for reimbursement of expenses incurred as a result of participating in the program.

45. Develop in-service and preservice training programs through the area education agencies and practitioner preparation institutions and guidelines for school districts for the establishment of family support programs. Guidelines developed shall describe barriers to learning and development which can affect children served by family support programs.

46. Serve as an ex officio member of the commission of libraries.

47. Grant annual exemptions from one or more of the minimum education standards contained in section 256.11 and rules adopted by the state board of education to nonpublic schools or public school districts who are engaging in comprehensive school transformation efforts that are broadly consistent with the current standards, but require exemption from one or more standards in order to implement the comprehensive school transformation effort within the nonpublic school or school district. Nonpublic schools or public school districts wishing to be exempted from one or more of the minimum standards contained in section 256.11 and rules adopted by the state board of education shall file a request for an exemption with the department. Requests for exemption shall include all of the following:

*a.* A description of the nonpublic school or public school district's school transformation plan, including but not limited to new structures, methodologies, and creative approaches designed to help students achieve at higher levels.

*b.* Identification of the standard or standards for which the exemption is being sought, including

a statement of the reasons for requesting the exemption from the standard or standards.

*c.* Identification of a method for periodic demonstration that student achievement will not be lessened by the granting of the exemption.

The director shall develop a procedure for application for exemption and receipt, review, and evaluation of nonpublic school and public school district requests, including but not limited to development of criteria for the granting or denying of requests for exemptions and a time line for the submission, review, and granting or denying of requests for exemption from one or more standards.

48. Develop and administer, with the cooperation of the department of veterans affairs, a program which shall be known as operation recognition. The purpose of the program is to award high school diplomas to veterans of World War I, World War II, and the Korean and Vietnam conflicts who left high school prior to graduation to enter United States military service. The department of education and the department of veterans affairs shall jointly develop an application procedure, distribute applications, and publicize the program to school districts, accredited nonpublic schools, county commissions of veteran affairs, veterans organizations, and state, regional, and local media. All honorably discharged veterans who are residents or former residents of the state; who served at any time between April 6, 1917, and November 11, 1918, at any time between September 16, 1940, and December 31, 1946, at any time between June 25, 1950, and January 31, 1955, or at any time between February 28, 1961, and May 5, 1975, all dates inclusive; and who did not return to school and complete their education after the war or conflict shall be eligible to receive a diploma. Diplomas may be issued posthumously. Upon approval of an application, the department shall issue an honorary high school diploma for an eligible veteran. The diploma shall indicate the veteran's school of attendance. The department of education and the department of veterans affairs shall work together to provide school districts, schools, communities, and county commissions of veteran affairs with information about hosting a diploma ceremony on or around Veterans Day. The diploma shall be mailed to the veteran or, if the veteran is deceased, to the veteran's family.

49. Reconcile, with the assistance of the community colleges, audited financial statements and the financial data submitted to the department. The reconciliation shall include an analysis of funding by funding source.

50. Develop core knowledge and skill criteria, based upon the Iowa teaching standards, for the evaluation, the advancement, and for teacher career development purposes pursuant to chapter 284. The criteria shall further define the characteristics of quality teaching as established by the Iowa teaching standards. The director, in consul-

tation with the board of educational examiners, shall also develop a transition plan for implementation of the career development standards developed pursuant to section 256.7, subsection 25, with regard to licensure renewal requirements. The plan shall include a requirement that practitioners be allowed credit for career development completed prior to implementation of the career development standards developed pursuant to section 256.7, subsection 25.

51. Disburse, transfer, or receive funds as authorized or required under federal or state law or regulation in a manner that utilizes electronic transfer of the funds whenever possible.

52. Develop and implement a comprehensive management information system designed for the purpose of establishing standardized electronic data collections and reporting protocols that facilitate compliance with state and federal reporting requirements, improve school-to-school and district-to-district information exchanges, and maintain the confidentiality of individual student and staff data. The system shall provide for the electronic transfer of individual student records between schools, districts, postsecondary institutions, and the department. The director may establish, to the extent practicable, a uniform coding and reporting system, including a statewide uniform student identification system.

53. Prepare and submit to the chairpersons and ranking members of the senate and house education committees a report on the state's progress toward closing the achievement gap, including student achievement for minority subgroups, and a comprehensive summary of state agency and local district activities and practices taken in the past year to close the achievement gap.

54. *a.* Develop and make available to school districts, examples of age-appropriate and research-based materials and lists of resources which parents may use to teach their children to recognize unwanted physical and verbal sexual advances, to not make unwanted physical and verbal sexual advances, to effectively reject unwanted sexual advances, that it is wrong to take advantage of or exploit another person, about the dangers of sexual exploitation by means of the internet including specific strategies to help students protect themselves and their personally identifiable information from such exploitation, and about counseling, medical, and legal resources available to survivors of sexual abuse and sexual assault, including resources for escaping violent relationships. The materials and resources shall cover verbal, physical, and visual sexual harassment, including nonconsensual sexual advances, and nonconsensual physical sexual contact. In developing the materials and resource list, the director shall consult with entities that shall include, but not be limited to, the departments of human services, public health, and public safety, educa-

tion stakeholders, and parent-teacher organizations. School districts shall provide age-appropriate and research-based materials and a list of available community and web-based resources to parents at registration and shall also include the age-appropriate and research-based materials and resource list in the student handbook. School districts are encouraged to work with their communities to provide voluntary parent education sessions to provide parents with the skills and appropriate strategies to teach their children as described in this subsection. School districts shall incorporate the age-appropriate and research-based materials into relevant curricula and shall reinforce the importance of preventive measures when reasonable with parents and students.

*b.* Make available scientifically based research studies in the area of health and wellness literacy for use by school districts and nonpublic schools in educating students. The content shall include but not be limited to research on instructional materials and teaching strategies that have proven effective in teaching students the knowledge and skills included in paragraph "a" and section 256.11. School districts are encouraged to incorporate as much of this material as practical.

55. Develop Iowa standards for school administrators, including knowledge and skill criteria, and develop, based on the Iowa standards for administrators, mentoring and induction, evaluation processes, and professional development plans pursuant to chapter 284A. The criteria shall further define the characteristics of quality administrators as established by the Iowa standards for school administrators.

56. Establish and maintain a process and a procedure, in cooperation with the board of educational examiners, to compare a practitioner's teaching assignment with the license and endorsements held by the practitioner. The director may report noncompliance issues identified by this process to the board of educational examiners pursuant to section 272.15, subsection 3.

2007 Acts, ch 98, §1; 2007 Acts, ch 108, §3; 2007 Acts, ch 214, §18  
Subsection 54 amended  
NEW subsections 55 and 56

### **256.11 Educational standards.**

The state board shall adopt rules under chapter 17A and a procedure for accrediting all public and nonpublic schools in Iowa offering instruction at any or all levels from the prekindergarten level through grade twelve. The rules of the state board shall require that a multicultural, gender fair approach is used by schools and school districts. The educational program shall be taught from a multicultural, gender fair approach. Global perspectives shall be incorporated into all levels of the educational program. The rules adopted by the state board pursuant to section 256.17, Code Supplement 1987, to establish new standards shall satisfy the requirements of this section to adopt rules



to implement the educational program contained in this section. The educational program shall be as follows:

1. *a.* If a school offers a prekindergarten program, the program shall be designed to help children to work and play with others, to express themselves, to learn to use and manage their bodies, and to extend their interests and understanding of the world about them. The prekindergarten program shall relate the role of the family to the child's developing sense of self and perception of others. Planning and carrying out prekindergarten activities designed to encourage cooperative efforts between home and school shall focus on community resources. Except as otherwise provided in this subsection, a prekindergarten teacher shall hold a license certifying that the holder is qualified to teach in prekindergarten. A nonpublic school which offers only a prekindergarten may, but is not required to, seek and obtain accreditation.

*b.* If the board of directors of a school district contracts for the operation of a prekindergarten program, the program shall be under the oversight of an appropriately licensed teacher. If the program contracted with was in existence on July 1, 1989, oversight of the program shall be provided by the district. If the program contracted with was not in existence on July 1, 1989, the director of the program shall be a licensed teacher and the director shall provide program oversight. Any director of a program contracted with by a school district under this section who is not a licensed teacher is required to register with the department of education.

*c.* For the purposes of this subsection, "*prekindergarten program*" includes but is not limited to a school district's implementation of the preschool program established pursuant to chapter 256C.

2. The kindergarten program shall include experiences designed to develop healthy emotional and social habits and growth in the language arts and communication skills, as well as a capacity for the completion of individual tasks, and protect and increase physical well-being with attention given to experiences relating to the development of life skills and human growth and development. A kindergarten teacher shall be licensed to teach in kindergarten. An accredited nonpublic school must meet the requirements of this subsection only if the nonpublic school offers a kindergarten program.

3. The following areas shall be taught in grades one through six: English-language arts, social studies, mathematics, science, health, age-appropriate and research-based human growth and development, physical education, traffic safety, music, and visual art. The health curriculum shall include the characteristics of communicable diseases including acquired immune deficiency syndrome. The state board as part of accreditation standards shall adopt curriculum definitions for

implementing the elementary program.

4. The following shall be taught in grades seven and eight: English-language arts; social studies; mathematics; science; health; age-appropriate and research-based human growth and development; family, consumer, career, and technology education; physical education; music; and visual art. The health curriculum shall include age-appropriate and research-based information regarding the characteristics of sexually transmitted diseases, including HPV and the availability of a vaccine to prevent HPV, and acquired immune deficiency syndrome. The state board as part of accreditation standards shall adopt curriculum definitions for implementing the program in grades seven and eight. However, this subsection shall not apply to the teaching of family, consumer, career, and technology education in nonpublic schools. For purposes of this section, "*age-appropriate*", "*HPV*", and "*research-based*" mean the same as defined in section 279.50.

5. In grades nine through twelve, a unit of credit consists of a course or equivalent related components or partial units taught throughout the academic year. The minimum program to be offered and taught for grades nine through twelve is:

*a.* Five units of science including physics and chemistry; the units of physics and chemistry may be taught in alternate years.

*b.* Five units of the social studies including instruction in voting statutes and procedures, voter registration requirements, the use of paper ballots and voting machines in the election process, and the method of acquiring and casting an absentee ballot. All students shall complete a minimum of one-half unit of United States government and one unit of United States history. The one-half unit of United States government shall include the voting procedure as described in this lettered paragraph and section 280.9A. The government instruction shall also include a study of the Constitution of the United States and the Bill of Rights contained in the Constitution and an assessment of a student's knowledge of the Constitution and the Bill of Rights.

The county auditor, upon request and at a site chosen by the county auditor, shall make available to schools within the county voting machines or sample ballots that are generally used within the county, at times when these machines or sample ballots are not in use for their recognized purpose.

*c.* Six units of English-language arts.

*d.* Four units of a sequential program in mathematics.

*e.* Two additional units of mathematics.

*f.* Four sequential units of one foreign language other than American sign language. Provision of instruction in American sign language shall be in addition to and not in lieu of provision of instruction in other foreign languages. The department may waive the third and fourth years of

the foreign language requirement on an annual basis upon the request of the board of directors of a school district or the authorities in charge of a nonpublic school if the board or authorities are able to prove that a licensed teacher was employed and assigned a schedule that would have allowed students to enroll in a foreign language class, the foreign language class was properly scheduled, students were aware that a foreign language class was scheduled, and no students enrolled in the class.

*g.* All students physically able shall be required to participate in physical education activities during each semester they are enrolled in school except as otherwise provided in this paragraph. A minimum of one-eighth unit each semester is required. A twelfth grade student who meets the requirements of this paragraph may be excused from the physical education requirement by the principal of the school in which the student is enrolled if the parent or guardian of the student requests in writing that the student be excused from the physical education requirement. A student who wishes to be excused from the physical education requirement must be seeking to be excused in order to enroll in academic courses not otherwise available to the student, or be enrolled or participating in one of the following:

(1) A cooperative or work-study program or other educational program authorized by the school which requires the student to leave the school premises for specified periods of time during the school day.

(2) An organized and supervised athletic program which requires at least as much participation per week as one-eighth unit of physical education.

Students in grades nine through eleven may be excused from the physical education requirement in order to enroll in academic courses not otherwise available to the student if the board of directors of the school district in which the school is located, or the authorities in charge of the school, if the school is a nonpublic school, determine that students from the school may be permitted to be excused from the physical education requirement. A student may be excused by the principal of the school in which the student is enrolled, in consultation with the student's counselor, for up to one semester, trimester, or the equivalent of a semester or trimester, per year if the parent or guardian of the student requests in writing that the student be excused from the physical education requirement. The student seeking to be excused from the physical education requirement must, at some time during the period for which the excuse is sought, be a participant in an organized and supervised athletic program which requires at least as much time of participation per week as one-eighth unit of physical education.

The principal of the school shall inform the su-

perintendent of the school district or nonpublic school that the student has been excused. Physical education activities shall emphasize leisure time activities which will benefit the student outside the school environment and after graduation from high school.

*h.* A minimum of three sequential units in at least four of the following six vocational service areas: agriculture, business or office occupations, health occupations, family and consumer sciences or home economics occupations, industrial technology or trade and industrial education, and marketing education. Instruction shall be competency-based, articulated with postsecondary programs of study, and include field, laboratory, or on-the-job training. Each sequential unit shall include instruction in a minimum set of competencies established by the department of education that relate to the following: new and emerging technologies; job-seeking, job-adaptability, and other employment, self-employment and entrepreneurial skills that reflect current industry standards and labor-market needs; and reinforcement of basic academic skills. The instructional programs shall also comply with the provisions of chapter 258 relating to vocational education. However, this paragraph does not apply to the teaching of vocational education in nonpublic schools.

The department of education shall permit school districts, in meeting the requirements of this section, to use vocational core courses in more than one vocational service area and to use multi-occupational courses to complete a sequence in more than one vocational service area.

*i.* Three units in the fine arts which shall include at least two of the following: dance, music, theatre, and visual art.

*j.* One unit of health education which shall include personal health; food and nutrition; environmental health; safety and survival skills; consumer health; family life; age-appropriate and research-based human growth and development; substance abuse and nonuse; emotional and social health; health resources; and prevention and control of disease, including age-appropriate and research-based information regarding sexually transmitted diseases, including HPV and the availability of a vaccine to prevent HPV, and acquired immune deficiency syndrome.

The state board as part of accreditation standards shall adopt curriculum standards for implementing the program in grades nine through twelve.

6. A pupil is not required to enroll in either physical education or health courses if the pupil's parent or guardian files a written statement with the school principal that the course conflicts with the pupil's religious belief.

7. Programs that meet the needs of each of the following:

- a. Pupils requiring special education.
- b. Gifted and talented pupils.
- c. At-risk students.

8. Upon request of the board of directors of a public school district or the authorities in charge of a nonpublic school, the director may, for a number of years to be specified by the director, grant the district board or the authorities in charge of the nonpublic school exemption from one or more of the requirements of the educational program specified in subsection 5. The exemption may be renewed. Exemptions shall be granted only if the director deems that the request made is an essential part of a planned innovative curriculum project which the director determines will adequately meet the educational needs and interests of the pupils and be broadly consistent with the intent of the educational program as defined in subsection 5. The request for exemption shall include all of the following:

- a. Rationale of the project to include supportive research evidence.
- b. Objectives of the project.
- c. Provisions for administration and conduct of the project, including the use of personnel, facilities, time, techniques, and activities.
- d. Plans for evaluation of the project by testing and observational measures of pupil progress in reaching the objectives.
- e. Plans for revisions of the project based on evaluation measures.
- f. Plans for periodic reports to the department.
- g. The estimated cost of the project.

9. Beginning July 1, 2006, each school district shall have a qualified teacher librarian who shall be licensed by the board of educational examiners under chapter 272. The state board shall establish in rule a definition of and standards for an articulated sequential kindergarten through grade twelve media program. A school district that entered into a contract with an individual for employment as a media specialist or librarian prior to June 1, 2006, shall be considered to be in compliance with this subsection until June 30, 2011, if the individual is making annual progress toward meeting the requirements for a teacher librarian endorsement issued by the board of educational examiners under chapter 272. A school district that entered into a contract with an individual for employment as a media specialist or librarian who holds at least a master's degree in library and information studies shall be considered to be in compliance with this subsection until the individual leaves the employ of the school district.

9A. Beginning July 1, 2007, each school district shall have a qualified guidance counselor who shall be licensed by the board of educational examiners under chapter 272. Each school district shall work toward the goal of having one qualified guidance counselor for every three hundred fifty students enrolled in the school district. The state board shall establish in rule a definition of and

standards for an articulated sequential kindergarten through grade twelve guidance and counseling program.

9B. Beginning July 1, 2007, each school district shall have a school nurse to provide health services to its students. Each school district shall work toward the goal of having one school nurse for every seven hundred fifty students enrolled in the school district. For purposes of this subsection, "school nurse" means a person who holds an endorsement or a statement of professional recognition for school nurses issued by the board of educational examiners under chapter 272.

10. The state board shall establish an accreditation process for school districts and nonpublic schools seeking accreditation pursuant to this subsection and subsections 11 and 12. By July 1, 1989, all school districts shall meet standards for accreditation. For the school year commencing July 1, 1989, and school years thereafter, the department of education shall use a two-phase process for the continued accreditation of schools and school districts.

a. Phase I shall consist of annual monitoring by the department of education of all accredited schools and school districts for compliance with accreditation standards adopted by the state board of education as provided in this section. The phase I monitoring requires that accredited schools and school districts annually complete accreditation compliance forms adopted by the state board and file them with the department of education. Phase I monitoring requires a comprehensive desk audit of all accredited schools and school districts including review of accreditation compliance forms, accreditation visit reports, methods of administration reports, and reports submitted in compliance with section 256.7, subsection 21, paragraph "a", and section 280.12.

The department shall conduct site visits to schools and school districts to address accreditation issues identified in the desk audit. Such a visit may be conducted by an individual departmental consultant or may be a comprehensive site visit by a team of departmental consultants and other educational professionals. The purpose of a comprehensive site visit is to determine that a district is in compliance with minimum standards and to provide a general assessment of educational practices in a school or school district and make recommendations with regard to the visit findings for the purposes of improving educational practices above the level of minimum compliance. The department shall establish a long-term schedule of site visits that includes visits of all accredited schools and school districts as needed.

b. (1) Phase II requires the use of an accreditation committee, appointed by the director of the department of education, to conduct an on-site visit to an accredited school or school district if any of the following conditions exist:

- (a) When either the annual monitoring or the

biennial on-site visit of phase I indicates that a school or school district is deficient and fails to be in compliance with accreditation standards.

(b) In response to a petition filed with the director requesting such a committee visitation that is signed by eligible electors residing in the school district equal in number to at least twenty percent of the registered voters of the school district.

(c) In response to a petition filed with the director requesting such a committee visitation that is signed by twenty percent or more of the parents or guardians who have children enrolled in the school or school district.

(d) At the direction of the state board of education.

(e) The school budget review committee submits to the department a recommendation for a fiscal review pursuant to section 257.31, subsection 18.

(2) The number and composition of the membership of an accreditation committee shall be determined by the director and may vary due to the specific nature or reason for the visit. In all situations, however, the chairperson and a majority of the committee membership shall be from the instructional and administrative program specialty staff of the department of education. Other members may include instructional and administrative staff from school districts, area education agencies, institutions of higher education, local board members and the general public. An accreditation committee visit to a nonpublic school requires membership on the committee from nonpublic school instructional or administrative staff or board members. A member of a committee shall not have a direct interest in the nonpublic school or school district being visited.

(3) Rules adopted by the state board may include provisions for coordination of the accreditation process under this section with activities of accreditation associations.

(4) Prior to a visit to a school district or nonpublic school, members of the accreditation committee shall have access to all annual accreditation report information filed with the department by that nonpublic school or school district.

(5) After visiting the school district or nonpublic school, the accreditation committee shall determine whether the accreditation standards have been met and shall make a report to the director, together with a recommendation whether the school district or nonpublic school shall remain accredited. The accreditation committee shall report strengths and weaknesses, if any, for each standard and shall advise the school or school district of available resources and technical assistance to further enhance strengths and improve areas of weakness. A school district or nonpublic school shall be provided with the opportunity to respond to the accreditation committee's report.

11. The director shall review the accreditation committee's report, and the response of the school

district or nonpublic school, and provide a report and recommendation to the state board along with copies of the accreditation committee's report, the response to the report, and other pertinent information. The state board shall determine whether the school district or nonpublic school shall remain accredited. If the state board determines that a school district or nonpublic school should not remain accredited, the director, in cooperation with the board of directors of the school district, or authorities in charge of the nonpublic school, shall establish a plan prescribing the procedures that must be taken to correct deficiencies in meeting the standards, and shall establish a deadline date for completion of the procedures. The plan is subject to approval of the state board.

12. During the period of time specified in the plan for its implementation by a school district or nonpublic school, the school district or school remains accredited. The accreditation committee shall revisit the school district or nonpublic school and shall determine whether the deficiencies in the standards have been corrected and shall make a report and recommendation to the director and the state board. The committee recommendation shall specify whether the school district or school shall remain accredited or under what conditions the district may remain accredited. The conditions may include, but are not limited to, providing temporary oversight authority, operational authority, or both oversight and operational authority to the director and the state board for some or all aspects of the school district operation, in order to bring the school district into compliance with minimum standards. The state board shall review the report and recommendation, may request additional information, and shall determine whether the deficiencies have been corrected. If the deficiencies have not been corrected, and the conditional accreditation alternatives contained in the report are not mutually acceptable to the local board and the state board, the state board shall merge the territory of the school district with one or more contiguous school districts at the end of the school year. Division of assets and liabilities of the school district shall be as provided in sections 275.29 through 275.31. Until the merger is completed, and subject to a decision by the state board of education, the school district shall pay tuition for its resident students to an accredited school district under section 282.24. However, in lieu of merger and payment of tuition by a nonaccredited school district, the state board may place a district under receivership for the remainder of the school year. The receivership shall be under the direct supervision and authority of the director. The decision of whether to merge the school district and require payment of tuition for the district's students or to place the district under receivership shall be based upon a determination by the state board of the best interests of the students, parents, residents of the community, teach-

ers, administrators, and board members of the district and the recommendations of the accreditation committee and the director. If the state board declares a nonpublic school to be nonaccredited, the removal of accreditation shall take effect on the date established by the resolution of the state board, which shall be no later than the end of the school year in which the nonpublic school is declared to be nonaccredited.

13. Notwithstanding subsections 1 through 12 and as an exception to their requirements, a private high school or private combined junior-senior high school operated for the express purpose of teaching a program designed to qualify its graduates for matriculation at accredited four-year or equivalent liberal arts, scientific, or technological colleges or universities shall be placed on a special accredited list of college preparatory schools, which list shall signify accreditation of the school for that express purpose only, if:

a. The school complies with minimum standards established by the Code other than this section, and rules adopted under the Code, applicable to:

- (1) Courses comprising the limited program.
- (2) Health requirements for personnel.
- (3) Plant facilities.
- (4) Other environmental factors affecting the programs.

b. At least eighty percent of those graduating from the school within the four most recent calendar years, other than those graduating who are aliens, graduates entering military or alternative civilian service, or graduates deceased or incapacitated before college acceptance, have been accepted by accredited four-year or equivalent liberal arts, scientific, or technological colleges or universities.

c. A school claiming to be a private college preparatory school which fails to comply with the requirement of paragraph "b" of this subsection shall be placed on the special accredited list of college preparatory schools probationally if the school complies with the requirements of paragraph "a" of this subsection, but a probational accreditation shall not continue for more than four successive years.

14. Notwithstanding subsections 1 through 13 and as an exception to their requirements, a nonpublic grade school which is reopening is accredited even if it does not have a complete grade one through grade six program. However, the nonpublic grade school must comply with other minimum standards established by law and administrative rules adopted pursuant to the law and the nonpublic grade school must show progress toward reaching a grade one through grade six program.

15. The board of directors of a school district or the authorities in charge of a nonpublic school may award credit toward graduation to a student if the

student successfully completes basic training for service as a member of the Iowa army national guard, the Iowa air national guard, the active military forces of the United States, the army national guard of the United States, or the air national guard of the United States.

2007 Acts, ch 42, §1; 2007 Acts, ch 98, §2, 3; 2007 Acts, ch 108, §4; 2007 Acts, ch 148, §7

Vocational agriculture education; §280.20  
Former unnumbered paragraphs 1 – 3 editorially combined  
Subsection 1, former unnumbered paragraphs 1 and 2 editorially designated as paragraphs a and b  
Subsection 1, NEW paragraph c  
Subsections 3 and 4 amended  
Subsection 5, paragraph j amended  
Subsection 8, unnumbered paragraphs 1 and 2 editorially combined  
NEW subsections 9A and 9B  
Subsection 10, unnumbered paragraphs 2 and 3 designated editorially as paragraph a, unnumbered paragraphs 1 and 2  
Subsection 10, unnumbered paragraph 4 and paragraphs a – d redesignated editorially as paragraph b, subparagraph (1) and subparagraph subdivisions (a) – (d) respectively  
Subsection 10, paragraph b, subparagraph (1), NEW subparagraph subdivision (e)  
Subsection 10, unnumbered paragraphs 5 – 8 designated editorially as subparagraphs (2) – (5) of paragraph b

#### **256.11A Teacher librarian — guidance counselor — school nurse — waivers.**

1. The board of directors of a school district may file a written request with the department of education that the department waive the following requirements adopted by the state board as follows:

a. By August 1, 2007, for the school year beginning July 1, 2007, apply for a one-year extension of a waiver granted for the previous school year beginning July 1, 2006, that the school district have a qualified teacher librarian.

b. By August 1, 2007, for the school year beginning July 1, 2007, that the school district have a qualified guidance counselor. The board of directors of the school district may, not later than August 1, 2008, for the school year beginning July 1, 2008, apply for a one-year extension of the waiver.

c. By August 1, 2007, for the school year beginning July 1, 2007, that the school district have a school nurse. The board of directors of the school district may, not later than August 1, 2008, for the school year beginning July 1, 2008, apply for a one-year extension of the waiver.

2. A request for a waiver filed by the board of directors of a school district pursuant to subsection 1 shall describe actions being taken by the district to meet the requirement for which the district has requested a waiver. A school district cannot request a waiver of a requirement under subsection 1 if it met the requirements of section 256.11, subsection 9, 9A, or 9B, as applicable, in the previous school year.

2007 Acts, ch 108, §5  
Section stricken and rewritten

**256.25 Reading instruction pilot project grant program.** Repealed by 2007 Acts, ch 214, § 43.

**256.26 Before and after school grant program.**

1. There is established a before and after school grant program to provide competitive grants to school districts and other public and private organizations to expand the availability of before and after school programs, including but not limited to summer programs.

2. Grant applications shall be assessed by the department based on the targeted student population and whether the application meets all of the following conditions:

*a.* Demonstrates partnerships and collaboration with not-for-profit community organizations.

*b.* Indicates that the applicant has a plan for continually improving quality in the program.

*c.* Provides for a safe and engaging environment.

*d.* Combines academic, enrichment, cultural, and recreational activities.

*e.* Provides for not less than a twenty percent match of any state funds received for purposes of the program.

*f.* Demonstrates that the applicant is able to sustain the program after the grant is exhausted.

3. Activities supported by an applicant may include but are not limited to tutoring and supplementing instruction in basic skills, such as reading, math, and science; drug and violence prevention curricula and counseling; youth leadership activities; volunteer and service learning opportunities; career and vocational awareness preparation; courses and enrichment in arts and culture; computer instruction; character development and civic participation; language instruction, including English as a second language; mentoring; positive interaction with law enforcement; supervised recreation programs; and health and nutrition programs.

4. The department shall make every effort to award grants to a balance of rural and urban programs.

5. The department shall make every effort to leverage additional funding from other public and private sources to support the grant program.

6. From funds appropriated for a fiscal year for purposes of this section, not more than one hundred thousand dollars may be used to retain a contractor to work with the department on long-term planning and development of a statewide infrastructure to provide coordination, support, and technical assistance to before and after school programs. The contractor shall be qualified to provide services in policy development, before and after school funding mechanisms, public and private partnerships, data collection, the promotion of quality, and working with various state and local interests.

2007 Acts, ch 214, §19

Appropriation for 2007-2008 fiscal year; 2007 Acts, ch 214, §6  
NEW section

**256.27 through 256.29** Reserved.

**256.44 National board certification pilot project.**

1. A national board certification pilot project is established to be administered by the department of education. A teacher, as defined in section 272.1, who registers for or achieves national board for professional teaching standards certification, and who is employed by a school district in Iowa and receiving a salary as a classroom teacher, may be eligible for the following:

*a.* If a teacher registers for national board for professional teaching standards certification by December 31, 2007, a one-time initial reimbursement award in the amount of up to one-half of the registration fee paid by the teacher for registration for certification by the national board for professional teaching standards. The teacher shall apply to the department within one year of registration, submitting to the department any documentation the department requires. A teacher who receives an initial reimbursement award shall receive a one-time final registration award in the amount of the remaining national board registration fee paid by the teacher if the teacher notifies the department of the teacher's certification achievement and submits any documentation requested by the department.

*b.* (1) If, by May 1, 2000, the teacher applies to the department for an annual award and submits documentation of certification by the national board for professional teaching standards, an annual award in the amount of five thousand dollars. However, if the teacher does not achieve certification on the teacher's first attempt to pass the national board for professional teaching standards assessment, the teacher shall be paid the award amount as provided in subparagraph (2) upon achieving certification. The department shall award not more than a total of fifty thousand dollars in annual awards to an individual during the individual's term of eligibility for annual awards.

(2) If the teacher registers for national board for professional teaching standards certification between January 1, 1999, and December 31, 2007, and achieves certification within the timelines and policies established by the national board for professional teaching standards, an annual award in the amount of two thousand five hundred dollars upon achieving certification by the national board of professional teaching standards.

To receive an annual award pursuant to this paragraph "b", a teacher shall apply to the department for an award within one year of eligibility. Payment for awards shall be made only upon departmental approval of an application or recertification of eligibility. A term of eligibility shall be for ten years or for the years in which the individual maintains a valid certificate, whichever time

period is shorter. In order to continue receipt of payments, a recipient shall annually recertify eligibility.

2. *a.* If the amount appropriated annually for purposes of this section is insufficient to pay the full amount of reimbursement awards in accordance with subsection 1, paragraph “a”, the department shall annually prorate the amount of the registration awards provided to each teacher who meets the requirements of this section.

*b.* If the amount appropriated annually for purposes of providing an annual award in accordance with subsection 1, paragraph “b”, is insufficient to pay the full annual award to all teachers approved by the department for an annual award, the department shall prorate the amount of the annual award based upon the amount appropriated.

3. A teacher receiving an annual award pursuant to this section may provide additional services to the school district that employs the teacher. The additional services to be provided by the teacher may be mutually agreed upon by the school district and the teacher.

4. Awards shall be paid to teachers by the department as follows:

*a.* Upon receipt of reimbursement documentation as provided in subsection 1, paragraph “a”.

*b.* Not later than June 1 to teachers whose applications and recertifications for annual awards as provided in subsection 1, paragraph “b”, are submitted to the department by May 1 and subsequently approved.

5. Notwithstanding any provision to the contrary, a teacher approved by the department to receive an annual award for certification in accordance with this section in the fiscal year beginning July 1, 1998, shall receive the annual award amount specified in subsection 1, paragraph “b”, subparagraph (1), to commence with the fiscal year beginning July 1, 1999.

6. From funds appropriated for purposes of this section by the general assembly to the department of education for each fiscal year in the fiscal period beginning July 1, 1999, and ending June 30, 2004, three hundred thousand dollars, or so much thereof as may be necessary, shall be used for the payment of registration awards as provided in subsection 4, paragraph “a”.

7. The department shall prorate the amount of the annual awards paid in accordance with this section when the number of award recipients exceeds one thousand one hundred individuals. The department may prorate the amount of an annual award when a teacher who meets the qualifications of subsection 1 is employed on a less than full-time basis by a school district. The state board shall adopt rules under chapter 17A establishing criteria for the proration of annual awards.

8. Notwithstanding section 8.33, funds appro-

priated for purposes of this section which remain unencumbered or unobligated at the close of the fiscal year for which the funds were appropriated shall not revert but shall be available for expenditure for the following fiscal year for purposes of this section.

2007 Acts, ch 108, §6, 7  
 Subsection 1, paragraph a amended  
 Subsection 1, paragraph b, subparagraph (2), unnumbered paragraph 1 amended

### **256.57 Enrich Iowa program.**

1. An enrich Iowa program is established in the division to provide direct state assistance to public libraries, to support the open access and access plus programs, to provide public libraries with an incentive to improve library services that are in compliance with performance measures, and to reduce inequities among communities in the delivery of library services based on performance measures adopted by rule by the commission. The commission shall adopt rules governing the allocation of funds appropriated by the general assembly for purposes of this section to provide direct state assistance to eligible public libraries. A public library is eligible for funds under this chapter if it is in compliance with the commission’s performance measures.

2. The amount of direct state assistance distributed to each eligible public library shall be based on the following:

*a.* The level of compliance by the eligible public library with the performance measures adopted by the commission as provided in this section.

*b.* The number of people residing within an eligible library’s geographic service area for whom the library provides services.

*c.* The amount of other funding the eligible public library received in the previous fiscal year for providing services to rural residents and to contracting communities.

3. Moneys received by a public library pursuant to this section shall supplement, not supplant, any other funding received by the library.

4. For purposes of this section, “*eligible public library*” means a public library that meets all of the following requirements:

*a.* Submits to the division all of the following:

(1) The report provided for under section 256.51, subsection 1, paragraph “g”.

(2) An application and accreditation report, in a format approved by the commission, that provides evidence of the library’s compliance with at least one level of the standards established in accordance with section 256.51, subsection 1, paragraph “j”.

(3) Any other application or report the division deems necessary for the implementation of the enrich Iowa program.

*b.* Participates in the library resource and information sharing programs established by the

state library.

c. Is a public library established by city ordinance or a library district as provided in chapter 336.

5. Each eligible public library shall maintain a separate listing within its budget for payments received and expenditures made pursuant to this section, and shall annually submit this listing to the division.

6. By January 15, annually, the division shall submit a program evaluation report to the general assembly and the governor detailing the uses and the impacts of funds allocated under this section.

7. A public library that receives funds in accordance with this section shall have an internet use

policy in place, which may or may not include internet filtering. The library shall submit a report describing the library's internet use efforts to the division.

8. A public library that receives funds in accordance with this section shall provide open access, the reciprocal borrowing program, as a service to its patrons, at a reimbursement rate determined by the state library.

9. Funds appropriated for purposes of this section shall not be used by the division for administrative purposes.

2007 Acts, ch 126, §46 – 48  
 Subsection 1 amended  
 Subsection 2, paragraph a amended  
 Subsection 5 amended

## CHAPTER 256A

### CHILD DEVELOPMENT ASSISTANCE

#### 256A.2 Child development coordinating council established.

1. A child development coordinating council is established to promote the provision of child development services to at-risk three-year-old and four-year-old children. The council shall consist of the following members:

a. The administrator of the division of child and family services of the department of human services or the administrator's designee.

b. The director of the department of education or the director's designee.

c. The director of human services or the director's designee.

d. The director of the department of public health or the director's designee.

e. An early childhood specialist of an area education agency selected by the area education agency administrators.

f. The dean of the college of family and con-

sumer sciences at Iowa state university of science and technology or the dean's designee.

g. The dean of the college of education from the university of northern Iowa or the dean's designee.

h. The professor and head of the department of pediatrics at the university of Iowa or the professor's designee.

i. A resident of this state who is a parent of a child who is or has been served by a federal head start program.

2. Staff assistance for the council shall be provided by the department of education. Members of the council shall be reimbursed for actual and necessary expenses incurred while engaged in their official duties and shall receive per diem compensation at the level authorized under section 7E.6, subsection 1, paragraph "a".

2007 Acts, ch 22, §58  
 Section amended

## CHAPTER 256C

### STATEWIDE PRESCHOOL PROGRAM FOR FOUR-YEAR-OLD CHILDREN

#### 256C.1 Definitions.

As used in this chapter:

1. "Approved local program" means a school district's program for four-year-old children approved by the department of education to provide high quality preschool instruction.

2. "Department" means the department of education.

3. "Director" means the director of the depart-

ment of education.

4. "Preschool program" means the statewide preschool program for four-year-old children created in accordance with this chapter.

5. "School district approved to participate in the preschool program" means a school district that meets the school district requirements under section 256C.3 and has been approved by the department to participate in the preschool program.



6. “*State board*” means the state board of education.

2007 Acts, ch 148, §1  
NEW section

**256C.2 Statewide preschool program for four-year-old children — purpose.**

1. A statewide preschool program for four-year-old children is established. The purpose of the preschool program is to provide an opportunity for all young children in the state to enter school ready to learn by expanding voluntary access to quality preschool curricula for all children who are four years old.

2. The state board shall adopt rules in accordance with chapter 17A as necessary to implement the preschool program as provided in this chapter.

2007 Acts, ch 148, §2  
Emergency rules authority; 2007 Acts, ch 148, §10  
NEW section

**256C.3 Preschool program requirements.**

1. *Eligible children.* A child who is a resident of Iowa and is four years of age by September 15 of a school year shall be eligible to enroll in the preschool program under this chapter. If space and funding are available, a school district approved to participate in the preschool program may enroll a younger or older child in the preschool program; however, the child shall not be counted for state funding purposes.

2. *Teacher requirements.*

*a.* An individual serving as a teacher in the preschool program must meet all of the following qualifications:

(1) The individual is either employed by or under contract with the school district implementing the program.

(2) The individual is appropriately licensed under chapter 272 and meets requirements under chapter 284.

(3) The individual possesses a bachelor’s or graduate degree from an accredited college or university with a major in early childhood education or other appropriate major identified in rule by the department.

*b.* A teacher in the preschool program shall collaborate with other agencies, organizations, and boards in the community to further the program’s capacity to meet the diverse needs of the children taught by the teacher and the families of the children, such as needs for early care, health, and human services. In addition, a teacher in the preschool program shall work to maintain relationships with each child’s family in order to enhance the child’s development in all settings by collaborating with providers of parent education and family support opportunities.

3. *Program requirements.* The state board shall adopt rules to further define the following

preschool program requirements which shall be used to determine whether or not a local program implemented by a school district approved to implement the preschool program qualifies as an approved local program:

*a.* Maximum and minimum teacher-to-child ratios and class sizes.

*b.* Applicable state and federal program standards.

*c.* Student learning standards.

*d.* Provisions for the integration of children from other state and federally funded preschools.

*e.* Collaboration with participating families, early care providers, and community partners including but not limited to community empowerment area boards, head start programs, shared visions and other programs provided under the auspices of the child development coordinating council, licensed child care centers, registered child development homes, area education agencies, child care resource and referral services provided under section 237A.26, early childhood special education programs, services funded by Title I of the federal Elementary and Secondary Education Act of 1965, and family support programs.

*f.* A minimum of ten hours per week of instruction delivered on the skills and knowledge included in the student learning standards developed for the preschool program.

*g.* Parental involvement in the local program.

*h.* Provision for ensuring that children receiving care from other child care arrangements can participate in the preschool program with minimal disruption due to transportation and movement from one site to another.

4. *School district requirements.* The state board shall adopt rules to further define the following requirements of school districts implementing the preschool program:

*a.* Methods of demonstrating community readiness to implement high-quality instruction in a local program shall be identified. The potential provider shall submit a collaborative program proposal that demonstrates the involvement of multiple community stakeholders including but not limited to, and only as applicable, parents, the school district, accredited nonpublic schools and faith-based representatives, the area education agency, the community empowerment area board, representatives of business, head start programs, shared visions and other programs provided under the auspices of the child development coordinating council, center-based and home-based providers of child care services, human services, public health, and economic development programs. The methods may include but are not limited to a school district providing evidence of a public hearing on the proposed programming and written documentation of collaboration agreements between the school district, existing community providers, and other community stakeholders addressing op-

erational procedures and other critical measures.

b. Subject to implementation of chapter 28E agreements between a school district and community-based providers of services to four-year-old children, a four-year-old child who is enrolled in a child care center or child development home licensed or registered under chapter 237A, or in an existing public or private preschool program, shall be eligible for services provided by the school district's local preschool program.

c. A school district shall participate in data collection and performance measurement processes and reporting as defined by rule.

d. Career development for school district preschool teachers shall be addressed in the school district's career development plan implemented in accordance with section 284.6.

5. *Department requirements.*

a. The department shall implement an application and selection process for school district participation in the preschool program that includes but is not limited to the enrollment requirements provided under section 256C.4.

b. The department shall track the progress of students served by a school district preschool program and the students' performance in elementary and secondary education.

c. The department shall implement procedures to monitor the quality of the programming provided under the preschool program.

d. The state board, in collaboration with the department, shall ensure that the administrative rules adopted to support the preschool program emphasize that children's access to the program is voluntary, that the preschool foundation aid provided to a school district is provided based upon the enrollment of eligible students in the school district's local program regardless of whether an eligible student is a resident of the school district, and that agreements entered into by a school district for the provision of programming in settings other than the school district's facilities are between the school district and the private provider.

2007 Acts, ch 148, §3; 2007 Acts, ch 215, §100  
NEW section

**256C.4 Funding provisions — enrollment.**

1. *General.*

a. State funding provided under the preschool program shall be based upon the enrollment of eligible students in the preschool programming provided by a school district approved to participate in the preschool program.

b. A school district approved to participate in the preschool program may authorize expenditures for the district's preschool programming from any of the revenue sources available to the district from the sources listed in chapter 298A, provided the expenditures are within the uses permitted for the revenue source. In addition, the use of the revenue source for preschool or prekindergarten programming must have been approved prior to any expenditure from the revenue source for the district's approved local program.

c. Funding provided under the preschool program is intended to supplement, not supplant, existing public funding for preschool programming.

d. Preschool foundation aid funding shall not be commingled with the other state aid payments made under section 257.16 to a school district and shall be accounted for by the local school district separately from the other state aid payments.

e. Preschool foundation aid payments made to school districts are miscellaneous income for purposes of chapter 257. A school district shall maintain a separate listing within its budget for preschool foundation aid payments received and expenditures made. A school district shall certify to the department of education that preschool foundation aid funding received by the school district was used to supplement, not supplant, moneys otherwise received and used by the school district for preschool programming.

f. Preschool foundation aid funding shall not be used for the costs of constructing a facility in connection with an approved local program.

2. *Eligible student enrollment.*

a. To be included as an eligible student in the enrollment count of the preschool programming provided by a school district approved to participate in the preschool program, a child must be four years of age by September 15 in the base year and attending the school district's approved local program.

b. The enrollment count of eligible students shall not include a child who is included in the enrollment count determined under section 257.6 or a child who is served by a program already receiving state or federal funds for the purpose of the provision of four-year-old preschool programming while the child is being served by the program. Such preschool programming includes but is not limited to child development assistance programs provided under chapter 256A, special education programs provided under section 256B.9, school ready children grant programs and other programs provided under chapter 28, and federal head start programs and the services funded by Title I of the federal Elementary and Secondary Education Act of 1965.

2007 Acts, ch 148, §4  
NEW section

**256C.5 Funding formula.**

1. *Definitions.* For the purposes of this section and section 256C.4:

a. "Base year", "budget year", "regular program state cost per pupil", and "school district" mean the same as defined or described in chapter 257.

b. "Eligible student" means a child who meets eligibility requirements under section 256C.4.

c. "Preschool budget enrollment" means the

figure that is equal to sixty percent of the actual enrollment of eligible students in the preschool programming provided by a school district approved to participate in the preschool program on October 1 of the base year, or the first Monday in October if October 1 falls on a Saturday or Sunday.

*d. "Preschool foundation aid"* means the product of the regular program state cost per pupil for the budget year multiplied by the school district's preschool budget enrollment.

*2. Preschool foundation aid district amount.*

*a.* For the initial school year for which a school district approved to participate in the preschool program receives that approval and implements the preschool program, the funding for the preschool foundation aid payable to that school district shall be paid from the appropriation made for that school year in section 256C.6 or in another appropriation made for purposes of this chapter. For that school year, the preschool foundation aid payable to the school district is the product of the regular program state cost per pupil for the school year multiplied by sixty percent of the school district's eligible student enrollment on the date in the school year determined by rule.

*b.* For budget years subsequent to the initial school year for which a school district approved to participate in the preschool program receives that approval and implements the preschool program, the funding for the preschool foundation aid payable to that school district shall be paid from the appropriation made in section 257.16.

*3. Aid payments.* Preschool foundation aid shall be paid as part of the state aid payments made to school districts in accordance with section 257.16.

*4. Administration and oversight.* Except as otherwise provided by law for a fiscal year, of the amount appropriated for that fiscal year for payment of preschool foundation aid statewide, the department may use an amount sufficient to fund up to three full-time equivalent positions which shall be in addition to the number of positions authorized for the fiscal year, as necessary to provide administration and oversight of the preschool program.

2007 Acts, ch 148, §5  
NEW section

**256C.6 Phase-in — appropriations.**

*1. Phase-in.* For the initial fiscal year in which a school district participates in the preschool program pursuant to an appropriation provided in subsection 2, the department shall apply a modified set of the requirements of the provi-

sions of this chapter relating to preschool program implementation, preschool enrollment reporting, and distribution of funding as necessary to begin the distribution in that fiscal year and additional program implementation in the next fiscal year. For each month after September 1, in the initial fiscal year that a school district approved to participate in the preschool program begins programming, the department shall reduce the preschool foundation aid payable to the school district by one-tenth of the amount that would otherwise have been payable to the school district for the full school year.

*2. Appropriations for initial years.* There is appropriated from the general fund of the state to the department of education for the designated fiscal years the following amounts, or so much thereof as is necessary, to be used for the initial year preschool foundation aid payments to school districts approved to participate in the preschool program and administrative costs:

*a.* For the fiscal year beginning July 1, 2008, and ending June 30, 2009, fifteen million dollars.

*b.* For the fiscal year beginning July 1, 2009, and ending June 30, 2010, fifteen million dollars.

*c.* For the fiscal year beginning July 1, 2010, and ending June 30, 2011, sixteen million one hundred sixty-two thousand five hundred dollars.

*3. Insufficient funding.* For the fiscal years in the period beginning July 1, 2007, and ending June 30, 2011, if the number of requests from school districts for initial participation in the preschool program exceeds the funding made available for the preschool program, the department shall utilize all of the following selection criteria in selecting the school districts that will be approved to participate in the preschool program:

*a.* Priority shall be given to school districts that do not have existing preschool programming within the school district boundaries.

*b.* Priority shall be given to school districts that have a high percentage of children in poverty and such children shall receive first priority for the programs.

*c.* Consideration shall be given to the size of school districts in large, medium, and small categories in order for there to be equitable statewide distribution of preschool program services.

*d.* Consideration shall be given to school districts with established, high-quality, community partnerships for the delivery of preschool programming that are seeking to expand access.

*4. Repeal.* This section is repealed July 1, 2011.

2007 Acts, ch 148, §6  
NEW section

## CHAPTER 256D

### IOWA EARLY INTERVENTION BLOCK GRANT PROGRAM

#### 256D.5 Appropriations.

There is appropriated from the general fund of the state to the department of education, the following amounts, for the following fiscal years, for the Iowa early intervention block grant program:

1. For the fiscal year beginning July 1, 1999, and ending June 30, 2000, the sum of ten million dollars.
2. For the fiscal year beginning July 1, 2000, and ending June 30, 2001, the sum of twenty million dollars.
3. For each fiscal year of the fiscal period be-

ginning July 1, 2001, and ending June 30, 2004, the sum of thirty million dollars.

4. For each fiscal year of the fiscal period beginning July 1, 2004, and ending June 30, 2012, the sum of twenty-nine million two hundred fifty thousand dollars.

2007 Acts, ch 215, §60  
Subsection 4 amended

#### 256D.9 Future repeal.

This chapter is repealed effective July 1, 2012.

2007 Acts, ch 215, §61, 67  
Section amended

## CHAPTER 257

### FINANCING SCHOOL PROGRAMS

#### 257.3 Foundation property tax.

1. *Amount of tax.* Except as provided in subsections 2 and 3, a school district shall cause to be levied each year, for the school general fund, a foundation property tax equal to five dollars and forty cents per thousand dollars of assessed valuation on all taxable property in the district. The county auditor shall spread the foundation levy over all taxable property in the district.

The amount paid to each school district for the tax replacement claim for industrial machinery, equipment and computers under section 427B.19A shall be regarded as property tax. The portion of the payment which is foundation property tax shall be determined by applying the foundation property tax rate to the amount computed under section 427B.19, subsection 3, paragraph "a", as adjusted by paragraph "d", if any adjustment was made.

Replacement taxes under chapter 437A shall be regarded as property taxes for purposes of this chapter.

#### 2. *Tax for reorganized and dissolved districts.*

a. Notwithstanding subsection 1, a reorganized school district shall cause a foundation property tax of four dollars and forty cents per thousand dollars of assessed valuation to be levied on all taxable property which, in the year preceding a reorganization, was within a school district affected by the reorganization as defined in section 275.1, or in the year preceding a dissolution was a part of a school district that dissolved if the dissolution proposal has been approved by the director of the department of education pursuant to section 275.55.

b. In succeeding school years, the foundation property tax levy on that portion shall be in-

creased to the rate of four dollars and ninety cents per thousand dollars of assessed valuation the first succeeding year, five dollars and fifteen cents per thousand dollars of assessed valuation the second succeeding year, and five dollars and forty cents per thousand dollars of assessed valuation the third succeeding year and each year thereafter.

c. The foundation property tax levy reduction pursuant to this subsection shall be available if either of the following apply:

(1) In the year preceding the reorganization or dissolution, the school district affected by the reorganization or the school district that dissolved had a certified enrollment of fewer than six hundred pupils.

(2) In the year preceding the reorganization or dissolution, the school district affected by the reorganization or the school district that dissolved had a certified enrollment of six hundred pupils or greater, and entered into a reorganization or dissolution with one or more school districts with a certified enrollment of fewer than six hundred pupils. The amount of foundation property tax reduction received by a school district qualifying for the reduction pursuant to this subparagraph shall not exceed the highest reduction amount provided in paragraphs "a" and "b" received by any of the school districts with a certified enrollment of fewer than six hundred pupils involved in the reorganization pursuant to subparagraph (1) of this paragraph "c".

d. For purposes of this section, a reorganized school district is one which absorbs at least thirty percent of the enrollment of the school district affected by a reorganization or dissolved during a dissolution and in which action to bring about a re-

organization or dissolution is initiated by a vote of the board of directors or jointly by the affected boards of directors to take effect on or after July 1, 2007, and on or before July 1, 2014. Each district which initiated, by a vote of the board of directors or jointly by the affected boards, action to bring about a reorganization or dissolution to take effect on or after July 1, 2007, and on or before July 1, 2014, shall certify the date and the nature of the action taken to the department of education by January 1 of the year in which the reorganization or dissolution takes effect. For a reorganization or dissolution that took effect on or after July 1, 2002, and on or before July 1, 2006, the reorganized school district shall continue to receive the benefits of paragraphs “a” and “b” of this subsection for the time specified in those paragraphs.

3. *Railway corporations.* For purposes of section 257.1, the “amount per pupil of foundation property tax” does not include the tax levied under subsection 1 or 2 on the property of a railway corporation, or on its trustee if the corporation has been declared bankrupt or is in bankruptcy proceedings.

2007 Acts, ch 130, §1  
Subsection 2, paragraph d amended

## 257.6 Enrollment.

### 1. Actual enrollment.

a. Actual enrollment is determined annually on October 1, or the first Monday in October if October 1 falls on a Saturday or Sunday, and includes all of the following:

(1) Resident pupils who were enrolled in public schools within the district in grades kindergarten through twelve and including prekindergarten pupils enrolled in special education programs.

(2) Full-time equivalent resident pupils of high school age for which the district pays tuition to attend an Iowa community college.

(3) Shared-time and part-time pupils of school age enrolled in public schools within the district, irrespective of the districts in which the pupils reside, in the proportion that the time for which they are enrolled or receive instruction for the school year is to the time that full-time pupils carrying a normal course schedule, at the same grade level, in the same school district, for the same school year, are enrolled and receive instruction. Tuition charges to the parent or guardian of a shared-time or part-time nonresident pupil shall be reduced by the amount of any increased state aid received by the district by the counting of the pupil.

(4) Eleventh and twelfth grade nonresident pupils who were residents of the district during the preceding school year and are enrolled in the district until the pupils graduate. Tuition for those pupils shall not be charged by the district in which the pupils are enrolled and the requirements of section 282.18 do not apply.

(5) Resident pupils receiving competent private instruction from a licensed practitioner pro-

vided through a public school district pursuant to chapter 299A shall be counted as six-tenths of one pupil.

(6) Resident pupils receiving competent private instruction under dual enrollment pursuant to chapter 299A shall be counted as one-tenth of one pupil.

b. Pupils attending a university laboratory school are not counted in the actual enrollment of a school district, but the laboratory school shall report their enrollment directly to the department of education.

c. A school district shall certify its actual enrollment to the department of education by October 15 of each year, and the department shall promptly forward the information to the department of management.

d. The department of management shall adjust the enrollment of the school district for the audit year based upon reports filed under section 11.6, and shall further adjust the budget of the second year succeeding the audit year for the property tax and state aid portions of the reported differences in enrollments for the year succeeding the audit year.

2. *Basic enrollment.* Basic enrollment for a budget year is a district’s actual enrollment for the base year. Basic enrollment for the base year is a district’s actual enrollment for the year preceding the base year.

3. *Additional enrollment because of special education.* A school district shall determine its additional enrollment because of special education, as defined in this section, by November 1 of each year and shall certify its additional enrollment because of special education to the department of education by November 15 of each year, and the department shall promptly forward the information to the department of management.

For the purposes of this chapter, “additional enrollment because of special education” is determined by multiplying the weighting of each category of child under section 256B.9 times the number of children in each category totaled for all categories minus the total number of children in all categories.

4. *Budget enrollment.* Budget enrollment for the budget year is the basic enrollment for the budget year.

5. *Weighted enrollment.* Weighted enrollment is the budget enrollment plus the district’s additional enrollment because of special education calculated by November 1 of the base year plus additional pupils added due to the application of the supplementary weighting.

Weighted enrollment for special education support services costs is equal to the weighted enrollment minus the additional pupils added due to the application of the supplementary weighting.

6. *Students excluded.* For the school year beginning July 1, 2001, and each succeeding school year, a student shall not be included in a district’s

enrollment for purposes of this chapter or considered an eligible pupil under chapter 261C if the student meets all of the following:

*a.* Was eligible to receive a diploma with the class in which they were enrolled and that class graduated in the previous school year.

*b.* Continues enrollment in the district to take courses either provided by the district, offered by community colleges under the provisions of section 257.11, or to take courses under the provisions of chapter 261C.

2007 Acts, ch 22, §59  
Subsection 1 amended

### **257.8 State percent of growth — allowable growth.**

1. *State percent of growth.* The state percent of growth for the budget year beginning July 1, 2007, is four percent. The state percent of growth for the budget year beginning July 1, 2008, is four percent. The state percent of growth for each subsequent budget year shall be established by statute which shall be enacted within thirty days of the submission in the year preceding the base year of the governor's budget under section 8.21. The establishment of the state percent of growth for a budget year shall be the only subject matter of the bill which enacts the state percent of growth for a budget year.

2. *Allowable growth calculation.* The department of management shall calculate the regular program allowable growth for a budget year by multiplying the state percent of growth for the budget year by the regular program state cost per pupil for the base year and shall calculate the special education support services allowable growth for the budget year by multiplying the state percent of growth for the budget year by the special education support services state cost per pupil for the base year.

3. *Alternate allowable growth — gifted and talented programs.* Notwithstanding the calculation in subsection 2, the department of management shall calculate the regular program allowable growth for the budget year beginning July 1, 1999, by multiplying the state percent of growth for the budget year by the regular program state cost per pupil for the base year, and add to the resulting product thirty-eight dollars. For purposes of determining the amount of a budget adjustment as defined in section 257.14, for a school district which calculated allowable growth for the budget year beginning July 1, 1999, pursuant to this subsection, thirty-eight dollars shall be subtracted from the school district's regular program cost per pupil for the budget year beginning July 1, 1999, prior to determining the amount of the adjustment.

4. *Alternate allowable growth — regular program state cost.* A school district which calculated allowable growth for the budget year beginning July 1, 1999, pursuant to the provisions of

subsection 3, shall calculate allowable growth pursuant to the provisions of subsection 2 for the school budget year beginning July 1, 2000, and succeeding budget years, utilizing a regular program state cost per pupil figure which incorporates the thirty-eight dollar increase in regular program allowable growth calculated for the budget year beginning July 1, 1999.

5. *Combined allowable growth.* The combined allowable growth per pupil for each school district is the sum of the regular program allowable growth per pupil and the special education support services allowable growth per pupil for the budget year, which may be modified as follows:

*a.* By the school budget review committee under section 257.31.

*b.* By the department of management under section 257.36.

6. *Alternate allowable growth — definitions.* For budget years beginning July 1, 2000, and subsequent budget years, references to the terms "allowable growth", "regular program state cost per pupil", and "regular program district cost per pupil" shall mean those terms as calculated for those school districts that calculated regular program allowable growth for the school budget year beginning July 1, 1999, with the additional thirty-eight dollars.

2007 Acts, ch 3, §1, 2  
2007 amendment to subsection 1 is applicable for computing state aid under the state school foundation program for the school budget year beginning July 1, 2008; 2007 Acts, ch 3, §2  
Subsection 1 amended

### **257.11 Supplementary weighting plan.**

1. *Regular curriculum.* Pupils in a regular curriculum attending all their classes in the district in which they reside, taught by teachers employed by that district, and having administrators employed by that district, are assigned a weighting of one.

2. *District-to-district sharing.*

*a.* In order to provide additional funds for school districts which send their resident pupils to another school district, which jointly employ and share the services of teachers under section 280.15, or which use the services of a teacher employed by another school district, a supplementary weighting plan for determining enrollment is adopted.

*b.* If the school budget review committee certifies to the department of management that the shared classes or teachers would otherwise not be implemented without the assignment of additional weighting, pupils attending classes in another school district, attending classes taught by a teacher who is employed jointly under section 280.15, or attending classes taught by a teacher who is employed by another school district are assigned a weighting of forty-eight hundredths of the percentage of the pupil's school day during which the pupil attends classes in another district, attends classes taught by a teacher who is jointly

employed under section 280.15, or attends classes taught by a teacher who is employed by another school district.

c. Pupils attending class for all or a substantial portion of a school day pursuant to a whole grade sharing agreement executed under sections 282.10 through 282.12 shall be eligible for supplementary weighting pursuant to this subsection. A school district which executes a whole grade sharing agreement and which adopts a resolution jointly with other affected boards to study the question of undergoing a reorganization or dissolution to take effect on or before July 1, 2014, shall receive a weighting of one-tenth of the percentage of the pupil's school day during which the pupil attends classes in another district, attends classes taught by a teacher who is jointly employed under section 280.15, or attends classes taught by a teacher who is employed by another school district. A district shall be eligible for supplementary weighting pursuant to this paragraph for a maximum of three years. Receipt of supplementary weighting for a second and third year shall be conditioned upon submission of information resulting from the study to the school budget review committee indicating progress toward the objective of reorganization on or before July 1, 2014.

3. *District-to-community college sharing.*

a. In order to provide additional funds for school districts which send their resident pupils to a community college for classes, a supplementary weighting plan for determining enrollment is adopted.

b. If the school budget review committee certifies to the department of management that the class would not otherwise be implemented without the assignment of additional weighting, pupils attending a community college-offered class or attending a class taught by a community college-employed instructor are assigned a weighting of forty-eight hundredths of the percentage of the pupil's school day during which the pupil attends class in the community college or attends a class taught by a community college-employed instructor. The following requirements shall be met for the purposes of assigning an additional weighting for classes offered through a sharing agreement between a school district and community college. The class must be:

(1) Supplementing, not supplanting, high school courses.

(2) Included in the community college catalog or an amendment or addendum to the catalog.

(3) Open to all registered community college students, not just high school students.

(4) For college credit and the credit must apply toward an associate of arts or associate of science degree, or toward an associate of applied arts or associate of applied science degree, or toward completion of a college diploma program.

(5) Taught by a community college-employed instructor.

(6) Taught utilizing the community college course syllabus.

(7) Of the same quality as a course offered on a community college campus.

4. *At-risk programs and alternative schools.*

a. In order to provide additional funding to school districts for programs serving at-risk pupils and alternative school pupils in secondary schools, a supplementary weighting plan for at-risk pupils is adopted. A supplementary weighting of forty-eight ten-thousandths per pupil shall be assigned to the percentage of pupils in a school district enrolled in grades one through six, as reported by the school district on the basic educational data survey for the base year, who are eligible for free and reduced price meals under the federal National School Lunch Act and the federal Child Nutrition Act of 1966, 42 U.S.C. § 1751-1785, multiplied by the budget enrollment in the school district; and a supplementary weighting of one hundred fifty-six one-hundred-thousandths per pupil shall be assigned to pupils included in the budget enrollment of the school district. Amounts received as supplementary weighting for at-risk pupils shall be utilized by a school district to develop or maintain at-risk pupils' programs, which may include alternative school programs.

b. Notwithstanding paragraph "a", a school district which received supplementary weighting for an alternative high school program for the school budget year beginning July 1, 1999, shall receive an amount of supplementary weighting for the next three school budget years as follows:

(1) For the budget year beginning July 1, 2000, the greater of the amount of supplementary weighting determined pursuant to paragraph "a", or sixty-five percent of the amount received for the budget year beginning July 1, 1999.

(2) For the budget year beginning July 1, 2001, the greater of the amount of supplementary weighting determined pursuant to paragraph "a", or forty percent of the amount received for the budget year beginning July 1, 1999.

(3) For the budget year beginning July 1, 2002, and succeeding budget years, the amount of supplementary weighting determined pursuant to paragraph "a".

If a school district receives an amount pursuant to this paragraph "b" which exceeds the amount the district would otherwise have received pursuant to paragraph "a", the department of management shall annually determine the amount of the excess that would have been state aid and the amount that would have been property tax if the school district had generated that amount pursuant to paragraph "a", and shall include the amounts in the state aid payments and property tax levies of school districts. The department of management shall recalculate the supplementary weighting amount received each year to reflect the amount of the reduction in funding from one budget year to the next pursuant to subparagraphs (1)

through (3). It is the intent of the general assembly that when weights are recalculated under this subsection, the total amounts generated by each weight shall be approximately equal.

5. *Regional academies.*

a. For the school budget year beginning July 1, 2002, through the school budget year beginning July 1, 2007, in order to provide additional funds for school districts in which a regional academy is located, a supplementary weighting plan for determining enrollment is adopted.

b. A school district which establishes a regional academy shall be eligible to assign its resident pupils attending classes at the academy a weighting of one-tenth of the percentage of the pupil's school day during which the pupil attends classes at the regional academy. For the purposes of this subsection, "*regional academy*" means an educational institution established by a school district to which multiple schools send pupils in grades nine through twelve, and may include a virtual academy. A regional academy shall include in its curriculum advanced-level courses and may include in its curriculum vocational-technical courses. The maximum amount of additional weighting for which a school district establishing a regional academy shall be eligible is an amount corresponding to fifteen additional pupils. The minimum amount of additional weighting for which a school district establishing a regional academy shall be eligible is an amount corresponding to ten additional pupils if the academy provides both advanced-level courses and vocational-technical courses. However, if the sum of the funding amount calculated for all districts operating regional academies under this subsection exceeds one million dollars for the school year beginning July 1, 2004, and each succeeding fiscal year, the director of the department of management shall prorate the amount calculated for each district. The proration shall be based upon the amount calculated for each district when compared to the sum of the amount for all districts.

6. *Shared operational functions — increased student opportunities.*

a. In order to provide additional funding to increase student opportunities and redirect more resources to student programming for school districts that share operational functions, a supplementary weighting of two hundredths per pupil shall be assigned to pupils enrolled in a district that shares with a political subdivision one or more operational functions in the areas of superintendent management, business management, human resources, transportation, or operation and maintenance for at least twenty percent of the school year. The additional weighting shall be assigned for each discrete operational function shared. For the purposes of this section, "*political subdivision*" means a city, township, county, school corporation, merged area, area education agency, institution governed by the state board of

regents, or any other governmental subdivision.

b. Supplementary weighting pursuant to this subsection shall be available to a school district for a maximum of five years during the period commencing with the budget year beginning July 1, 2008, through the budget year beginning July 1, 2013. The minimum amount of additional weighting for which a school district shall be eligible is an amount equivalent to ten additional pupils, and the maximum amount of additional weighting for which a school district shall be eligible is an amount equivalent to forty additional pupils. Receipt of supplementary weighting by a school district pursuant to this subsection for more than one year shall be contingent upon the annual submission of information by the district to the department documenting cost savings directly attributable to the shared operational functions. Criteria for determining the number of years for which supplementary weighting shall be received pursuant to this subsection, subject to the five-year maximum, and for determining qualification of operational functions for supplementary weighting shall be determined by the department by rule, through consideration of long-term savings by the school district or increased student opportunities.

c. Supplementary weighting pursuant to this subsection shall be available to an area education agency for a maximum of five years during the period commencing with the budget year beginning July 1, 2008. The minimum amount of additional funding for which an area education agency shall be eligible is fifty thousand dollars, and the maximum amount of additional funding for which an area education agency shall be eligible is two hundred thousand dollars. The department of management shall annually set a weighting for each area education agency to generate the approved operational sharing expense using the area education agency's special education cost per pupil amount and foundation level. Receipt of supplementary weighting by an area education agency for more than one year shall be contingent upon the annual submission of information by the district to the department documenting cost savings directly attributable to the shared operational functions. Criteria for determining the number of years for which supplementary weighting shall be received pursuant to this subsection, subject to the five-year maximum, and the amount generated by the supplementary weighting, and for determining qualification of operational functions for supplementary weighting shall be determined by the department by rule, through consideration of long-term savings by the area educational agency or increased student opportunities.

d. The amount of any supplementary weighting originally received under this subsection shall be reduced by an additional twenty percent from the original amount for each subsequent budget year that supplementary weighting may be received.



e. This subsection is repealed effective July 1, 2014.

7. *Shared classes delivered over the Iowa communications network.*

a. A school district that provides a virtual class to a pupil in another school district and the school district receiving that virtual class for a pupil shall each receive a supplemental weighting of one-twentieth of the percentage of the pupil's school day during which the pupil attends the virtual class.

b. Fifty percent of the funding the school district providing the virtual class receives as a result of this subsection shall be reserved as additional pay for the virtual classroom instructor. If an instructor's contract provides additional pay for teaching a virtual class, the instructor shall receive the greater amount of either the amount provided for in this paragraph or the amount provided for in the instructor's contract.

c. A school district receiving a virtual class for a pupil from a community college, which class meets the sharing agreement requirements in subsection 3, shall receive a supplemental funding weighting of one-twentieth of the percentage of the pupil's school day during which the pupil attends the virtual class.

d. For the purposes of this subsection, "virtual class" means either of the following:

(1) A class provided by a school district to a pupil in another school district via the Iowa communications network's video services.

(2) A class provided by a community college to a pupil in a school district via the Iowa communications network's video services.

8. *Pupils ineligible.* A pupil eligible for the weighting plan provided in section 256B.9 is not eligible for supplementary weighting pursuant to this section. A pupil attending an alternative program or an at-risk pupils' program, including alternative high school programs, is not eligible for supplementary weighting under subsection 2.

9. *School finance appropriations report.* The department of education shall annually prepare a report regarding school finance provisions or programs receiving a standing appropriation, including supplementary weighting programs. The report shall provide information regarding amounts received or accessed by school districts pursuant to the provisions or programs, whether the amounts received represent an increase or decrease over amounts received during the previous budget year and the percentage increase or decrease, conclusions regarding the adequacy of amounts received by school districts and whether the amounts received are equitable between school districts based upon input from the school districts and analysis by the department, and the rationale for current trends being observed by the department and projections regarding possible trends in the future. The report shall be submitted

to the general assembly by January 1 each year, and copies of the report shall be forwarded to the chairpersons and members of the committee on education in the senate and in the house of representatives.

2007 Acts, ch 130, §2 - 4; 2007 Acts, ch 214, §20, 44  
2007 strike and rewrite of subsection 7 applies to school budget years beginning on or after July 1, 2008; 2007 Acts, ch 214, §44  
Subsection 2, paragraph c stricken and rewritten  
Subsection 5, paragraph a amended  
NEW subsection 6 and former subsection 6 stricken, rewritten, and renumbered as 7  
Former subsections 7 and 8 renumbered as 8 and 9

### 257.11A Supplementary weighting and school reorganization.

1. In determining weighted enrollment under section 257.6, if the board of directors of a school district has approved a contract for sharing pursuant to section 257.11 and the school district has approved an action to bring about a reorganization to take effect on and after July 1, 2007, and on or before July 1, 2014, the reorganized school district shall include, for a period of three years following the effective date of the reorganization, additional pupils added by the application of the supplementary weighting plan, equal to the pupils added by the application of the supplementary weighting plan in the year preceding the reorganization. For the purposes of this subsection, the weighted enrollment for the period of three years following the effective date of reorganization shall include the supplementary weighting in the base year used for determining the combined district cost for the first year of the reorganization. However, the weighting shall be reduced by the supplementary weighting added for a pupil whose residency is not within the reorganized district.

2. For purposes of this section, a reorganized district is one in which the reorganization was approved in an election pursuant to sections 275.18 and 275.20 and takes effect on or after July 1, 2007, and on or before July 1, 2014. Each district which initiates, by a vote of the board of directors or jointly by the affected boards, action to bring about a reorganization or dissolution to take effect on or after July 1, 2007, and on or before July 1, 2014, shall certify the date and the nature of the action taken to the department of education by January 1 of the year in which the reorganization or dissolution takes effect.

3. A school district shall be eligible for a combined maximum total of six years of supplementary weighting under the provisions of this section and section 257.11, subsection 2, paragraph "c". A school district participating in a whole grade sharing arrangement during the budget year beginning July 1, 2001, that adopted a resolution jointly with other affected boards to study the question of undergoing a reorganization or dissolution to take effect on or after July 1, 2002, and on or before July 1, 2006, shall continue to receive the supplementary weighting to which it was entitled pursuant to

the provisions of this section and section 257.11, subsection 2, paragraph “c”.

2007 Acts, ch 130, §5  
Section amended

### 257.16 Appropriations.

1. There is appropriated each year from the general fund of the state an amount necessary to pay the foundation aid under this chapter, the pre-school foundation aid under chapter 256C, supplementary aid under section 257.4, subsection 2, and adjusted additional property tax levy aid under section 257.15, subsection 4.

2. All state aids paid under this chapter, unless otherwise stated, shall be paid in monthly installments beginning on September 15 of a budget year and ending on or about June 15 of the budget year as determined by the department of management, taking into consideration the relative budget and cash position of the state resources.

3. All moneys received by a school district from the state under this chapter shall be deposited in the general fund of the school district, and may be used for any school general fund purpose.

4. Notwithstanding any provision to the contrary, if the governor orders budget reductions in accordance with section 8.31, reductions in the appropriations provided in accordance with this section shall be distributed on a per pupil basis calculated with the weighted enrollment determined in accordance with section 257.6, subsection 5.

2007 Acts, ch 148, §8  
Subsection 1 amended

### 257.31 Duties of the committee.

1. The school budget review committee may recommend the revision of any rules, regulations, directives, or forms relating to school district budgeting and accounting, confer with local school boards or their representatives and make recommendations relating to any budgeting or accounting matters, and direct the director of the department of education or the director of the department of management to make studies and investigations of school costs in any school district.

2. The committee shall report to each session of the general assembly, which report shall include any recommended changes in laws relating to school districts, and shall specify the number of hearings held annually, the reasons for the committee's recommendations, information about the amounts of property tax levied by school districts for a cash reserve, and other information the committee deems advisable.

3. The committee shall review the proposed budget and certified budget of each school district, and may make recommendations. The committee may make decisions affecting budgets to the extent provided in this chapter. The costs and computations referred to in this section relate to the budget year unless otherwise expressly stated.

4. Not later than January 1, 1992, the committee shall adopt recommendations relating to the implementation by school districts and area education agencies of procedures pertaining to the preparation of financial reports in conformity with generally accepted accounting principles and submit those recommendations to the state board of education. The state board shall consider the recommendations and adopt rules under section 256.7 specifying procedures and requiring the school districts and area education agencies to conform to generally accepted accounting principles commencing with the school year beginning July 1, 1996.

5. If a district has unusual circumstances, creating an unusual need for additional funds, including but not limited to the following circumstances, the committee may grant supplemental aid to the district from any funds appropriated to the department of education for the use of the school budget review committee for the purposes of this subsection, and such aid shall be miscellaneous income and shall not be included in district cost, or may establish a modified allowable growth for the district by increasing its allowable growth, or both:

- a. Any unusual increase or decrease in enrollment.
- b. Unusual natural disasters.
- c. Unusual initial staffing problems.
- d. The closing of a nonpublic school, wholly or in part, or the opening or closing of a pilot charter school.
- e. Substantial reduction in miscellaneous income due to circumstances beyond the control of the district.
- f. Unusual necessity for additional funds to permit continuance of a course or program which provides substantial benefit to pupils.
- g. Unusual need for a new course or program which will provide substantial benefit to pupils, if the district establishes the need and the amount of necessary increased cost.
- h. Unusual need for additional funds for special education or compensatory education programs.
- i. Year-round or substantially year-round attendance programs which apply toward graduation requirements, including but not limited to trimester or four-quarter programs. Enrollment in such programs shall be adjusted to reflect equivalency to normal school year attendance.
- j. Unusual need to continue providing a program or other special assistance to non-English speaking pupils after the expiration of the four-year period specified in section 280.4.
- k. Circumstances caused by unusual demographic characteristics.
- l. Any unique problems of school districts.
- m. The addition of one or more teacher librarians pursuant to section 256.11, subsection 9, one

or more guidance counselors pursuant to section 256.11, subsection 9A, or one or more school nurses pursuant to section 256.11, subsection 9B.

6. The committee shall establish a modified allowable growth for a district by increasing its allowable growth when the district submits evidence that it requires additional funding for removal, management, or abatement of environmental hazards due to a state or federal requirement. Environmental hazards shall include but are not limited to the presence of asbestos, radon, or the presence of any other hazardous material dangerous to health and safety.

The district shall include a budget for the actual cost of the project that may include the costs of inspection, reinspection, sampling, analysis, assessment, response actions, operations and maintenance, training, periodic surveillance, developing of management plans, recordkeeping requirements, and encapsulation or removal of the hazardous material.

7. *a.* The committee may authorize a district to spend a reasonable and specified amount from its unexpended cash balance for either of the following purposes:

(1) Furnishing, equipping, and contributing to the construction of a new building or structure for which the voters of the district have approved a bond issue as provided by law or the tax levy provided in section 298.2.

(2) The costs associated with the demolition of an unused school building, or the conversion of an unused school building for community use, in a school district involved in a dissolution or reorganization under chapter 275, if the costs are incurred within three years of the dissolution or reorganization.

*b.* Other expenditures, including but not limited to expenditures for salaries or recurring costs, are not authorized under this subsection. Expenditures authorized under this subsection shall not be included in allowable growth or district cost, and the portion of the unexpended cash balance which is authorized to be spent shall be regarded as if it were miscellaneous income. Any part of the amount not actually spent for the authorized purpose shall revert to its former status as part of the unexpended cash balance.

8. The committee may approve or modify the initial base year district cost of any district which changes accounting procedures.

9. When the committee makes a decision under subsections 3 through 8, it shall make all necessary changes in the district cost, budget, and tax levy. It shall give written notice of its decision, including all such changes, to the school board through the department of education.

10. All decisions by the committee under this chapter shall be made in accordance with reasonable and uniform policies which shall be consistent with this chapter. All such policies of general application shall be stated in rules adopted in ac-

cordance with chapter 17A. The committee shall take into account the intent of this chapter to equalize educational opportunity, to provide a good education for all the children of Iowa, to provide property tax relief, to decrease the percentage of school costs paid from property taxes, and to provide reasonable control of school costs. The committee shall also take into account the amount of funds available.

11. Failure by any school district to provide information or appear before the committee as requested for the accomplishment of review or hearing is justification for the committee to instruct the director of the department of management to withhold any state aid to that district until the committee's inquiries are satisfied completely.

12. The committee shall review the recommendations of the director of the department of education relating to the special education weighting plan, and shall establish a weighting plan for each school year pursuant to section 256B.9, and report the plan to the director of the department of education.

13. The committee may recommend that two or more school districts jointly employ and share the services of any school personnel, or acquire and share the use of classrooms, laboratories, equipment, and facilities as specified in section 280.15.

14. As soon as possible following June 30 of the base year, the school budget review committee shall determine for each school district the balance of funds, whether positive or negative, raised for special education instruction programs under the special education weighting plan established in section 256B.9. The committee shall certify the balance of funds for each school district to the director of the department of management.

*a.* If the amount certified for a school district to the director of the department of management under this subsection for the base year is positive, the director of the department of management shall subtract the amount of the positive balance exceeding ten percent of the additional funds generated for special education, not to include any previous carryover, from the amount of state aid remaining to be paid to the district during the budget year. If the positive amount exceeding the ten percent amount exceeds the amount of state aid that remains to be paid to the district, not including any previous carryover, the school district shall pay the excess on a quarterly basis prior to June 30 of the budget year to the director of the department of management from other funds received by the district. The director of the department of management shall determine the amount of the positive balance that exceeds the ten percent amount that came from local property tax revenues and shall increase the district's total state school aids available under this chapter for the next following budget year by the amount so determined and shall reduce the district's tax levy

computed under section 257.4 for the next following budget year by the amount necessary to compensate for the increased state aid.

b. (1) If the amount certified for a school district to the director of the department of management under this subsection for the base year is negative, the director of the department of management shall determine the amount of the deficit that would have been state aid and the amount that would have been property taxes for each eligible school district.

(2) There is appropriated from the general fund of the state to the school budget review committee for each fiscal year an amount equal to the state aid portion of five percent of the receipts for special education instruction programs in all districts that has a positive balance determined under paragraph "a" for the base year, or the state aid portion of all of the positive balances determined under paragraph "a" for the base year, whichever is less, to be used for supplemental aid payments to school districts. Except as otherwise provided in this lettered paragraph, supplemental aid paid to a district is equal to the state aid portion of the district's negative balance. The school budget review committee shall direct the director of the department of management to make the payments to school districts under this lettered paragraph.

(3) A school district is only eligible to receive supplemental aid payments during the budget year if the school district certifies to the school budget review committee that for the year following the budget year it will notify the school budget review committee to instruct the director of the department of management to increase the district's allowable growth and will fund the allowable growth increase either by using moneys from its unexpended cash balance to reduce the district's property tax levy or by using cash reserve moneys to equal the amount of the deficit that would have been property taxes and any part of the state aid portion of the deficit not received as supplemental aid under this subsection. The director of the department of management shall make the necessary adjustments to the school district's budget to provide the modified allowable growth and shall make the supplemental aid payments.

(4) If the amount appropriated under this lettered paragraph is insufficient to make the supplemental aid payments under this subsection, the director of the department of management shall prorate the payments on the basis of the amount appropriated.

15. Annually the school budget review committee shall review the amount of property tax levied by each school district for the cash reserve authorized in section 298.10. If in the committee's judgment, the amount of a district's cash reserve levy is unreasonably high, the committee shall instruct the director of the department of management to reduce that district's tax levy computed

under section 257.4 for the following budget year by the amount the cash reserve levy is deemed excessive. A reduction in a district's property tax levy for a budget year under this subsection does not affect the district's authorized budget.

16. The committee shall perform the duties assigned to it under sections 257.32 and 260C.18B.

17. a. If a district's average transportation costs per pupil exceed the state average transportation costs per pupil determined under paragraph "c" by one hundred fifty percent, the committee may grant transportation assistance aid to the district. Such aid shall be miscellaneous income and shall not be included in district cost.

b. To be eligible for transportation assistance aid, a school district shall annually certify its actual cost for all children transported in all school buses not later than July 31 after each school year on forms prescribed by the committee.

c. A district's average transportation costs per pupil shall be determined by dividing the district's actual cost for all children transported in all school buses for a school year pursuant to section 285.1, subsection 12, less the amount received for transporting nonpublic school pupils under section 285.1, by the district's actual enrollment for the school year excluding the shared-time enrollment for the school year as defined in section 257.6. The state average transportation costs per pupil shall be determined by dividing the total actual costs for all children transported in all districts for a school year, by the total of all districts' actual enrollments for the school year.

d. Funds transferred to the committee in accordance with section 321.34, subsection 22, are appropriated to and may be expended for the purposes of the committee, as described in this section. However, highest priority shall be given to districts that meet the conditions described in this subsection. Notwithstanding any other provision of the Code, unencumbered or unobligated funds transferred to the committee pursuant to section 321.34, subsection 22, remaining on June 30 of the fiscal year for which the funds were transferred, shall not revert but shall be available for expenditure for the purposes of this subsection in subsequent fiscal years.

18. If a school district exceeds its authorized budget or carries a negative unspent balance for two or more consecutive years, the committee may recommend that the department implement a phase II on-site visit to conduct a fiscal review pursuant to section 256.11, subsection 10, paragraph "b", subparagraph (1), subparagraph subdivision (e).

2007 Acts, ch 42, §2; 2007 Acts, ch 108, §8

Subsection 5, NEW paragraph m

Subsection 7, unnumbered paragraph 1, paragraphs a and b, and unnumbered paragraph 2 redesignated editorially as paragraph a, subparagraphs (1) and (2), and paragraph b respectively

Subsection 14, paragraph b, unnumbered paragraphs 1 – 4 redesignated editorially as subparagraphs (1) – (4) respectively

NEW subsection 18

**257.35 Area education agency payments.**

1. The department of management shall deduct the amounts calculated for special education support services, media services, and educational services for each school district from the state aid due to the district pursuant to this chapter and shall pay the amounts to the respective area education agencies on a monthly basis from September 15 through June 15 during each school year. The department of management shall notify each school district of the amount of state aid deducted for these purposes and the balance of state aid shall be paid to the district. If a district does not qualify for state aid under this chapter in an amount sufficient to cover its amount due to the area education agency as calculated by the department of management, the school district shall pay the deficiency to the area education agency from other moneys received by the district, on a quarterly basis during each school year.

2. Notwithstanding subsection 1, the state aid for area education agencies and the portion of the combined district cost calculated for these agencies for the fiscal year beginning July 1, 2002, and each succeeding fiscal year, shall be reduced by the department of management by seven million five hundred thousand dollars. The reduction for each area education agency shall be equal to the reduction that the agency received in the fiscal year beginning July 1, 2001.

3. Notwithstanding subsection 1, and in addition to the reduction applicable pursuant to subsection 2, the state aid for area education agencies and the portion of the combined district cost calculated for these agencies for the fiscal year beginning July 1, 2003, and ending June 30, 2004, shall be reduced by the department of management by ten million dollars. The department shall calculate a reduction such that each area education agency shall receive a reduction proportionate to the amount that it would otherwise have received under this section if the reduction imposed pursuant to this subsection did not apply.

4. Notwithstanding subsection 1, and in addition to the reduction applicable pursuant to subsection 2, the state aid for area education agencies and the portion of the combined district cost calculated for these agencies for the fiscal year beginning July 1, 2007, shall be reduced by the department of management by five million two hundred fifty thousand dollars. The reduction for each area education agency shall be prorated based on the reduction that the agency received in the fiscal year beginning July 1, 2003.

5. Notwithstanding section 257.37, an area education agency may use the funds determined to

be available under this section in a manner which the area education agency determines is appropriate to best maintain the level of required area education agency special education services. An area education agency may also use unreserved fund balances for media services or education services in a manner which the area education agency determines is appropriate to best maintain the level of required area education agency special education services.

2007 Acts, ch 215, §9  
Subsection 4 amended

**257.40 Approval of programs for returning dropouts and dropout prevention — annual report.**

1. The board of directors of a school district requesting to use modified allowable growth for programs for returning dropouts and dropout prevention shall submit requests for modified at-risk allowable growth, including budget costs, to the department not later than December 15 of the year preceding the budget year during which the program will be offered. The department shall review the request and shall prior to January 15 either grant approval for the request or return the request for approval with comments of the department included. An unapproved request for a program may be resubmitted with modifications to the department not later than February 1. Not later than February 15, the department shall notify the department of management and the school budget review committee of the names of the school districts for which programs using modified allowable growth for funding have been approved and the approved budget of each program listed separately for each school district having an approved request.

2. Beginning January 15, 2007, the department shall submit an annual report to the chairpersons and ranking members of the senate and house education committees that includes the ways school districts in the previous school year used modified allowable growth approved under subsection 1; identifies, by grade level, age, and district size, the students in the dropout and dropout prevention programs for which the department approves a request; describes school district progress toward increasing student achievement and attendance for the students in the programs; and describes how the school districts are using the revenues from the modified allowable growth to improve student achievement among minority subgroups.

2007 Acts, ch 22, §60  
Subsection 1 amended

## CHAPTER 260C

### COMMUNITY COLLEGES

#### 260C.1 Statement of policy.

It is hereby declared to be the policy of the state of Iowa and the purpose of this chapter to provide for the establishment of not more than fifteen areas which shall include all of the area of the state and which may operate community colleges offering to the greatest extent possible, educational opportunities and services in each of the following, when applicable, but not necessarily limited to:

1. The first two years of college work including preprofessional education.
2. Vocational and technical training.
3. Programs for in-service training and retraining of workers.
4. Programs for high school completion for students of post-high school age.
5. Programs for all students of high school age who may best serve themselves by enrolling for vocational and technical training while also enrolled in a local high school, public or private.
6. Programs for students of high school age to provide advanced college placement courses not taught at a student's high school while the student is also enrolled in the high school.
7. Student personnel services.
8. Community services.
9. Vocational education for persons who have academic, socioeconomic, or other disabilities which prevent succeeding in regular vocational education programs.
10. Training, retraining, and all necessary preparation for productive employment of all citizens.
11. Vocational and technical training for persons who are not enrolled in a high school and who have not completed high school.
12. Developmental education for persons who are academically or personally underprepared to succeed in their program of study.

Application of community college course credits to degree programs at state universities; credit transfer and articulation website; 2007 Acts, ch 215, §55

Section not amended; footnote added

#### 260C.19A Motor vehicles required to operate on alternative fuels.

1. A motor vehicle purchased by or used under the direction of the board of directors to provide services to a merged area shall not operate on gasoline other than ethanol blended gasoline as defined in section 214A.1. The motor vehicle shall also be affixed with a brightly visible sticker which notifies the traveling public that the motor vehicle is being operated on ethanol blended gasoline. However, the sticker is not required to be affixed to an unmarked vehicle used for purposes of providing law enforcement or security.

2. *a.* Of all new passenger vehicles and light pickup trucks purchased by or under the direction of the board of directors to provide services to a merged area, a minimum of ten percent of all such vehicles and trucks purchased shall be equipped with engines which utilize alternative methods of propulsion, including but not limited to any of the following:

- (1) A flexible fuel which is any of the following:
  - (a) E-85 gasoline as provided in section 214A.2.
  - (b) B-20 biodiesel blended fuel as provided in section 214A.2.
  - (c) A renewable fuel approved by the office of renewable fuels and coproducts pursuant to section 159A.3.
- (2) Compressed or liquefied natural gas.
- (3) Propane gas.
- (4) Solar energy.
- (5) Electricity.

*b.* The provisions of this subsection do not apply to vehicles and trucks purchased and directly used for law enforcement or off-road maintenance work.

2007 Acts, ch 22, §61

Subsection 2, unnumbered paragraph 1 editorially designated as paragraph a

Subsection 2, former paragraph a, unnumbered paragraph 1 amended and editorially redesignated as subparagraph (1) of paragraph a

Subsection 2, former subparagraphs (1) – (3) of paragraph a editorially redesignated as subparagraph subdivisions (a) – (c) of paragraph a, subparagraph (1)

Subsection 2, former paragraphs b – e editorially redesignated as subparagraphs (2) – (5) of paragraph a

Subsection 2, former unnumbered paragraph 2 editorially designated as paragraph b

#### 260C.36 Quality faculty plan.

1. The community college administration shall establish a committee consisting of instructors and administrators, equally representative of the arts and sciences faculty and the vocational-technical faculty, which has no more than a simple majority of members of the same gender. The faculty members shall be appointed by the certified employee organization if one exists and if not, by the college administration. The administrators shall be appointed by the college administration. The committee shall develop and maintain a plan for hiring and developing quality faculty that includes all of the following:

- a.* An implementation schedule for the plan.
- b.* Orientation for new faculty.
- c.* Continuing professional development for faculty.
- d.* Procedures for accurate recordkeeping and documentation for plan monitoring.
- e.* Consortium arrangements when appropriate, cost-effective, and mutually beneficial.
- f.* Specific activities that ensure faculty attain

and demonstrate instructional competencies and knowledge in their subject or technical areas.

*g.* Procedures for collection and maintenance of records demonstrating that each faculty member has attained or documented progress toward attaining minimal competencies.

*h.* Compliance with the faculty accreditation standards of the north central association of colleges and schools and with faculty standards required under specific programs offered by the community college that are accredited by other accrediting agencies.

2. The committee shall submit the plan to the board of directors, which shall consider the plan and, once approved, submit the plan to the department of education and implement the plan not later than July 1, 2003.

3. The administration of the college shall encourage the continued development of faculty potential by doing all of the following:

*a.* Regularly stimulating department chairpersons or heads to meet their responsibilities for the continued development of faculty potential.

*b.* Reducing the instructional loads of first-year instructors whose course preparation and in-service training demand a reduction.

*c.* Stimulating curricular evaluation.

*d.* Encouraging the development of an atmosphere in which the faculty brings a wide range of ideas and experiences to the students, each other, and the community.

2007 Acts, ch 214, §21, 22

Subsection 1, unnumbered paragraph 1 amended

Subsection 3 stricken and former subsection 4 renumbered as 3

#### **260C.48 Standards for accrediting community college programs.**

1. The state board shall develop standards and rules for the accreditation of community college programs. Except as provided in this subsection and subsection 4, standards developed shall be general in nature so as to apply to more than one specific program of instruction. With regard to community college-employed instructors, the standards adopted shall at a minimum require that community college instructors who are under contract for at least half-time or more meet the following requirements:

*a.* Instructors in the subject area of career and technical education shall be registered, certified, or licensed in the occupational area in which the state requires registration, certification, or licensure, and shall hold the appropriate registration, certificate, or license for the occupational area in which the instructor is teaching, and shall meet either of the following qualifications:

(1) A baccalaureate or graduate degree in the

area or a related area of study or occupational area in which the instructor is teaching classes.

(2) Special training and at least six thousand hours of recent and relevant work experience in the occupational area or related occupational area in which the instructor teaches classes if the instructor possesses less than a baccalaureate degree.

*b.* Instructors in the subject area of arts and sciences shall meet either of the following qualifications:

(1) Possess a master's degree from a regionally accredited graduate school, and has successfully completed a minimum of twelve credit hours of graduate level courses in each field of instruction in which the instructor is teaching classes.

(2) Has two or more years of successful experience in a professional field or area in which the instructor is teaching classes and in which postbaccalaureate recognition or professional licensure is necessary for practice, including but not limited to the fields or areas of accounting, engineering, law, law enforcement, and medicine.

2. Standards developed shall include a provision that the standard academic workload for an instructor in arts and science courses shall be fifteen credit hours per school term, and the maximum academic workload for any instructor shall be sixteen credit hours per school term, for classes taught during the normal school day. In addition thereto, any faculty member may teach a course or courses at times other than the regular school week, involving total class instruction time equivalent to not more than a three-credit-hour course. The total workload for such instructors shall not exceed the equivalent of eighteen credit hours per school term.

3. Standards developed shall include provisions requiring equal access in recruitment, enrollment, and placement activities for students with special education needs. The provisions shall include a requirement that students with special education needs shall receive instruction in the least restrictive environment with access to the full range of program offerings at a college, through, but not limited to, adaptation of curriculum, instruction, equipment, facilities, career guidance, and counseling services.

4. Commencing July 1, 2006, standards relating to quality assurance of faculty and ongoing quality professional development shall be the accreditation standards of the north central association of colleges and schools and the faculty standards required under specific programs offered by the community college that are accredited by other accrediting agencies.

2007 Acts, ch 214, §23

Subsection 1, unnumbered paragraph 1 amended

## CHAPTER 260F

## JOBS TRAINING

**260F.10 Reporting.** Repealed by 2007 Acts, ch 126, § 115.

With respect to proposed future repeal of former §260F.10, see Code editor's note to §29A.28

## CHAPTER 260G

## ACCELERATED CAREER EDUCATION PROGRAM

**260G.10 Reporting.** Repealed by 2007 Acts, ch 126, § 115.

With respect to proposed future repeal of former §260G.10, see Code editor's note to §29A.28

## CHAPTER 261

## COLLEGE STUDENT AID COMMISSION

**261.2 Duties of commission.**

The commission shall:

1. Prepare and administer a state plan for a state supported and administered scholarship program. The state plan shall provide for scholarships to deserving students of Iowa, matriculating in Iowa universities, colleges, community colleges, or schools of professional nursing. Eligibility of a student for receipt of a scholarship shall be based upon academic achievement and completion of advanced level courses prescribed by the commission.

2. Administer the tuition grant program under this chapter.

3. Develop and implement, in cooperation with the state board of regents, an educational program and marketing strategies designed to inform parents about the options available for financing a college education and the need to accumulate the financial resources necessary to pay for a college education. The educational program shall include, but not be limited to, distribution of informational material to public and nonpublic elementary schools for distribution to parents and guardians of five-year and six-year old children.

4. Approve transfers from the scholarship and tuition grant reserve fund under section 261.20.

5. Develop and implement, in cooperation with the judicial district departments of correctional services and the department of corrections, a program to assist criminal offenders in applying for federal and state aid available for higher education.

6. Develop and implement, in cooperation with the department of human services and the judicial branch, a program to assist juveniles who are sixteen years of age or older and who have a case permanency plan under chapter 232 or 237 or

are otherwise under the jurisdiction of chapter 232 in applying for federal and state aid available for higher education. The commission shall also develop and implement the all Iowa opportunity foster care grant program in accordance with section 261.6.

7. Adopt rules to establish reasonable registration standards for the approval, pursuant to section 261B.3A, of postsecondary schools that are required to register with the secretary of state in order to operate in this state. The registration standards established by the commission shall ensure that all of the following conditions are satisfied:

a. The courses, curriculum, and instruction offered by the postsecondary school are of such quality and content as may reasonably and adequately ensure achievement of the stated objective for which the courses, curriculum, or instruction are offered.

b. The postsecondary school has adequate space, equipment, instructional material, and personnel to provide education and training of good quality.

c. The educational and experience qualifications of the postsecondary school's directors, administrators, and instructors are such as may reasonably ensure that students will receive instruction consistent with the objectives of the postsecondary school's programs of study.

d. Upon completion of training or instruction, students are given certificates, diplomas, or degrees as appropriate by the postsecondary school indicating satisfactory completion of the program.

e. The postsecondary school is financially responsible and capable of fulfilling commitments for instruction.

The commission may require a school seeking



registration under chapter 261B to provide copies of its application to the Iowa coordinating council for post-high school education. The commission may consider comments from the council that are received by the commission within ninety days of the filing of the application. However, if the council meets to consider comments for submission to the commission, the meeting shall be open to the public and subject to the provisions of chapter 21. The commission shall render a decision on an application for registration within one hundred eighty days of the filing of the application.

8. Establish an advisory committee on postsecondary registration to review and make recommendations relating to applications from schools required to register pursuant to chapter 261B. The commission shall adopt rules pursuant to chapter 17A to establish the policies and procedures of the advisory committee. Meetings of the advisory committee are subject to the requirements of chapter 21. The members of the advisory committee shall include one representative from each of the following:

- a. The state board of regents.
- b. The department of education.
- c. The office of the secretary of state.
- d. The office of the attorney general.
- e. A community college located in this state.
- f. An accredited private postsecondary institution as defined in section 261.9, subsection 1, incorporated or otherwise organized under the laws of this state.

2007 Acts, ch 214, §24  
Subsection 6 amended

### **261.6 All Iowa opportunity foster care grant program.**

1. The commission shall develop and implement, in cooperation with the department of human services and the judicial branch, the all Iowa opportunity foster care grant program in accordance with this section.

2. The program shall provide financial assistance for postsecondary education or training to persons who have a high school diploma or a high school equivalency diploma under chapter 259A, are age eighteen through twenty-three, and are described by any of the following:

a. On the date the person reached age eighteen or during the thirty calendar days preceding or succeeding that date, the person was in a licensed foster care placement pursuant to a court order entered under chapter 232 under the care and custody of the department of human services or juvenile court services.

b. On the date the person reached age eighteen or during the thirty calendar days preceding or succeeding that date, the person was under a court order under chapter 232 to live with a relative or other suitable person.

c. The person was in a licensed foster care placement pursuant to an order entered under chapter 232 prior to being legally adopted after reaching age sixteen.

d. On the date the person reached age eighteen or during the thirty calendar days preceding or succeeding that date, the person was placed in the state training school or the Iowa juvenile home pursuant to a court order entered under chapter 232 under the care and custody of the department of human services.

3. The program requirements shall include but are not limited to all of the following:

a. Program assistance shall cover a program participant's expenses associated with attending an approved postsecondary education or training program in this state. The expenses shall include tuition and fees, books and supplies, child care, transportation, housing, and other expenses approved by the commission. If a participant is attending on less than a full-time basis, assistance provisions shall be designed to cover tuition and fees and books and supplies, and assistance for other expenses shall be prorated to reflect the hours enrolled.

b. If the approved education or training program is more than one year in length, the program assistance may be renewed. To renew the assistance, the participant must annually reapply for the program and meet the academic progress standards of the postsecondary educational institution or make satisfactory progress toward completion of the training program.

c. A person shall be less than age twenty-three upon both the date of the person's initial application for the program and the start date of the education or training program for which the assistance is provided. Eligibility for program assistance shall end upon the participant reaching age twenty-four.

d. Assistance under the program shall not be provided for expenses that are paid for by other programs for which funding is available to assist the participant.

e. The commission shall implement assistance provisions in a manner to ensure that the total amount of assistance provided under the program remains within the funding available for the program.

4. The commission shall develop and implement a tracking system that maintains a record of the postsecondary and workforce participation for those assisted under the program. The system shall maintain a record for each participant for up to ten years after the first year of assistance. The commission shall deliver a report on the outcomes of the program to the governor and general assembly by January 1 annually.

2007 Acts, ch 214, §25  
Appropriation of funds for 2007-2008 fiscal year; 2007 Acts, ch 214, §2  
NEW section

**261.7 and 261.8** Reserved.**261.23 Registered nurse and nurse educator loan forgiveness program.**

1. A registered nurse and nurse educator loan forgiveness program is established to be administered by the commission. The program shall consist of loan forgiveness for eligible federally guaranteed loans for registered nurses and nurse educators who practice or teach in this state. For purposes of this section, unless the context otherwise requires, “*nurse educator*” means a registered nurse who holds a master’s degree or doctorate degree and is employed as a faculty member who teaches nursing as provided in 655 IAC 2.6(152) at an accredited private institution or an institution of higher education governed by the state board of regents.

2. Each applicant for loan forgiveness shall, in accordance with the rules of the commission, do the following:

*a.* Complete and file an application for registered nurse or nurse educator loan forgiveness. The individual shall be responsible for the prompt submission of any information required by the commission.

*b.* File a new application and submit information as required by the commission annually on the basis of which the applicant’s eligibility for the renewed loan forgiveness will be evaluated and determined.

*c.* Complete and return, on a form approved by the commission, an affidavit of practice verifying that the applicant is a registered nurse practicing in this state or a nurse educator teaching at an accredited private institution or an institution of higher learning governed by the state board of regents.

3. *a.* The annual amount of registered nurse loan forgiveness for a registered nurse who completes a course of study, which leads to a baccalaureate or associate degree of nursing, diploma in nursing, or a graduate or equivalent degree in nursing, and who practices in this state, shall not exceed the resident tuition rate established for institutions of higher learning governed by the state board of regents for the first year following the registered nurse’s graduation from a nursing education program approved by the board of nursing pursuant to section 152.5, or twenty percent of the registered nurse’s total federally guaranteed Stafford loan amount under the federal family education loan program or the federal direct loan program, including principal and interest, whichever amount is less. A registered nurse shall be eligible for the loan forgiveness program for not more than five consecutive years.

*b.* The annual amount of nurse educator loan forgiveness shall not exceed the resident tuition

rate established for institutions of higher learning governed by the state board of regents for the first year following the nurse educator’s graduation from an advanced formal academic nursing education program approved by the board of nursing pursuant to section 152.5, or twenty percent of the nurse educator’s total federally guaranteed Stafford loan amount under the federal family education loan program or the federal direct loan program, including principal and interest, whichever amount is less. A nurse educator shall be eligible for the loan forgiveness program for not more than five consecutive years.

4. A registered nurse and nurse educator loan forgiveness repayment fund is created for deposit of moneys appropriated to or received by the commission for use under the program. Notwithstanding section 8.33, moneys deposited in the fund shall not revert to any fund of the state at the end of any fiscal year but shall remain in the loan forgiveness repayment fund and be continuously available for loan forgiveness under the program. Notwithstanding section 12C.7, subsection 2, interest or earnings on moneys deposited in the fund shall be credited to the fund.

5. The commission shall submit in a report to the general assembly by January 1, annually, the number of individuals who received loan forgiveness pursuant to this section, where the participants practiced or taught, the amount paid to each program participant, and other information identified by the commission as indicators of outcomes from the program.

6. The commission shall adopt rules pursuant to chapter 17A to administer this section.

2007 Acts, ch 214, §26  
Section stricken and rewritten

**261.25 Appropriations — standing limit — minority student and faculty information.**

1. There is appropriated from the general fund of the state to the commission for each fiscal year the sum of forty-eight million three hundred seventy-three thousand seven hundred eighteen dollars for tuition grants.

2. There is appropriated from the general fund of the state to the commission for each fiscal year the sum of five million three hundred seventy-four thousand eight hundred fifty-eight dollars for tuition grants for students attending for-profit accredited private institutions located in Iowa. A for-profit institution which, effective March 9, 2005, purchased an accredited private institution that was exempt from taxation under section 501(c) of the Internal Revenue Code, shall be an eligible institution under the tuition grant program. In the case of a qualified student who was enrolled in such accredited private institution that was

purchased by the for-profit institution effective March 9, 2005, and who continues to be enrolled in the eligible institution in succeeding years, the amount the student qualifies for under this subsection shall be not less than the amount the student qualified for in the fiscal year beginning July 1, 2004. For purposes of the tuition grant program, “for-profit accredited private institution” means an accredited private institution which is not exempt from taxation under section 501(c)(3) of the Internal Revenue Code but which otherwise meets the requirements of section 261.9, subsection 1, paragraph “b”, and whose students were eligible to receive tuition grants in the fiscal year beginning July 1, 2003.

3. There is appropriated from the general fund of the state to the commission for each fiscal year the sum of two million seven hundred eighty-three thousand one hundred fifteen dollars for vocational-technical tuition grants.

4. This section shall not be construed to be a limitation on any of the amounts which may be appropriated by the general assembly for any program enumerated in this section.

5. For each fiscal year, the institutions of higher education that enroll recipients of Iowa tuition grants shall transmit to the Iowa college student aid commission information about the numbers of minority students enrolled and minority faculty members employed at the institution, and existing or proposed plans for the recruitment and retention of minority students and faculty as well as existing or proposed plans to serve nontraditional students. The Iowa college student aid commission shall compile and report the first fall academic semester or quarter enrollment and employment information and plans for the next fiscal year to the chairpersons and ranking members of the house and senate education committees, members of the joint education appropriations subcommittee, the governor, and the legislative services agency by March 1 of each year.

2007 Acts, ch 214, §27

Portion of funds to be used for forgivable loans pursuant to §261.23 for Iowa nurses and nurse educators; 2007 Acts, ch 214, §4  
Subsections 1 – 3 amended

### 261.85 Appropriation.

There is appropriated from the general fund of the state to the commission for each fiscal year the sum of two million seven hundred fifty thousand dollars for the work-study program.

From moneys appropriated in this section, one million five hundred thousand dollars shall be allocated to institutions of higher education under the state board of regents and community colleges and the remaining dollars appropriated in this section shall be allocated by the commission on the basis of need as determined by the portion of the federal formula for distribution of work-study

funds that relates to the current need of institutions.

Funding for 2007-2008 fiscal year; 2007 Acts, ch 214, §3  
Section not amended; footnote revised

## DIVISION X

### ALL IOWA OPPORTUNITY SCHOLARSHIPS

#### 261.87 All Iowa opportunity scholarship program and fund.

1. *Definitions.* As used in this division, unless the context otherwise requires:

a. “*Commission*” means the college student aid commission.

b. “*Eligible institution*” means a community college established under chapter 260C or an institution of higher learning governed by the state board of regents.

c. “*Financial need*” means the difference between the student’s financial resources available, including those available from the student’s parents as determined by a completed parents’ confidential statement, and the student’s anticipated expenses while attending an eligible institution.

d. “*Full-time resident student*” means an individual resident of Iowa who is enrolled at an eligible institution in a program of study including at least twelve semester hours or the trimester or quarter equivalent.

e. “*Part-time resident student*” means an individual resident of Iowa who is enrolled at an eligible institution in a program of study including at least three semester hours or the trimester or quarter equivalent.

f. “*Qualified student*” means a resident student who has established financial need and who is meeting all program requirements.

2. *Program — eligibility.* An all Iowa opportunity scholarship program is established to be administered by the commission. The awarding of scholarships under the program is subject to appropriations made by the general assembly. A person who meets all of the following requirements is eligible for the program:

a. Is a resident of Iowa and a citizen of the United States or a lawful permanent resident.

b. Achieves a cumulative high school grade point average upon graduation of at least two point five on a four-point grade scale, or its equivalent if another grade scale is used.

c. Applies in a timely manner for admission to an eligible institution and is accepted for admission.

d. Applies in a timely manner for any federal or state student financial assistance available to the student to attend an eligible institution.

e. Files a new application and parents’ confidential statement, as applicable, annually on the

basis of which the applicant's eligibility for a renewed scholarship will be evaluated and determined.

f. Maintains satisfactory academic progress during each term for which a scholarship is awarded.

g. Begins enrollment at an eligible institution within two academic years of graduation from high school and continuously receives awards as a full-time or part-time student to maintain eligibility. However, the student may defer participation in the program for up to two years in order to pursue obligations that meet conditions established by the commission by rule or to fulfill military obligations.

3. *Extent of scholarship.*

a. A qualified student at a two-year eligible institution may receive scholarships for not more than the equivalent of four full-time semesters of undergraduate study, or the trimester or quarter equivalent.

b. A qualified student at a four-year eligible institution may receive scholarships for not more than the equivalent of two full-time semesters of undergraduate study, or the trimester or quarter equivalent.

c. Scholarships awarded pursuant to this section shall not exceed the student's financial need, as determined by the commission, the average resident tuition rate and mandatory fees established for institutions of higher learning governed by the state board of regents, or the resident tuition and mandatory fees charged for the program of enrollment by the eligible institution at which the student is enrolled, whichever is least.

4. *Discontinuance of attendance — remittance.* If a student receiving a scholarship pursuant to this section discontinues attendance before the end of any academic term, the entire amount of any refund due to the student, up to the amount of any payments made by the state, shall be remitted by the eligible institution to the commission. The commission shall deposit refunds paid to the commission in accordance with this subsection into the fund established pursuant to subsection 5.

5. *Fund established.* An all Iowa opportunity scholarship fund is created in the state treasury as a separate fund under the control of the commission. All moneys deposited or paid into the fund are appropriated and made available to the commission to be used for scholarships for students meeting the requirements of this section. Notwithstanding section 8.33, any balance in the fund on June 30 of each fiscal year shall not revert to the general fund of the state, but shall be available for purposes of this section in subsequent fiscal years.

2007 Acts, ch 214, §28  
Appropriation of funds for 2007-2008 fiscal year; 2007 Acts, ch 214, §2  
NEW section

**261.88 through 261.91** Reserved.

DIVISION XIII  
TEACHER SHORTAGE FORGIVABLE  
LOAN AND LOAN  
FORGIVENESS PROGRAMS

**261.111 Teacher shortage forgivable loan program.**

1. A teacher shortage forgivable loan program is established to be administered by the college student aid commission. An individual is eligible for the forgivable loan program if the individual is a resident of this state who is enrolled as a sophomore, junior, senior, or graduate student in an approved practitioner preparation program in a designated area in which teacher shortages are anticipated at an institution of higher learning under the control of the state board of regents or an accredited private institution as defined in section 261.9.

2. The director of the department of education shall annually designate the areas in which teacher shortages are anticipated. The director shall periodically conduct a survey of school districts, accredited nonpublic schools, and approved practitioner preparation programs to determine current shortage areas and predict future shortage areas.

3. Each applicant shall, in accordance with the rules of the commission, do the following:

a. Complete and file an application for a teacher shortage forgivable loan. The individual shall be responsible for the prompt submission of any information required by the commission.

b. File a new application and submit information as required by the commission annually on the basis of which the applicant's eligibility for the renewed forgivable loan will be evaluated and determined.

4. Forgivable loans to eligible students shall not become due until after the student graduates or leaves school. The individual's total loan amount, including principal and interest, shall be reduced by twenty percent for each year in which the individual remains an Iowa resident and is employed in Iowa by a school district or an accredited nonpublic school as a practitioner in the teacher shortage area for which the loan was approved. If the commission determines that the person does not meet the criteria for forgiveness of the principal and interest payments, the commission shall establish a plan for repayment of the principal and interest over a ten-year period. If a person required to make the repayment does not make the required payments, the commission shall provide for payment collection.

5. The annual amount of a teacher shortage forgivable loan shall not exceed the resident tuition rate established for institutions of higher education governed by the state board of regents, or the amount of the student's established financial need, whichever is less.

6. The commission shall prescribe by rule the interest rate for the forgivable loan.

7. A teacher shortage forgivable loan repayment fund is created for deposit of payments made by forgivable loan recipients who do not fulfill the conditions of the forgivable loan program and any other moneys appropriated to or received by the commission for deposit in the fund. Notwithstanding section 8.33, moneys deposited in the fund shall not revert to the general fund of the state at the end of any fiscal year but shall remain in the forgivable loan repayment fund and be continuously available to make additional loans under the program. Notwithstanding section 12C.7, subsection 2, interest or earnings on moneys deposited in the fund shall be credited to the fund.

8. For purposes of this section, unless the context otherwise requires, “*teacher*” means the same as defined in section 272.1.

9. The commission shall submit in a report to the general assembly by January 1, annually, the number of students who received forgivable loans pursuant to this section, which institutions the students were enrolled in, and the amount paid to each of the institutions on behalf of the students who received forgivable loans pursuant to this section and the total amount of loans outstanding, including a schedule of years remaining on the outstanding loans.

2007 Acts, ch 214, §29, 30  
Subsection 9 amended  
Subsection 10 stricken

**261.112 Teacher shortage loan forgiveness program.**

1. A teacher shortage loan forgiveness program is established to be administered by the commission. A teacher is eligible for the program if the teacher is practicing in a teacher shortage area as designated by the department of education pursuant to subsection 2. For purposes of this section, “*teacher*” means an individual holding a practitioner’s license issued under chapter 272, who is employed in a nonadministrative position in a designated shortage area by a school district or area education agency pursuant to a contract issued by a board of directors under section 279.13.

2. The director of the department of education shall annually designate the geographic or subject areas experiencing teacher shortages. The director shall periodically conduct a survey of school districts, accredited nonpublic schools, and approved practitioner preparation programs to determine current shortage areas.

3. Each applicant for loan forgiveness shall, in accordance with the rules of the commission, do

the following:

a. Complete and file an application for teacher shortage loan forgiveness. The individual shall be responsible for the prompt submission of any information required by the commission.

b. File a new application and submit information as required by the commission annually on the basis of which the applicant’s eligibility for the renewed loan forgiveness will be evaluated and determined.

c. Complete and return on a form approved by the commission an affidavit of practice verifying that the applicant is a teacher in an eligible teacher shortage area.

4. The annual amount of teacher shortage loan forgiveness shall not exceed the resident tuition rate established for institutions of higher learning governed by the state board of regents for the first year following the teacher’s graduation from an approved practitioner preparation program, or twenty percent of the teacher’s total federally guaranteed Stafford loan amount under the federal family education loan program or the federal direct loan program, including principal and interest, whichever amount is less. A teacher shall be eligible for the loan forgiveness program for not more than five consecutive years.

5. A teacher shortage loan forgiveness repayment fund is created for deposit of moneys appropriated to or received by the commission for use under the program. Notwithstanding section 8.33, moneys deposited in the fund shall not revert to any fund of the state at the end of any fiscal year but shall remain in the loan forgiveness repayment fund and be continuously available for loan forgiveness under the program. Notwithstanding section 12C.7, subsection 2, interest or earnings on moneys deposited in the fund shall be credited to the fund.

6. The commission shall submit in a report to the general assembly by January 1, annually, the number of individuals who received loan forgiveness pursuant to this section, which shortage areas the teachers taught in, the amount paid to each program participant, and other information identified by the commission as indicators of outcomes from the program.

7. The commission shall adopt rules pursuant to chapter 17A to administer this section.

2007 Acts, ch 214, §31  
NEW section

DIVISION XIV

RESERVED

## CHAPTER 261C

### POSTSECONDARY ENROLLMENT OPTIONS

#### 261C.6 School district payments.

1. Not later than June 30 of each year, a school district shall pay a tuition reimbursement amount to an eligible postsecondary institution that has enrolled its resident eligible pupils under this chapter, unless the eligible pupil is participating in open enrollment under section 282.18, in which case, the tuition reimbursement amount shall be paid by the receiving district. However, if a child's residency changes during a school year, the tuition shall be paid by the district in which the child was enrolled as of the date specified in section 257.6, subsection 1, or the district in which the child was counted under section 257.6, subsection 1, paragraph "a", subparagraph (6). For pupils enrolled at the school for the deaf and the Iowa braille and

sight saving school, the state board of regents shall pay a tuition reimbursement amount by June 30 of each year. The amount of tuition reimbursement for each separate course shall equal the lesser of:

a. The actual and customary costs of tuition, textbooks, materials, and fees directly related to the course taken by the eligible student.

b. Two hundred fifty dollars.

2. A pupil is not eligible to enroll on a full-time basis in an eligible postsecondary institution and receive payment for all courses in which a student is enrolled.

2007 Acts, ch 22, §62

Subsection 1, unnumbered paragraph 1 amended

## CHAPTER 262

### BOARD OF REGENTS

#### 262.9 Powers and duties.

The board shall:

1. Each even-numbered year elect, from its members, a president of the board, who shall serve for two years and until a successor is elected and qualified.

2. Elect a president of each of the institutions of higher learning; a superintendent of each of the other institutions; a treasurer and a secretarial officer for each institution annually; professors, instructors, officers, and employees; and fix their compensation. Sections 279.12 through 279.19 and section 279.27 apply to employees of the Iowa braille and sight saving school and the state school for the deaf, who are licensed pursuant to chapter 272. In following those sections in chapter 279, the references to boards of directors of school districts shall be interpreted to apply to the board of regents.

3. Make rules for admission to and for the government of said institutions, not inconsistent with law.

4. Manage and control the property, both real and personal, belonging to the institutions. The board shall purchase or require the purchase of, when the price is reasonably competitive and the quality as intended, soybean-based inks. All inks purchased that are used internally or are contracted for by the board shall be soybean-based to the extent formulations for such inks are available.

a. The department of natural resources shall review the procurement specifications currently

used by the board to eliminate, wherever possible, discrimination against the procurement of products manufactured with soybean-based inks.

b. The department of natural resources shall assist the board in locating suppliers of recycled content products and soybean-based inks and collecting data on recycled content and soybean-based ink purchases.

c. The board, in conjunction with the department of natural resources, shall adopt rules to carry out the provisions of this section.

d. The department of natural resources shall cooperate with the board in all phases of implementing this section.

5. The board shall, whenever technically feasible, purchase and use degradable loose foam packing material manufactured from grain starches or other renewable resources, unless the cost of the packing material is more than ten percent greater than the cost of packing material made from non-renewable resources. For the purposes of this subsection, "packing material" means material, other than an exterior packing shell, that is used to stabilize, protect, cushion, or brace the contents of a package.

6. Purchase and use recycled printing and writing paper, with the exception of specialized paper when no recyclable product is available, in accordance with the schedule established in section 8A.315; establish a wastepaper recycling program for all institutions governed by the board in accordance with recommendations made by the department of natural resources and the require-

ments of section 8A.329; shall, in accordance with the requirements of section 8A.311, require product content statements and compliance with requirements regarding procurement specifications; and shall comply with the requirements for the purchase of lubricating oils and industrial oils as established pursuant to section 8A.316.

7. Acquire real estate for the proper uses of institutions under its control, and dispose of real estate belonging to the institutions when not necessary for their purposes. The disposal of real estate shall be made upon such terms, conditions, and consideration as the board may recommend. If real estate subject to sale has been purchased or acquired from appropriated funds, the proceeds of such sale shall be deposited with the treasurer of state and credited to the general fund of the state. There is hereby appropriated from the general fund of the state a sum equal to the proceeds so deposited and credited to the general fund of the state to the state board of regents, which may be used to purchase other real estate and buildings and for the construction and alteration of buildings and other capital improvements. All transfers shall be by state patent in the manner provided by law. The board is also authorized to grant easements for rights-of-way over, across, and under the surface of public lands under its jurisdiction when in the board's judgment such easements are desirable and will benefit the state of Iowa.

8. Accept and administer trusts and may authorize nonprofit foundations acting solely for the support of institutions governed by the board to accept and administer trusts deemed by the board to be beneficial. Notwithstanding the provisions of section 633.63, the board and such nonprofit foundations may act as trustee in such instances.

9. Direct the expenditure of all appropriations made to said institutions, and of any other moneys belonging thereto, but in no event shall the perpetual funds of the Iowa state university of science and technology, nor the permanent funds of the university of Iowa derived under Acts of Congress, be diminished.

10. Collect the highest rate of interest, consistent with safety, obtainable on daily balances in the hands of the treasurer of each institution.

11. With consent of the inventor and in the discretion of the board, secure letters patent or copyright on inventions of students, instructors and officials, or take assignment of such letters patent or copyright and may make all necessary expenditures in regard thereto. The letters patent or copyright on inventions when so secured shall be the property of the state, and the royalties and earnings thereon shall be credited to the funds of the institution in which such patent or copyright originated.

12. Perform all other acts necessary and proper for the execution of the powers and duties conferred by law upon it.

13. Grant leaves of absence with full or partial

compensation to staff members to undertake approved programs of study, research, or other professional activity which in the judgment of the board will contribute to the improvement of the institutions. Any staff member granted such leave shall agree either to return to the institution granting such leave for a period of not less than two years or to repay to the state of Iowa such compensation as the staff member shall have received during such leave.

14. Lease properties and facilities, either as lessor or lessee, for the proper use and benefit of said institutions upon such terms, conditions, and considerations as the board deems advantageous, including leases with provisions for ultimate ownership by the state of Iowa, and to pay the rentals from funds appropriated to the institution for operating expenses thereof or from such other funds as may be available therefor.

15. In its discretion employ or retain attorneys or counselors when acting as a public employer for the purpose of carrying out collective bargaining and related responsibilities provided for under chapter 20. This subsection shall supersede the provisions of section 13.7.

16. In its discretion, adopt rules relating to the classification of students enrolled in institutions of higher education under the board who are residents of Iowa's sister states as residents or nonresidents for fee purposes.

17. In issuing bonds or notes under this chapter, chapter 262A, chapter 263A, or other provision of law, select and fix the compensation for, through a competitive selection procedure, attorneys, accountants, financial advisors, banks, underwriters, insurers, and other employees and agents which in the board's judgment are necessary to carry out the board's intention. Prior to the initial selection, the board shall establish a procedure which provides for a fair and open selection process including, but not limited to, the opportunity to present written proposals and personal interviews. The board shall maintain a list of firms which have requested to be notified of requests for proposal. The selection criteria shall take into consideration, but are not limited to, compensation, expenses, experience with similar issues, scheduling, ability to provide the services of individuals with specific knowledge in the relevant subject matter and length of engagement. The board may waive the requirements for a competitive selection procedure for any specific employment upon adoption of a resolution of the board stating why the waiver is in the public interest and shall provide the executive council with written notice of the granting of any such waiver.

18. *a.* Not less than thirty days prior to action by the board on any proposal to increase tuition, fees, or charges at one or more of the institutions of higher education under its control, send written notification of the amount of the proposed increase including a copy of the proposed tuition increase

docket memorandum prepared for its consideration to the presiding officers of the student government organization of the affected institutions. The final decision on an increase in tuition or mandatory fees charged to all students at an institution for a fiscal year shall be made at a regular meeting and shall be reflected in a final docket memorandum that states the estimated total cost of attending each of the institutions of higher education under the board's control. The regular meeting shall be held in Ames, Cedar Falls, or Iowa City and shall not be held during a period in which classes have been suspended for university holiday or break.

*b.* Authorize, at its discretion, each institution of higher education to retain the student fees and charges it collects to further the institution's purposes as authorized by the board. Notwithstanding any provision to the contrary, student fees and charges, as defined in section 262A.2, shall not be considered repayment receipts as defined in section 8.2.

19. Adopt policies and procedures for the use of telecommunications as an instructional tool at its institutions. The policies and procedures shall include but not be limited to policies and procedures relating to programs, educational policy, practices, staff development, use of pilot projects, and the instructional application of the technology.

20. Establish a hall of fame for distinguished graduates at the Iowa braille and sight saving school and at the Iowa school for the deaf.

21. Assist a nonprofit organization located in Sioux City in the creation of a tristate graduate center, comparable to the quad cities graduate center, located in the quad cities in Iowa. The purpose of the Sioux City graduate center shall be to create graduate education opportunities for students living in northwest Iowa.

22. Direct the administration of the Iowa minority academic grants for economic success program as established in section 261.101 for the institutions under its control.

23. Develop a policy and adopt rules relating to the establishment of tuition rates which provide a predictable basis for assessing and anticipating changes in tuition rates.

24. Develop a policy requiring oral communication competence of persons who provide instruction to students attending institutions under the control of the board. The policy shall include a student evaluation mechanism which requires student evaluation of persons providing instruction on at least an annual basis. However, the board shall establish criteria by which an institution may discontinue annual evaluations of a specific person providing instruction. The criteria shall include receipt by the institution of two consecutive positive annual evaluations from the majority of students evaluating the person.

25. Develop a policy relating to the teaching proficiency of teaching assistants which provides a teaching proficiency standard, instructional assistance to, and evaluation of persons who provide instruction to students at the higher education institutions under the control of the board.

26. Explore, in conjunction with the department of education, the need for coordination between school districts, area education agencies, state board of regents institutions, and community colleges for purposes of delivery of courses, use of telecommunications, transportation, and other similar issues. Coordination may include, but is not limited to, coordination of calendars, programs, schedules, or telecommunications emissions. The state board shall develop recommendations as necessary, which shall be submitted in a report to the general assembly on a timely basis.

27. Develop and implement a written policy, which is disseminated during registration or orientation, addressing the following four areas relating to sexual abuse:

*a.* Counseling.

*b.* Campus security.

*c.* Education, including prevention, protection, and the rights and duties of students and employees of the institution.

*d.* Facilitating the accurate and prompt reporting of sexual abuse to the duly constituted law enforcement authorities.

28. Authorize the institutions of higher learning under the board to charge an interest rate, not to exceed the prime rate plus six percent, on delinquent bills. However, the board shall prohibit the institutions from charging interest on late tuition payments and room and board payments if financial aid payments to students enrolled in the institutions are delayed by the lending institution.

29. Direct the institutions of higher education under its control to adopt a policy to offer not less than the following options to a student who is a member of the Iowa national guard or reserve forces of the United States and who is ordered to state military service or federal service or duty:

*a.* Withdraw from the student's entire registration and receive a full refund of tuition and mandatory fees.

*b.* Make arrangements with the student's instructors for course grades, or for incompletes that shall be completed by the student at a later date. If such arrangements are made, the student's registration shall remain intact and tuition and mandatory fees shall be assessed for the courses in full.

*c.* Make arrangements with only some of the student's instructors for grades, or for incompletes that shall be completed by the student at a later date. If such arrangements are made, the registration for those courses shall remain intact and tuition and mandatory fees shall be assessed for those courses. Any course for which arrange-



ments cannot be made for grades or incompletes shall be considered dropped and the tuition and mandatory fees for the course refunded.

30. Develop a policy, not later than August 1, 2003, that each institution of higher education under the control of the board shall approve, institute, and enforce, which prohibits students, faculty, and staff from harassing or intimidating a student or any other person on institution property who is wearing the uniform of, or a distinctive part of the uniform of, the armed forces of the United States. A policy developed in accordance with this subsection shall not prohibit an individual from wearing such a uniform on institution property if the individual is authorized to wear the uniform under the laws of a state or the United States. The policy shall provide for appropriate sanctions.

31. Establish a research triangle, defined by the three institutions of higher learning under the board's control, and clearinghouse for purposes of sharing the projects and results of kindergarten through grade twelve education technology initiatives occurring in Iowa's school districts, area education agencies, community colleges, and other higher education institutions, with the education community within and outside of the state. Dissemination of and access to information regarding planning, financing, curriculum, professional development, preservice training, project implementation strategies, and results shall be centralized to allow school districts from across the state to gain ideas from each other regarding the integration of technology in the classroom.

2005 Acts, ch 144, §1; 2005 Acts, ch 179, §82; 2006 Acts, ch 1152, §54, 57; 2007 Acts, ch 214, §32, 44

2005 amendment enacting subsection 31 takes effect July 1, 2007; 2005 Acts, ch 179, §82; 2006 Acts, ch 1152, §54, 57

Subsection 18 amended

NEW subsection 31

### **262.14 Loans — conditions — other investments.**

The board may invest funds belonging to the institutions, subject to chapter 12F and the following regulations:

1. Each loan shall be secured by a mortgage paramount to all other liens upon approved farm lands in this state, accompanied by abstract showing merchantable title in the borrower. The loan shall not exceed sixty-five percent of the cash value of the land, exclusive of buildings.

2. Each such loan if for a sum more than one-fourth of the value of the farm shall be on the basis of stipulated annual principal reductions.

3. *a.* Any portion of the funds may be invested by the board. In the investment of the funds, the board shall exercise the judgment and care, under the circumstances then prevailing, which persons of prudence, discretion and intelligence exercise in their own affairs as provided in chapter 633A, subchapter IV, part 3.

*b.* The board shall give appropriate consideration to those facts and circumstances that the board knows or should know are relevant to the particular investment involved, including the role the investment plays in the total value of the board's funds.

*c.* For the purposes of this subsection, appropriate consideration includes, but is not limited to, a determination by the board that the particular investment is reasonably designed to further the purposes prescribed by law to the board, taking into consideration the risk of loss and the opportunity for gain or other return associated with the investment and consideration of the following factors as they relate to the funds of the board:

(1) The composition of the funds of the board with regard to diversification.

(2) The liquidity and current return of the investments relative to the anticipated cash flow requirements.

(3) The projected return of the investments relative to the funding objectives of the board.

*d.* The board shall have a written investment policy, the goal of which is to provide for the financial health of the institutions governed by the board. The board shall establish investment practices that preserve principal, provide for liquidity sufficient for anticipated needs, and maintain purchasing power of investable assets of the board and its institutions. The policy shall also include a list of authorized investments, maturity guidelines, procedures for selecting and approving investment managers and other investment professionals as described in section 11.2, subsection 2, and provisions for regular and frequent oversight of investment decisions by the board, including audit. The board shall make available to the auditor of state and treasurer of state the most recent annual report of any investment entity or investment professional employed by an institution governed by the board. The investment policy shall cover investments of endowment and nonendowment funds.

*e.* Consistent with this subsection, investments made under this subsection shall be made in a manner that will enhance the economy of this state, and in particular, will result in increased employment of the residents of this state.

4. Any gift accepted by the Iowa state board of regents for the use and benefit of any institution under its control may be invested in securities designated by the donor, but whenever such gifts are accepted and the money invested according to the request of the said donor, neither the state, the Iowa state board of regents, nor any member thereof, shall be liable therefor or on account thereof.

5. A register containing a complete abstract of each loan and investment, and showing its actual condition, shall be kept by the board and be at all

times open to inspection.

6. All loans made under the provisions of this section shall have an interest rate of not less than three and one-half percent per annum.

2007 Acts, ch 39, §11  
 Unnumbered paragraph 1 amended  
 Subsection 3, unnumbered paragraphs 1 and 2 editorially designated as paragraphs a and b  
 Subsection 3, former unnumbered paragraph 3 and paragraphs a–c editorially redesignated as paragraph c, unnumbered paragraph 1 and subparagraphs (1)–(3)  
 Subsection 3, former unnumbered paragraphs 4 and 5 editorially designated as paragraphs d and e

**262.25A Purchase of automobiles.**

1. Institutions under the control of the state board of regents shall purchase only new automobiles which have at least the fuel economy required for purchase of new automobiles by the director of the department of administrative services under section 8A.362, subsection 4. This subsection does not apply to automobiles purchased for law enforcement purposes.

2. A motor vehicle purchased by the institutions shall not operate on gasoline other than ethanol blended gasoline as defined in section 214A.1, unless under emergency circumstances. A state-issued credit card used to purchase gasoline shall not be valid to purchase gasoline other than ethanol blended gasoline if commercially available. The motor vehicle shall also be affixed with a brightly visible sticker which notifies the traveling public that the motor vehicle is being operated on ethanol blended gasoline. However, the sticker is not required to be affixed to an unmarked vehicle used for purposes of providing law enforcement or security.

3. a. Of all new passenger vehicles and light pickup trucks purchased by or under the direction of the state board of regents, a minimum of ten percent of all such vehicles and trucks purchased shall be equipped with engines which utilize alternative methods of propulsion, including but not limited to any of the following:

- (1) A flexible fuel which is any of the following:
  - (a) E-85 gasoline as provided in section 214A.2.
  - (b) B-20 biodiesel blended fuel as provided in section 214A.2.
  - (c) A renewable fuel approved by the office of renewable fuels and coproducts pursuant to section 159A.3.
    - (2) Compressed or liquefied natural gas.
    - (3) Propane gas.
    - (4) Solar energy.
    - (5) Electricity.

b. The provisions of this subsection do not apply to vehicles and trucks purchased and directly used for law enforcement or off-road maintenance work.

2007 Acts, ch 22, §63  
 Subsection 3, unnumbered paragraph 1 editorially designated as paragraph a  
 Subsection 3, former paragraph a, unnumbered paragraph 1 amended

and editorially redesignated as subparagraph (1) of paragraph a  
 Subsection 3, former subparagraphs (1)–(3) of paragraph a editorially redesignated as subparagraph subdivisions (a)–(c) of paragraph a, subparagraph (1)  
 Subsection 3, former paragraphs b–e editorially redesignated as subparagraphs (2)–(5) of paragraph a  
 Subsection 3, former unnumbered paragraph 2 editorially designated as paragraph b

**262.34A Bid requests and targeted small business procurement.**

1. The state board of regents shall request bids and proposals for materials, products, supplies, provisions, and other needed articles to be purchased at public expense, from Iowa state industries as defined in section 904.802, subsection 2, when the articles are available in the requested quantity and at comparable prices and quality.

2. Notwithstanding section 73.16, subsection 2, and due to the high volume of bids issued by the board and the need to coordinate bidding of three institutions of higher learning, the board shall issue electronic bid notices for distribution to the targeted small business internet site through internet links to each of the regents institutions.

3. Notwithstanding section 73.17, the board shall notify the director of the department of economic development of regents institutions' targeted small business purchases on an annual basis.

2007 Acts, ch 207, §11, 18  
 Subsection 2 amended

**262.58 Rates and terms of bonds or notes.**

Such bonds or notes may bear such date or dates, may bear interest at such rate or rates, payable semiannually, may mature at such time or times, may be in such form, carry such registration privileges, may be payable at such place or places, may be subject to such terms of redemption prior to maturity with or without premium, if so stated on the face thereof, and may contain such terms and covenants all as may be provided by the resolution of the board authorizing the issuance of the bonds or notes. In addition to the estimated cost of construction, the cost of the project shall be deemed to include interest upon the bonds or notes during construction and for six months after the estimated completion date, the compensation of a fiscal agent or adviser, and engineering, administrative and legal expenses. Such bonds or notes shall be executed by the president of the state board of regents and attested by the executive director of the state board of regents, secretary, or other official thereof performing the duties of the executive director of the state board of regents, and the coupons thereto attached shall be executed with the original or facsimile signatures of said president, executive director, secretary, or other official. Any bonds or notes bearing the signatures of officers in office on the date of the signing thereof shall be valid and binding for all purposes, not-

withstanding that before delivery thereof any or all such persons whose signatures appear thereon shall have ceased to be such officers. Each such bond or note shall state upon its face the name of the institution on behalf of which it is issued, that it is payable solely and only from the net rents, profits and income derived from the operation of residence halls or dormitories, including dining and other incidental facilities, at such institution as hereinbefore provided, and that it does not con-

stitute a charge against the state of Iowa within the meaning or application of any constitutional or statutory limitation or provision. The issuance of such bonds or notes shall be recorded in the office of the treasurer of the institution on behalf of which the same are issued, and a certificate by such treasurer to this effect shall be printed on the back of each such bond or note.

2007 Acts, ch 126, §49  
Section amended

## CHAPTER 262B

### COMMERCIALIZATION OF RESEARCH

#### **262B.21 Research and development platforms.**

1. For purposes of this section and section 262B.23, “*core platform areas*” means the areas of advanced manufacturing, biosciences, information solutions, and financial services.

2. The state board of regents shall do all of the following:

*a.* Recruit employees, build capacity, and invest moneys to ensure rapid scientific progress in the core platform areas.

*b.* Create endowed chair positions and employ persons with entrepreneurial expertise.

*c.* Invest in technology development infrastructure to strengthen and accelerate the scientific and commercialization work in the core plat-

form areas.

*d.* Provide financial assistance in the form of grants for purposes of accelerating the transformation of new and ongoing research and development initiatives in the core platform areas into commercial opportunities.

*e.* Actively participate in advisory groups dedicated to the areas of bioscience advanced manufacturing, and information solutions.

2007 Acts, ch 122, §5  
Subsection 1 amended

**262B.22 Technology and commercialization resource organization.** Repealed by 2007 Acts, ch 122, § 6.

## CHAPTER 270

### SCHOOL FOR THE DEAF

#### **270.7 Payment by county.**

The county auditor shall, upon receipt of the certificate, pass it to the credit of the state, and issue a notice to the county treasurer authorizing the county treasurer to transfer the amount to the general state revenue, which shall be filed by the treasurer as authority for making the transfer, and the county treasurer shall include the amount in the next remittance of state taxes to the treasurer of state, designating the fund to which it belongs.

If a county fails to pay these bills within sixty days from the date of certificate from the superintendent, the director of the department of administrative services shall charge the delinquent county a penalty of three-fourths of one percent per month on and after sixty days from the date of certificate until paid. The penalties shall be credited to the general fund of the state.

Method for payment for prescription drug costs for 2007-2008 fiscal year;  
2007 Acts, ch 214, §12  
Section not amended; footnote revised

## CHAPTER 272

### EDUCATIONAL EXAMINERS BOARD

#### **272.2 Board of examiners created.**

The board of educational examiners is created to exercise the exclusive authority to:

1. *a.* License practitioners who do not hold or receive a license from another professional licensing board. Licensing authority includes the au-

thority to establish criteria for the licenses; establish issuance and renewal requirements; create application and renewal forms; create licenses that authorize different instructional functions or specialties; develop a code of professional rights and responsibilities, practices, and ethics, which shall, among other things, address the failure of a practitioner to fulfill contractual obligations under section 279.13; and develop any other classifications, distinctions, and procedures which may be necessary to exercise licensing duties. In addressing the failure of a practitioner to fulfill contractual obligations, the board shall consider factors beyond the practitioner's control.

b. Notwithstanding section 272.28, subsection 1, a teacher shall be licensed in accordance with rules adopted pursuant to chapter 272, Code 2001, if the teacher successfully completes a beginning teacher mentoring program approved pursuant to chapter 256E, Code 2001, on or before June 30, 2002, or is employed by a school district that does not offer a beginning teacher mentoring and induction program approved in accordance with this chapter during the school year beginning July 1, 2001.

2. Establish, collect, and refund fees for a license.

3. Enter into reciprocity agreements with other equivalent state boards or a national certification board to provide for licensing of applicants from other states or nations.

4. Enforce rules adopted by the board through revocation or suspension of a license, or by other disciplinary action against a practitioner or professional development program licensed by the board of educational examiners. The board shall designate who may or shall initiate a licensee disciplinary investigation and a licensee disciplinary proceeding, and who shall prosecute a disciplinary proceeding and under what conditions, and shall state the procedures for review by the board of findings of fact if a majority of the board does not hear the disciplinary proceeding. However, in a case alleging failure of a practitioner to fulfill contractual obligations, the person who files a complaint with the board, or the complainant's designee, shall represent the complainant in a disciplinary hearing conducted in accordance with this chapter.

5. Apply for and receive federal or other funds on behalf of the state for purposes related to its duties.

6. Evaluate and conduct studies of board standards.

7. Hire an executive director, legal counsel, and other personnel and control the personnel administration of persons employed by the board.

8. Hear appeals regarding application, renewal, suspension, or revocation of a license. Board action is final agency action for purposes of chapter 17A.

9. Establish standards for the determination of whether an applicant is qualified to perform the duties required for a given license.

10. Issue statements of professional recognition to school service personnel who have attained a minimum of a baccalaureate degree and who are licensed by another professional licensing board.

11. Make recommendations to the state board of education concerning standards for the approval of professional development programs.

12. Establish, under chapter 17A, rules necessary to carry out board duties, and establish a budget request.

13. Adopt rules to provide for nontraditional preparation options for licensing persons who hold a bachelor's degree from an accredited college or university, who do not meet other requirements for licensure.

14. Adopt rules to determine whether an applicant is qualified to perform the duties for which a license is sought. The rules shall include all of the following:

a. The board may deny a license to or revoke the license of a person upon the board's finding by a preponderance of evidence that either the person has been convicted of a crime or that there has been a founded report of child abuse against the person. Rules adopted in accordance with this paragraph shall provide that in determining whether a person should be denied a license or that a practitioner's license should be revoked, the board shall consider the nature and seriousness of the founded abuse or crime in relation to the position sought, the time elapsed since the crime was committed, the degree of rehabilitation which has taken place since the incidence of founded abuse or the commission of the crime, the likelihood that the person will commit the same abuse or crime again, and the number of founded abuses committed by or criminal convictions of the person involved.

b. Notwithstanding paragraph "a", the rules shall require the board to disqualify an applicant for a license or to revoke the license of a person for any of the following reasons:

(1) The person entered a plea of guilty to, or has been found guilty of, any of the following offenses established pursuant to Iowa law or offenses of a similar nature established under the laws of any other state or of the United States, or any other country, whether or not a sentence is imposed:

(a) Any of the following forcible felonies included in section 702.11: child endangerment, assault, murder, sexual abuse, or kidnapping.

(b) Any of the following sexual abuse offenses, as provided in chapter 709, involving a child:

(i) First, second, or third degree sexual abuse committed on or with a person who is under the age of eighteen years.

(ii) Lascivious acts with a child.

- (iii) Detention in a brothel.
  - (iv) Assault with intent to commit sexual abuse.
  - (v) Indecent contact with a child.
  - (vi) Sexual exploitation by a counselor.
  - (vii) Lascivious conduct with a minor.
  - (viii) Sexual exploitation by a school employee.
- (c) Incest involving a child under section 726.2.
- (d) Dissemination and exhibition of obscene material to minors under section 728.2.
- (e) Telephone dissemination of obscene material to minors under section 728.15.
- (2) The applicant is less than twenty-one years of age except as provided in section 272.31, subsection 1, paragraph “e”. However, a student enrolled in a practitioner preparation program who meets board requirements for a temporary, limited-purpose license who is seeking to teach as part of a practicum or internship may be less than twenty-one years of age.
- (3) The applicant’s application is fraudulent.
- (4) The applicant’s license or certification from another state is suspended or revoked.
- (5) The applicant fails to meet board standards for application for an initial or renewed license.

c. Qualifications or criteria for the granting or revocation of a license or the determination of an individual’s professional standing shall not include membership or nonmembership in any teachers’ organization.

d. An applicant for a license or certificate under this chapter shall demonstrate that the requirements of the license or certificate have been met and the burden of proof shall be on the applicant.

15. Adopt rules that require specificity in written complaints that are filed by individuals who have personal knowledge of an alleged violation and which are accepted by the board, provide that the jurisdictional requirements as set by the board in administrative rule are met on the face of the complaint before initiating an investigation of allegations, provide that any investigation be limited to the allegations contained on the face of the complaint, provide for an adequate interval between the receipt of a complaint and public notice of the complaint, permit parties to a complaint to mutually agree to a resolution of the complaint filed with the board, allow the respondent the right to review any investigative report upon a finding of probable cause for further action by the board, require that the conduct providing the basis for the complaint occurred within three years of discovery of the event by the complainant unless good cause can be shown for an extension of this limitation, and require complaints to be resolved within one hundred eighty days unless good cause can be shown for an extension of this limitation.

16. Adopt criteria for administrative endorsements that allow a person to achieve the endorsement authorizing the person to serve as an elementary or secondary principal without regard to the grade level at which the person accrued teaching experience.

17. Adopt rules to require that a background investigation be conducted by the division of criminal investigation of the department of public safety on all initial applicants for licensure. The board shall also require all initial applicants to submit a completed fingerprint packet and shall use the packet to facilitate a national criminal history background check. The board shall have access to, and shall review the sex offender registry information under section 692A.13, the central registry for child abuse information established under chapter 235A, and the dependent adult abuse records maintained under chapter 235B for information regarding applicants for license renewal.

2007 Acts, ch 108, §9  
Subsection 10 amended

### 272.3 Membership.

1. The board of educational examiners consists of twelve members. Two must be members of the general public, one must be the director of the department of education or the director’s designee, and the remaining nine members must be licensed practitioners. One of the public members shall have served on a school board. The public members shall never have held a practitioner’s license, but shall have a demonstrated interest in education. The nine practitioners shall be selected from the following areas and specialties of the teaching profession:

- a. Elementary teachers.
- b. Secondary teachers.
- c. Special education or other similar teachers.
- d. Counselors or other special purpose practitioners.
- e. Administrators.
- f. School service personnel.

2. A majority of the licensed practitioner members shall be nonadministrative practitioners. Four of the members shall be administrators. Membership of the board shall comply with the requirements of sections 69.16 and 69.16A. A quorum of the board shall consist of six members. Members shall elect a chairperson of the board. Members, except for the director of the department of education, shall be appointed by the governor subject to confirmation by the senate.

2007 Acts, ch 104, §1  
Confirmation, see §2.32  
Subsection 1, unnumbered paragraph 1 amended

### 272.4 Terms of office.

1. Members, except for the director of the department of education, shall be appointed to serve staggered terms of four years. A member shall not serve more than two consecutive terms, except for

the director of the department of education, who shall serve until the director's term of office expires. A member of the board, except for the two public members, shall hold a valid practitioner's license during the member's term of office. A vacancy exists when any of the following occur:

*a.* A nonpublic member's license expires, is suspended, or is revoked.

*b.* A nonpublic member retires or terminates employment as a practitioner.

*c.* A member dies, resigns, is removed from office, or is otherwise physically unable to perform the duties of office.

*d.* A member's term of office expires.

2. Terms of office for regular appointments shall begin and end as provided in section 69.19. Terms of office for members appointed to fill vacancies shall begin on the date of appointment and end as provided in section 69.19. Members may be removed for cause by a state court with competent jurisdiction after notice and opportunity for hearing. The board may remove a member for three consecutive absences or for cause.

2007 Acts, ch 22, §64  
Section amended

#### **272.9A Administrator licenses.**

1. Beginning July 1, 2007, requirements for administrator licensure beyond an initial license shall include completion of a beginning administrator mentoring and induction program provided by the department pursuant to section 284A.5, subsection 2,\* and demonstration of competence on the administrator standards adopted pursuant to section 284A.3.

2. The board shall adopt rules for administrator licensure renewal that include credit for individual administrator professional development plans developed in accordance with section 284A.6.

3. An administrator formerly employed by an accredited nonpublic school or formerly employed as an administrator in another state or country is exempt from the mentoring and induction requirement under subsection 1 if the administrator can document two years of successful administrator experience and meet or exceed the requirements contained in rules adopted pursuant to this chapter for endorsement and licensure. However, if an administrator cannot document two years of successful administrator experience when hired by a school district, the administrator shall meet the requirements of subsection 1.

2007 Acts, ch 108, §10

\*The phrase "provided by the department" and the reference to "subsection 2" may not be intended; corrective legislation is pending

Section stricken and rewritten

#### **272.15 Reporting requirements — complaints.**

1. The board of directors of a school district or area education agency, the superintendent of a

school district or the chief administrator of an area education agency, and the authorities in charge of a nonpublic school shall report to the board the nonrenewal or termination, for reasons of alleged or actual misconduct, of a person's contract executed under sections 279.12, 279.13, 279.15 through 279.21, 279.23, and 279.24, and the resignation of a person who holds a license, certificate, or authorization issued by the board as a result of or following an incident or allegation of misconduct that, if proven, would constitute a violation of the rules adopted by the board to implement section 272.2, subsection 14, paragraph "b", subparagraph (1), when the board or reporting official has a good faith belief that the incident occurred or the allegation is true. Information reported to the board in accordance with this section is privileged and confidential, and except as provided in section 272.13, is not subject to discovery, subpoena, or other means of legal compulsion for its release to a person other than the respondent and the board and its employees and agents involved in licensee discipline, and is not admissible in evidence in a judicial or administrative proceeding other than the proceeding involving licensee discipline. The board shall review the information reported to determine whether a complaint should be initiated. In making that determination, the board shall consider the factors enumerated in section 272.2, subsection 14, paragraph "a". For purposes of this section, unless the context otherwise requires, "misconduct" means an action disqualifying an applicant for a license or causing the license of a person to be revoked or suspended in accordance with the rules adopted by the board to implement section 272.2, subsection 14, paragraph "b", subparagraph (1).

2. If, in the course of performing official duties, an employee of the department becomes aware of any alleged misconduct by an individual licensed under this chapter, the employee shall report the alleged misconduct to the board of educational examiners under rules adopted pursuant to subsection 1.

3. If the executive director of the board verifies through a review of official records that a teacher who holds a practitioner's license under this chapter is assigned instructional duties for which the teacher does not hold the appropriate license or endorsement, either by grade level or subject area, by a school district or accredited nonpublic school, the executive director may initiate a complaint against the teacher and the administrator responsible for the inappropriate assignment of instructional duties.

2007 Acts, ch 214, §33  
Section amended

#### **272.27 Student teaching and other educational experiences.**

If the rules adopted by the board of educational examiners for issuance of any type or class of li-

cense require an applicant to complete work in student teaching, pre-student teaching experiences, field experiences, practicums, clinicals, or internships, an institution with a practitioner preparation program approved by the state board of education under section 256.7, subsection 3, shall enter into a written contract with any school district, accredited nonpublic school, preschool registered or licensed by the department of human services, or area education agency in Iowa under terms and conditions as agreed upon by the contracting parties. The terms and conditions of a written contract entered into with a preschool pur-

suant to this section shall provide that a student teacher be under the direct supervision of an appropriately licensed cooperating teacher who is employed to teach at the preschool. Students actually teaching or engaged in preservice licensure activities in a school district under the terms of such a contract are entitled to the same protection, under section 670.8, as is afforded by that section to officers and employees of the school district, during the time they are so assigned.

2007 Acts, ch 215, §101  
Section amended

## CHAPTER 272C

### CONTINUING EDUCATION AND REGULATION — PROFESSIONAL AND OCCUPATIONAL

#### 272C.1 Definitions.

1. “*Continuing education*” means that education which is obtained by a professional or occupational licensee in order to maintain, improve, or expand skills and knowledge obtained prior to initial licensure or to develop new and relevant skills and knowledge. This education may be obtained through formal or informal education practices, self-study, research, and participation in professional, technical, and occupational societies, and by other similar means as authorized by the board.

2. “*Disciplinary proceeding*” means any proceeding under the authority of a licensing board pursuant to which licensee discipline may be imposed.

3. “*Inactive licensee re-entry*” means that process a former or inactive professional or occupational licensee pursues to again be capable of actively and competently practicing as a professional or occupational licensee.

4. “*Licensee discipline*” means any sanction a licensing board may impose upon its licensees for conduct which threatens or denies citizens of this state a high standard of professional or occupational care.

5. The term “*licensing*” and its derivations include the terms “*registration*” and “*certification*” and their derivations.

6. “*Licensing board*” or “*board*” includes the following boards:

a. The state board of engineering and land surveying examiners, created pursuant to chapter 542B.

b. The board of examiners of shorthand reporters created pursuant to article 3 of chapter 602.

c. The Iowa accountancy examining board, created pursuant to chapter 542.

d. The Iowa real estate commission, created pursuant to chapter 543B.

e. The board of architectural examiners, creat-

ed pursuant to chapter 544A.

f. The Iowa board of landscape architectural examiners, created pursuant to chapter 544B.

g. The board of barbering, created pursuant to chapter 147.

h. The board of chiropractic, created pursuant to chapter 147.

i. The board of cosmetology arts and sciences, created pursuant to chapter 147.

j. The dental board, created pursuant to chapter 147.

k. The board of mortuary science, created pursuant to chapter 147.

l. The board of medicine, created pursuant to chapter 147.

m. The board of physician assistants, created pursuant to chapter 148C.

n. The board of nursing, created pursuant to chapter 147.

o. The board of nursing home administrators, created pursuant to chapter 155.

p. The board of optometry, created pursuant to chapter 147.

q. The board of pharmacy, created pursuant to chapter 147.

r. The board of physical and occupational therapy, created pursuant to chapter 147.

s. The board of podiatry, created pursuant to chapter 147.

t. The board of psychology, created pursuant to chapter 147.

u. The board of speech pathology and audiology, created pursuant to chapter 147.

v. The board of hearing aid dispensers, created pursuant to chapter 154A.

w. The board of veterinary medicine, created pursuant to chapter 169.

x. The director of the department of natural resources in certifying water treatment operators as provided in sections 455B.211 through 455B.224.

y. Any professional or occupational licensing board created after January 1, 1978.

z. The board of respiratory care in licensing respiratory care practitioners pursuant to chapter 152B.

aa. The board of athletic training in licensing athletic trainers pursuant to chapter 152D.

ab. The board of massage therapy in licensing massage therapists pursuant to chapter 152C.

ac. The board of sign language interpreters and transliterators, created pursuant to chapter 154E.

ad. The director of public health in certifying emergency medical care providers and emergency medical care services pursuant to chapter 147A.

7. “*Malpractice*” means any error or omission, unreasonable lack of skill, or failure to maintain a reasonable standard of care by a licensee in the course of practice of the licensee’s occupation or profession, pursuant to this chapter.

8. “*Peer review*” means evaluation of professional services rendered by a professional practitioner.

9. “*Peer review committee*” means one or more persons acting in a peer review capacity pursuant to this chapter.

2007 Acts, ch 10, §171; 2007 Acts, ch 218, §205  
For future amendment to this section effective July 1, 2008, see 2007 Acts, ch 198, §31, 35  
Subsection 6 amended

### 272C.2 Continuing education required.

1. Each licensing board shall require and issue rules for continuing education requirements as a condition to license renewal.

2. The rules shall create continuing education requirements at a minimum level prescribed by each licensing board. These boards may also establish continuing education programs to assist a licensee in meeting such continuing education requirements. Such rules shall also:

a. Give due attention to the effect of continuing education requirements on interstate and international practice.

b. Place the responsibility for arrangement of financing of continuing education on the licensee, while allowing the board to receive any other available funds or resources that aid in supporting a continuing education program.

c. Attempt to express continuing education requirements in terms of uniform and widely recognized measurement units.

d. Establish guidelines, including guidelines in regard to the monitoring of licensee participation, for the approval of continuing education programs that qualify under the continuing education requirements prescribed.

e. Not be implemented for the purpose of limiting the size of the profession or occupation.

f. Define the status of active and inactive licensure and establish appropriate guidelines for inactive licensee re-entry.

g. Be promulgated solely for the purpose of assuring a continued maintenance of skills and knowledge by a professional or occupational licensee directly related and commensurate with the current level of competency of the licensee’s profession or occupation.

3. The state board of engineering and land surveyors, the board of architectural examiners, the board of landscape architectural examiners, and the department of natural resources shall cooperate with each other and with persons who typically offer continuing education courses for design professionals to make available energy efficiency related continuing education courses, and to encourage interdisciplinary cooperation and education concerning available energy efficiency strategies for employment in the state’s construction industry.

4. A person licensed to practice an occupation or profession in this state shall be deemed to have complied with the continuing education requirements of this state during periods that the person serves honorably on active duty in the military services, or for periods that the person is a resident of another state or district having a continuing education requirement for the occupation or profession and meets all requirements of that state or district for practice therein, or for periods that the person is a government employee working in the person’s licensed specialty and assigned to duty outside of the United States, or for other periods of active practice and absence from the state approved by the appropriate licensing board.

5. A person licensed to sell real estate in this state shall be deemed to have complied with the continuing education requirements of this state during periods that the person serves honorably on active duty in the military services, or for periods that the person is a resident of another state or district having a continuing education requirement for the occupation or profession and meets all requirements of that state or district for practice therein, if the state or district accords the same privilege to Iowa residents, or for periods that the person is a government employee working in the person’s licensed specialty and assigned to duty outside of the United States, or for other periods of active practice and absence from the state approved by the appropriate licensing board.

2007 Acts, ch 10, §172  
Subsections 4 and 5 amended

### 272C.2A Continuing education minimum requirements — barbering and cosmetology arts and sciences.

The board of barbering and the board of cosmetology arts and sciences, created pursuant to chapter 147, shall each require, as a condition of license renewal, a minimum of six hours of continuing education in the two years immediately prior to a licensee’s license renewal. The board of cosmetology arts and sciences may notify cosmetolo-



gy arts and sciences licensees on a quarterly basis regarding continuing education opportunities.

2007 Acts, ch 10, §173  
Section amended

### **272C.3 Authority of licensing boards.**

1. Notwithstanding any other provision of this chapter, each licensing board shall have the powers to:

*a.* Administer and enforce the laws and administrative rules provided for in this chapter and any other statute to which the licensing board is subject;

*b.* Adopt and enforce administrative rules which provide for the partial re-examination of the professional licensing examinations given by each licensing board;

*c.* Review or investigate, or both, upon written complaint or upon its own motion pursuant to other evidence received by the board, alleged acts or omissions which the board reasonably believes constitute cause under applicable law or administrative rule for licensee discipline;

*d.* Determine in any case whether an investigation, or further investigation, or a disciplinary proceeding is warranted. Notwithstanding the provisions of chapter 17A, a determination by a licensing board that an investigation is not warranted or that an investigation should be closed without initiating a disciplinary proceeding is not subject to judicial review pursuant to section 17A.19;

*e.* Initiate and prosecute disciplinary proceedings;

*f.* Impose licensee discipline;

*g.* Petition the district court for enforcement of its authority with respect to licensees or with respect to other persons violating the laws which the board is charged with administering;

*h.* Register or establish and register peer review committees;

*i.* Refer to a registered peer review committee for investigation, review, and report to the board, any complaint or other evidence of an act or omission which the board reasonably believes to constitute cause for licensee discipline. However, the referral of any matter shall not relieve the board of any of its duties and shall not divest the board of any authority or jurisdiction;

*j.* Determine and administer the renewal of licenses for periods not exceeding three years.

*k.* Establish a licensee review committee for the purpose of evaluating and monitoring licensees who are impaired as a result of alcohol or drug abuse, dependency, or addiction, or by any mental or physical disorder or disability, and who self-report the impairment to the committee, or who are referred by the board to the committee. Members of the committee shall receive actual expenses for the performance of their duties and shall be eligible to receive per diem compensation pursu-

ant to section 7E.6. The board shall adopt rules for the establishment and administration of the committee, including but not limited to establishment of the criteria for eligibility for referral to the committee and the grounds for disciplinary action for noncompliance with committee decisions. Information in the possession of the board or the licensee review committee, under this paragraph, shall be subject to the confidentiality requirements of section 272C.6. Referral of a licensee by the board to a licensee review committee shall not relieve the board of any duties of the board and shall not divest the board of any authority or jurisdiction otherwise provided. A licensee who violates section 272C.10 or the rules of the board while under review by the licensee review committee shall be referred to the board for appropriate action.

2. Each licensing board may impose one or more of the following as licensee discipline:

*a.* Revoke a license, or suspend a license either until further order of the board or for a specified period, upon any of the grounds specified in section 147.55, 148.6, 148B.7, 152.10, 153.34, 154A.24, 169.13, 455B.219, 542.10, 542B.21, 543B.29, 544A.13, 544B.15, or 602.3203 or chapter 151 or 155, as applicable, or upon any other grounds specifically provided for in this chapter for revocation of the license of a licensee subject to the jurisdiction of that board, or upon failure of the licensee to comply with a decision of the board imposing licensee discipline;

*b.* Revoke, or suspend either until further order of the board or for a specified period, the privilege of a licensee to engage in one or more specified procedures, methods, or acts incident to the practice of the profession, if pursuant to hearing or stipulated or agreed settlement the board finds that because of a lack of education or experience, or because of negligence, or careless acts or omissions, or because of one or more intentional acts or omissions, the licensee has demonstrated a lack of qualifications which are necessary to assure the residents of this state a high standard of professional and occupational care;

*c.* Impose a period of probation under specified conditions, whether or not in conjunction with other sanctions;

*d.* Require additional professional education or training, or re-examination, or any combination, as a condition precedent to the reinstatement of a license or of any privilege incident thereto, or as a condition precedent to the termination of any suspension;

*e.* Impose civil penalties by rule, if the rule specifies which offenses or acts are subject to civil penalties. The amount of civil penalty shall be in the discretion of the board, but shall not exceed one thousand dollars. Failure to comply with the imposition of a civil penalty may be grounds for further license discipline;

*f.* Issue a citation and warning respecting li-

censee behavior which is subject to the imposition of other sanctions by the board.

3. The powers conferred by this section upon a licensing board shall be in addition to powers specified elsewhere in the Code. The powers of any other person specified elsewhere in the Code shall not limit the powers of a licensing board conferred by this section, nor shall the powers of such other person be deemed limited by the provisions of this section.

4. Nothing contained in this section shall be construed to prohibit informal stipulation and settlement by a board and a licensee of any matter involving licensee discipline. However, licensee discipline shall not be agreed to or imposed except pursuant to a written decision which specifies the sanction and which is entered by the board and filed.

All health care boards shall file written decisions which specify the sanction entered by the board with the Iowa department of public health which shall be available to the public upon request. All non-health care boards shall have on file the written and specified decisions and sanctions entered by the board and shall be available to the public upon request.

For future amendment to this section effective July 1, 2008, see 2007 Acts, ch 198, §32, 35

Section not amended; footnote added

#### **272C.4 Duties of board.**

Each licensing board shall have the following duties in addition to other duties specified by this chapter or elsewhere in the Code:

1. Establish procedures by which complaints which relate to licensure or to licensee discipline shall be received and reviewed by the board;

2. Establish procedures by which disputes between licensees and clients which result in judgments or settlements in or of malpractice claims or actions shall be investigated by the board;

3. Establish procedures by which any recommendation taken by a peer review committee shall be reported to and reviewed by the board if a peer review committee is established;

4. Establish procedures for registration with the board of peer review committees if a peer review committee is established;

5. Define by rule those recommendations of peer review committees which shall constitute disciplinary recommendations which must be reported to the board if a peer review committee is established;

6. Define by rule acts or omissions that are grounds for revocation or suspension of a license under section 147.55, 148.6, 148B.7, 152.10, 153.34, 154A.24, 169.13, 455B.219, 542.10, 542B.21, 543B.29, 544A.13, 544B.15, or 602.3203 or chapter 151 or 155, as applicable, and to define by rule acts or omissions that constitute negli-

gence, careless acts, or omissions within the meaning of section 272C.3, subsection 2, paragraph "b", which licensees are required to report to the board pursuant to section 272C.9, subsection 2;

7. Establish the procedures by which licensees shall report those acts or omissions specified by the board pursuant to subsection 6;

8. Give written notice to another licensing board or to a hospital licensing agency if evidence received by the board either alleges or constitutes reasonable cause to believe the existence of an act or omission which is subject to discipline by that other board or agency;

9. Require each health care licensing board to file with the Iowa department of public health a copy of each decision of the board imposing licensee discipline. Each non-health care board shall have on file a copy of each decision of the board imposing licensee discipline which copy shall be properly dated and shall be in simple language and in the most concise form consistent with clearness and comprehensiveness of subject matter.

10. Establish procedures consistent with the provisions of section 261.121, subsection 2, and sections 261.122 through 261.127 by which, in the board's discretion, a license shall be suspended, denied, or revoked, or other disciplinary action imposed, with regard to a licensee subject to the board's jurisdiction who has defaulted on a repayment or service obligation under any federal or state educational loan or service-conditional scholarship program. Notwithstanding any other provision to the contrary, each board shall defer to the federal or state program's determination of default upon certification by the program of such a default on the part of a licensee, and shall remove the suspension, grant the license, or stay the revocation or other disciplinary action taken if the federal or state program certifies that the defaulting licensee has agreed to fulfill the licensee's obligation, or is complying with an approved repayment plan. Licensure sanctions shall be reinstated upon certification that a defaulting licensee has failed to comply with the repayment or service requirements, as determined by the federal or state program. The provisions of this subsection relating to board authority to act in response to notification of default shall apply not only to a licensing board, as defined in section 272C.1, but also to any other licensing board or authority regulating a license authorized by the laws of this state.

Insurance carriers which insure professional and occupational licensees for acts or omissions that constitute negligence, careless acts, or omissions in the practice of a profession or occupation shall file reports with the appropriate licensing board. The reports shall include information pertaining to any lawsuit filed against a licensee which may affect the licensee as defined by rule,

involving an insured of the insurer.

For future amendment to this section effective July 1, 2008, see 2007 Acts, ch 198, §33, 35

Section not amended; footnote added

**272C.5 Licensee disciplinary procedure — rulemaking delegation.**

1. Each licensing board may establish by rule licensee disciplinary procedures. Each licensing board may impose licensee discipline under these procedures.

2. Rules promulgated under subsection 1 of this section:

*a.* Shall comply with the provisions of chapter 17A.

*b.* Shall designate who may or shall initiate a licensee disciplinary investigation and a licensee

disciplinary proceeding, and who shall prosecute a disciplinary proceeding and under what conditions, and shall state the procedures for review by the licensing board of findings of fact if a majority of the licensing board does not hear the disciplinary proceeding.

*c.* Shall state whether the procedures are an alternative to or an addition to the procedures stated in sections 147.58 through 147.71, 148.6 through 148.9, 152.10, 152.11, 153.33, 154A.23, 542.11, 542B.22, 543B.35, 543B.36, and 544B.16.

*d.* Shall specify methods by which the final decisions of the board relating to disciplinary proceedings shall be published.

For future amendment to this section effective July 1, 2008, see 2007 Acts, ch 198, §34, 35

Section not amended; footnote added

## CHAPTER 275

### REORGANIZATION OF SCHOOL DISTRICTS

**275.15 Hearing — decision — publication — appeal.**

1. At the hearing, which shall be held within ten days of the final date set for filing objections, interested parties, both petitioners and objectors, may present evidence and arguments, and the area education agency board shall review the matter on its merits and within ten days after the conclusion of any hearing, shall rule on the objections and shall enter an order fixing the boundaries for the proposed school corporation as will in its judgment be for the best interests of all parties concerned, having due regard for the welfare of adjoining districts, or dismiss the petition.

2. The area education agency board, when entering the order fixing the boundaries, shall consider all available evidence including, but not limited to, information presented by the petitioners, all objections requesting territory exclusion, reorganization studies and plans, geographical patterns evidenced by students using open enrollment to attend school in another district pursuant to section 282.18, potential travel distances required of students, and geographic configuration of the proposed district. The exclusion of territory shall represent a balance between the rights of the objectors and the welfare of the reorganized district.

3. If the petition is not dismissed and the board determines that additional information is required in order to fix boundary lines of the proposed school corporation, the board may continue the hearing for no more than thirty days. The date of the continued hearing shall be announced at the

original meeting. Additional objections in the form required in section 275.14 may be considered if filed with the administrator within five days, not including Saturdays, Sundays, or holidays, after the date of the original board hearing. If the hearing is continued, the area education agency administrator may conduct one or more meetings with the boards of directors of the affected districts. Notice of any such meeting must be given at least forty-eight hours in advance by the area education agency administrator in the manner provided in section 21.4. The area education agency board may request that the administrator make alternative recommendations regarding the boundary lines of the proposed school corporation. The area education agency board shall make a decision on the boundary lines within ten days following the conclusion of the continued hearing.

4. The administrator shall at once publish the decision in the same newspaper in which the original notice was published. Within twenty days after the publication, the decision rendered by the area education agency board may be appealed to the district court in the county involved by any school district affected. For purposes of appeal, only those school districts who filed reorganization petitions are school districts affected. An appeal from a decision of an area education agency board or joint area education agency boards under section 275.4, 275.16, or this section is subject to appeal procedures under this chapter and is not subject to appeal under chapter 290.

2007 Acts, ch 214, §34  
Subsection 4 amended

## CHAPTER 279

## DIRECTORS — POWERS AND DUTIES

**279.13 Contracts with teachers — automatic continuation — initial background investigations.**

1. *a.* Contracts with teachers, which for the purpose of this section means all licensed employees of a school district and nurses employed by the board, excluding superintendents, assistant superintendents, principals, and assistant principals, shall be in writing and shall state the number of contract days, the annual compensation to be paid, and any other matters as may be mutually agreed upon. The contract may include employment for a term not exceeding the ensuing school year, except as otherwise authorized.

*b.* (1) Prior to entering into an initial contract with a teacher who holds a license other than an initial license issued by the board of educational examiners under chapter 272, the school district shall either request the division of criminal investigation of the department of public safety to conduct a background investigation of the applicant or request a qualified background screening company accredited by the national association of professional background check screeners to conduct a background check on the applicant.

(2) If the school district submits a request to the division of criminal investigation pursuant to subparagraph (1), the school district shall require the teacher to submit a completed fingerprint packet, which shall be used to facilitate a national criminal history check. The school district shall submit the packet to the division of criminal investigation which shall conduct a thorough background investigation of the teacher. The superintendent of a school district or the superintendent's designee shall have access to and shall review the sex offender registry information under section 692A.13, the central registry for child abuse information established under section 235A.14, and the central registry for dependent adult abuse information established under section 235B.5 for information regarding applicants for employment as a teacher.

(3) If the school district submits a request to a qualified background screening company pursuant to subparagraph (1), the background check shall include a national criminal history check, a review of the sex offender registry information under section 692A.13, the central registry for child abuse information established under section 235A.14 as the superintendent's designee under section 235A.15, and the central registry for dependent adult abuse information established under section 235B.5 as the superintendent's designee under section 235B.6 for information regard-

ing applicants for employment as a teacher.

(4) The school district may charge the teacher a fee for the background investigation, which shall not exceed the fee charged by the division of criminal investigation for conducting the background investigation.

*c.* The contract is invalid if the teacher is under contract with another board of directors to teach during the same time period until a release from the other contract is achieved. The contract shall be signed by the president of the board, or by the superintendent if the board has adopted a policy authorizing the superintendent to sign teaching contracts, when tendered, and after it is signed by the teacher, the contract shall be filed with the secretary of the board before the teacher enters into performance under the contract.

2. The contract shall remain in force and effect for the period stated in the contract and shall be automatically continued for equivalent periods except as modified or terminated by mutual agreement of the board of directors and the teacher or as terminated in accordance with the provisions specified in this chapter. A contract shall not be offered by the employing board to a teacher under its jurisdiction prior to March 15 of any year. A teacher who has not accepted a contract for the ensuing school year tendered by the employing board may resign effective at the end of the current school year by filing a written resignation with the secretary of the board. The resignation must be filed not later than the last day of the current school year or the date specified by the employing board for return of the contract, whichever date occurs first. However, a teacher shall not be required to return a contract to the board or to resign less than twenty-one days after the contract has been offered.

3. If the provisions of a contract executed or automatically renewed under this section conflict with a collective bargaining agreement negotiated under chapter 20 and effective when the contract is executed or renewed, the provisions of the collective bargaining agreement shall prevail.

4. For purposes of this section, sections 279.14, 279.15 through 279.17, 279.19, and 279.27, unless the context otherwise requires, "teacher" includes the following individuals employed by a community college:

*a.* An instructor, but does not include an adjunct instructor.

*b.* A librarian, including those denoted as being a learning resource specialist or a media specialist.

*c.* A counselor.

5. Notwithstanding the other provisions of this section, a temporary contract may be issued to a teacher to fill a vacancy created by a leave of absence in accordance with the provisions of section 29A.28, which contract shall automatically terminate upon return from military leave of the former incumbent of the teaching position and which contract shall not be subject to the provisions of sections 279.15 through 279.19, or section 279.27. A separate extracurricular contract issued pursuant to section 279.19A to a person issued a temporary contract under this section shall automatically terminate with the termination of the temporary contract as required under section 279.19A, subsection 8.

2007 Acts, ch 108, §11; 2007 Acts, ch 215, §102  
Subsection 1 amended

### **279.17 Appeal by teacher to adjudicator.**

1. If the teacher is no longer a probationary teacher, the teacher may, within ten days, appeal the determination of the board to an adjudicator by filing a notice of appeal with the secretary of the board. The notice of appeal shall contain a concise statement of the action which is the subject of the appeal, the particular board action appealed from, the grounds on which relief is sought and the relief sought.

2. Within five days following receipt by the secretary of the notice of appeal, the board or the board's legal representative, if any, and the teacher or the teacher's representative, if any, may select an adjudicator who resides within the boundaries of the merged area in which the school district is located. If an adjudicator cannot be mutually agreed upon within the five-day period, the secretary shall notify the chairperson of the public employment relations board by transmitting the notice of appeal, and the chairperson of the public employment relations board shall within five days provide a list of five adjudicators to the parties. Within three days from receipt of the list of adjudicators, the parties shall select an adjudicator by alternately removing a name from the list until only one name remains. The person whose name remains shall be the adjudicator. The parties shall determine by lot which party shall remove the first name from the list submitted by the chairperson of the public employment relations board. The secretary of the board shall inform the chairperson of the public employee relations board of the name of the adjudicator selected.

3. If the teacher does not timely request an appeal to an adjudicator the decision, opinion, or conclusion of the board shall become final and binding.

4. *a.* Within thirty days after filing the notice of appeal, or within further time allowed by the adjudicator, the board shall transmit to the adjudicator the original or a certified copy of the entire record of the private hearing which may be the sub-

ject of the petition. By stipulation of the parties to review the proceedings, the record of the case may be shortened. The adjudicator may require or permit subsequent corrections or additions to the shortened record.

*b.* The record certified and filed by the board shall be the record upon which the appeal shall be heard and no additional evidence shall be heard by the adjudicator. In such appeal to the adjudicator, especially when considering the credibility of witnesses, the adjudicator shall give weight to the fact findings of the board; but shall not be bound by them.

5. Before the date set for hearing a petition for review of board action, which shall be within ten days after receipt of the record unless otherwise agreed or unless the adjudicator orders additional evidence be taken before the board, application may be made to the adjudicator for leave to present evidence in addition to that found in the record of the case. If it is shown to the adjudicator that the additional evidence is material and that there were good reasons for failure to present it in the private hearing before the board, the adjudicator may order that the additional evidence be taken before the board upon conditions determined by the adjudicator. The board may modify its findings and decision in the case by reason of the additional evidence and shall file that evidence and any modifications, new findings, or decisions, with the adjudicator and mail copies of the new findings or decisions to the teacher.

6. The adjudicator may affirm board action or remand to the board for further proceedings. The adjudicator shall reverse, modify, or grant any appropriate relief from the board action if substantial rights of the teacher have been prejudiced because the board action is:

*a.* In violation of a board rule or policy or contract; or

*b.* Unsupported by a preponderance of the competent evidence in the record made before the board when that record is viewed as a whole; or

*c.* Unreasonable, arbitrary or capricious or characterized by an abuse of discretion or a clearly unwarranted exercise of discretion.

7. The adjudicator shall, within fifteen days after the hearing, make a decision and shall give a copy of the decision to the teacher and the secretary of the board. The decision of the adjudicator shall become the final and binding decision of the board unless either party within ten days notifies the secretary of the board that the decision is rejected. The board may reject the decision by majority vote, by roll call, in open meeting and entered into the minutes of the meeting. The board shall immediately notify the teacher of its decision by certified mail. The teacher may reject the adjudicator's decision by notifying the board's secretary in writing within ten days of the filing of such decision.

8. All costs of the adjudicator shall be shared equally by the teacher and the board.

2007 Acts, ch 22, §65  
 Subsection 3, unnumbered paragraph 2 editorially redesignated as subsection 4, paragraph a  
 Former subsection 4, unnumbered paragraph 1 redesignated as paragraph b of subsection 4  
 Section amended

**279.34 Motor vehicles required to operate on ethanol blended gasoline.**

A motor vehicle purchased by or used under the direction of the board of directors to provide services to a school corporation shall not operate on gasoline other than ethanol blended gasoline as defined in section 214A.1. The motor vehicle shall also be affixed with a brightly visible sticker which notifies the traveling public that the motor vehicle is being operated on ethanol blended gasoline. However, the sticker is not required to be affixed to an unmarked vehicle used for purposes of providing law enforcement or security.

2007 Acts, ch 126, §50  
 Section amended

**279.43 Reporting inappropriate teaching assignments.**

An employee licensed by the board of educational examiners and holding a contract as described in section 279.13 shall disclose any occurrence of a teaching assignment for which that employee is not properly licensed to the school official responsible for determining teaching assignments. Failure of the employee to disclose this occurrence or failure of the school official responsible for determining teaching assignments to make appropriate adjustments to the employee's teaching assignment once the employee discloses the occurrence shall constitute an incident of misconduct as provided in section 272.2, subsection 14, and is actionable by the board. If the school official fails to make appropriate adjustments to the teaching assignment once disclosure by the employee is made, the employee shall report this occurrence to the department or to the board for further action.

2007 Acts, ch 214, §35  
 NEW section

**279.50 Human growth and development instruction.**

1. Each school board shall provide instruction in kindergarten which gives attention to experiences relating to life skills and human growth and development as required in section 256.11. School districts shall use research provided in section 256.9, subsection 54, paragraph "b", to evaluate and upgrade their instructional materials and teaching strategies for human growth and development.

2. Each school board shall provide age-appropriate and research-based instruction in human growth and development including instruction regarding human sexuality, self-esteem, stress management, interpersonal relationships, domestic

abuse, HPV and the availability of a vaccine to prevent HPV, and acquired immune deficiency syndrome as required in section 256.11, in grades one through twelve.

3. Each school board shall annually provide to a parent or guardian of any pupil enrolled in the school district, information about the human growth and development curriculum used in the pupil's grade level and the procedure for inspecting the instructional materials prior to their use in the classroom.

4. Each school district shall, upon request by any agency or organization, provide information about the human growth and development curriculum used in each grade level and the procedure for inspecting and updating the instructional materials.

5. A pupil shall not be required to take instruction in human growth and development if the pupil's parent or guardian files with the appropriate principal a written request that the pupil be excused from the instruction. Notification that the written request may be made shall be included in the information provided by the school district.

6. Each school board or community college which offers general adult education classes or courses shall periodically offer an instructional program in parenting skills and in human growth and development for parents, guardians, prospective biological and adoptive parents, and foster parents.

7. Each area education agency shall periodically offer a staff development program for teachers who provide instruction in human growth and development.

8. The department of education shall identify and disseminate information about early intervention programs for students who are at the greatest risk of suffering from the problem of dropping out of school, substance abuse, adolescent pregnancy, or suicide.

9. For purposes of this section and sections 256.9 and 256.11, unless the context otherwise requires:

a. "Age-appropriate" means topics, messages, and teaching methods suitable to particular ages or age groups of children and adolescents, based on developing cognitive, emotional, and behavioral capacity typical for the age or age group.

b. "HIV" means HIV as defined in section 141A.1.

c. "HPV" means human papilloma virus as defined by the centers for disease control and prevention of the United States department of health and human services.

d. "Research-based" means all of the following:

(1) Complete information that is verified or supported by the weight of research conducted in compliance with accepted scientific methods; recognized as medically accurate and objective by leading professional organizations and agencies with relevant expertise in the field, such as the

American college of obstetricians and gynecologists, the American public health association, the American academy of pediatrics, and the national association of school nurses; and published in peer-reviewed journals where appropriate.

(2) Information that is free of racial, ethnic, sexual orientation, and gender biases.

10. To the extent not inconsistent with this section and section 256.11, an accredited nonpublic school may also choose curriculum in accordance with doctrinal teachings for the human sexuality component of the human growth and development requirements of this section and section 256.11.

11. Nothing in this section or section 256.11 shall be construed to prohibit a school or school district from developing and making available abstinence-based or abstinence-only materials pursuant to the requirements of section 256.9, subsection 54, and from offering an abstinence-based or abstinence-only curriculum in meeting the human sexuality component of the human growth and development requirements of this section and section 256.11.

2007 Acts, ch 98, §4  
Section amended

#### **279.51 Programs for at-risk children.**

1. There is appropriated from the general fund of the state to the department of education for the fiscal year beginning July 1, 2007, and each succeeding fiscal year, the sum of twelve million six hundred six thousand one hundred ninety-six dollars.

The moneys shall be allocated as follows:

*a.* Two hundred seventy-five thousand eight hundred sixty-four dollars of the funds appropriated shall be allocated to the area education agencies to assist school districts in developing program plans and budgets under this section and to assist school districts in meeting other responsibilities in early childhood education.

*b.* For the fiscal year beginning July 1, 2007, and for each succeeding fiscal year, eight million five hundred thirty-six thousand seven hundred forty dollars of the funds appropriated shall be allocated to the child development coordinating council established in chapter 256A for the purposes set out in subsection 2 of this section and section 256A.3.

*c.* For the fiscal year beginning July 1, 2007, and for each fiscal year thereafter, three million five hundred ten thousand nine hundred ninety-two dollars of the funds appropriated shall be allocated as grants to school districts that have elementary schools that demonstrate the greatest need for programs for at-risk students with preference given to innovative programs for the early elementary school years. School districts receiving grants under this paragraph shall at a minimum provide activities and materials designed to encourage children's self-esteem, provide role

modeling and mentoring techniques in social competence and social skills, and discourage inappropriate drug use. The grant allocations made in this paragraph may be renewed for additional periods of time. Of the amount allocated under this paragraph for each fiscal year, seventy-five thousand dollars shall be allocated to school districts which have an actual student population of ten thousand or less and have an actual non-English speaking student population which represents greater than five percent of the total actual student population for grants to elementary schools in those districts.

*d.* Notwithstanding section 256A.3, subsection 6, of the amount appropriated in this subsection for the fiscal year beginning July 1, 2007, and for each succeeding fiscal year, up to two hundred eighty-two thousand six hundred dollars may be used for administrative costs.

2. Funds allocated under subsection 1, paragraph "b", shall be used by the child development coordinating council for the following:

*a.* To continue funding for programs previously funded by grants awarded under section 256A.3 and to provide additional grants under section 256A.3. The council shall seek to provide grants on the basis of the location within the state of children meeting at-risk definitions.

*b.* At the discretion of the child development coordinating council, award grants for the following:

(1) To school districts to establish programs for three-year-old, four-year-old, and five-year-old at-risk children which are a combination of preschool and full-day kindergarten.

(2) To provide grants to provide educational support services to parents of at-risk children age birth through three years.

3. The department shall seek assistance from foundations and public and private agencies in the evaluation of the programs funded under this section, and in the provision of support to school districts in developing and implementing the programs funded under this section.

4. The state board of education shall adopt rules under chapter 17A for the administration of this section.

2007 Acts, ch 215, §62  
Subsection 1 amended

#### **279.61 Student plan for progress toward university admissions — report.**

1. For the school year beginning July 1, 2007, and each succeeding school year, the board of directors of each school district shall cooperate with each student enrolled in grade eight to develop for the student a core curriculum plan to guide the student toward the goal of successfully completing, at a minimum, the voluntary model core curriculum developed by the state board of education pursuant to section 256.7, subsection 26, by the time the student graduates from high school. The

plan shall include career options and shall identify the coursework needed in grades nine through twelve to support the student's postsecondary education and career options. The student's parent or guardian shall sign the core curriculum plan developed with the student and the signed plan shall be included in the student's cumulative records.

2. For the school year beginning July 1, 2007, and each succeeding school year, the board of directors of each school district shall report annually to each student enrolled in grades nine through twelve in the school district, and, if the student is under the age of eighteen, to each student's parent or guardian, the student's progress toward meeting the goal of successfully completing the high school graduation requirements adopted by the state board of education pursuant to section 256.7, subsection 26.

2007 Acts, ch 214, §36  
Section amended

**279.65 Student advancement policy — findings — supplemental strategies and educational services grant program.**

1. The general assembly finds and declares that students should be able to meet or exceed the expectations established by the school district of enrollment in order to advance to the next grade level.

2. The board of directors of each school district shall adopt a student advancement policy which provides for the following:

a. Supplemental strategies to be provided to all students in kindergarten through grade five who do not meet the grade level expectations established by the school district for English-language arts, social studies, mathematics, and science.

b. A requirement that students in grades six through eight who fail one or more of the core courses make up deficiencies before advancing to the next level in the subject area. "Core course", for purposes of this section, means a course in the following subject areas: English-language arts, social studies, mathematics, and science.

c. Opportunities for students to meet the school district's expectations as provided in paragraphs "a" and "b" which shall include but not be limited to supplemental educational services such as tutoring that may be offered before and after school or during the summer and that may be provided by private service providers.

3. If a student in kindergarten through grade eight does not meet the grade level core course ex-

pectations established by the school district as provided in this section, the school district shall develop a plan for supplemental strategies or supplemental educational services, and for measuring student progress, in consultation with the student's parent or guardian.

4. In deciding student placement and advancement, the board of directors of a school district shall make every effort to reach agreement with parents and guardians.

5. A supplemental strategies and educational services grant program is established to be administered by the department of education to award grants to school districts for purposes of providing supplemental strategies and educational services to students who do not meet the grade level expectations established by the school district for English-language arts, social studies, mathematics, and science. The department shall develop the criteria and a process for awarding supplemental strategies and educational services grants to school districts when moneys are appropriated for the grant program. By January 15 of the fiscal year following each fiscal year for which the general assembly appropriated funds to the department of education for purposes of this subsection, the department shall assess the effectiveness of the program and shall submit its findings and recommendations in a report to the general assembly.

2007 Acts, ch 214, §37  
NEW section

**279.66 Discipline and personal conduct standards.**

The board of directors of a school district shall review and modify existing policies related to student discipline and student conduct that are designed to promote responsible behavior on school property and at school functions in order that the policy shall govern the conduct of students, teachers and other school personnel, and visitors; provide opportunities for students to exercise self-discipline and practice cooperative classroom behavior; and encourage students and practitioners to model fairness, equity, and respect. The policy shall specify the responsibilities of students, parents and guardians, and practitioners in creating an atmosphere where all individuals feel a sense of respect, safety, and belonging, and shall set forth the consequences for unacceptable behavior. The policy shall be published in the student handbook.

2007 Acts, ch 214, §38  
NEW section



## CHAPTER 280

## UNIFORM SCHOOL REQUIREMENTS

**280.12 School improvement advisory committee.**

The board of directors of each public school district and the authorities in charge of each nonpublic school shall do the following:

1. Appoint a school improvement advisory committee to make recommendations to the board or authorities. The advisory committee shall consist of members representing students, parents, teachers, administrators, and representatives from the local community, which may include representatives of business, industry, labor, community agencies, higher education, or other community constituents. To the extent possible, committee membership shall have balanced representation with regard to race, gender, national origin, and disability.

2. Utilize the recommendations from the school improvement advisory committee to determine the following:

- a. Major educational needs.
- b. Student learning goals.
- c. Long-range and annual improvement goals that include, but are not limited to, the state indicators that address reading, mathematics, and science achievement.
- d. Desired levels of student performance.
- e. Progress toward meeting the goals set out in paragraphs “b” through “d”.
- f. Harassment or bullying prevention goals, programs, training, and other initiatives.

3. Consider recommendations from the school improvement advisory committee to infuse character education into the educational program.

2007 Acts, ch 9, §1  
Subsection 2, NEW paragraph f

**280.28 Harassment and bullying prohibited — policy — immunity.**

1. *Purpose — findings — policy.* The state of Iowa is committed to providing all students with a safe and civil school environment in which all members of the school community are treated with dignity and respect. The general assembly finds that a safe and civil school environment is necessary for students to learn and achieve at high academic levels. Harassing and bullying behavior can seriously disrupt the ability of school employees to maintain a safe and civil environment, and the ability of students to learn and succeed. Therefore, it is the policy of the state of Iowa that school employees, volunteers, and students in Iowa schools shall not engage in harassing or bullying behavior.

2. *Definitions.* For purposes of this section, unless the context otherwise requires:

a. “*Electronic*” means any communication involving the transmission of information by wire, radio, optical cable, electromagnetic, or other similar means. “*Electronic*” includes but is not limited to communication via electronic mail, internet-based communications, pager service, cell phones, and electronic text messaging.

b. “*Harassment*” and “*bullying*” shall be construed to mean any electronic, written, verbal, or physical act or conduct toward a student which is based on any actual or perceived trait or characteristic of the student and which creates an objectively hostile school environment that meets one or more of the following conditions:

(1) Places the student in reasonable fear of harm to the student’s person or property.

(2) Has a substantially detrimental effect on the student’s physical or mental health.

(3) Has the effect of substantially interfering with a student’s academic performance.

(4) Has the effect of substantially interfering with the student’s ability to participate in or benefit from the services, activities, or privileges provided by a school.

c. “*Trait or characteristic of the student*” includes but is not limited to age, color, creed, national origin, race, religion, marital status, sex, sexual orientation, gender identity, physical attributes, physical or mental ability or disability, ancestry, political party preference, political belief, socioeconomic status, or familial status.

d. “*Volunteer*” means an individual who has regular, significant contact with students.

3. *Policy.* On or before September 1, 2007, the board of directors of a school district and the authorities in charge of each accredited nonpublic school shall adopt a policy declaring harassment and bullying in schools, on school property, and at any school function, or school-sponsored activity regardless of its location, in a manner consistent with this section, as against state and school policy. The board and the authorities shall make a copy of the policy available to all school employees, volunteers, students, and parents or guardians and shall take all appropriate steps to bring the policy against harassment and bullying and the responsibilities set forth in the policy to the attention of school employees, volunteers, students, and parents or guardians. Each policy shall, at a minimum, include all of the following components:

a. A statement declaring harassment and bullying to be against state and school policy. The statement shall include but not be limited to the following provisions:

(1) School employees, volunteers, and students in school, on school property, or at any school

function or school-sponsored activity shall not engage in harassing and bullying behavior.

(2) School employees, volunteers, and students shall not engage in reprisal, retaliation, or false accusation against a victim, witness, or an individual who has reliable information about such an act of harassment or bullying.

*b.* A definition of harassment and bullying as set forth in this section.

*c.* A description of the type of behavior expected from school employees, volunteers, parents or guardians, and students relative to prevention measures, reporting, and investigation of harassment or bullying.

*d.* The consequences and appropriate remedial action for a person who violates the anti-harassment and antibullying policy.

*e.* A procedure for reporting an act of harassment or bullying, including the identification by job title of the school official responsible for ensuring that the policy is implemented, and the identification of the person or persons responsible for receiving reports of harassment or bullying.

*f.* A procedure for the prompt investigation of complaints, either identifying the school superintendent or the superintendent's designee as the individual responsible for conducting the investigation, including a statement that investigators will consider the totality of circumstances presented in determining whether conduct objectively constitutes harassment or bullying under this section.

*g.* A statement of the manner in which the policy will be publicized.

4. *Programs encouraged.* The board of directors of a school district and the authorities in charge of each accredited nonpublic school are encouraged to establish programs designed to eliminate harassment and bullying in schools. To the extent that funds are available for these purposes,

school districts and accredited nonpublic schools shall do the following:

*a.* Provide training on antiharassment and antibullying policies to school employees and volunteers who have significant contact with students.

*b.* Develop a process to provide school employees, volunteers, and students with the skills and knowledge to help reduce incidents of harassment and bullying.

5. *Immunity.* A school employee, volunteer, or student, or a student's parent or guardian who promptly, reasonably, and in good faith reports an incident of harassment or bullying, in compliance with the procedures in the policy adopted pursuant to this section, to the appropriate school official designated by the school district or accredited nonpublic school, shall be immune from civil or criminal liability relating to such report and to participation in any administrative or judicial proceeding resulting from or relating to the report.

6. *Collection requirement.* The board of directors of a school district and the authorities in charge of each nonpublic school shall develop and maintain a system to collect harassment and bullying incidence data.

7. *Integration of policy and reporting.* The board of directors of a school district and the authorities in charge of each nonpublic school shall integrate its antiharassment and antibullying policy into the comprehensive school improvement plan required under section 256.7, subsection 21, and shall report data collected under subsection 6, as specified by the department, to the local community.

8. *Existing remedies not affected.* This section shall not be construed to preclude a victim from seeking administrative or legal remedies under any applicable provision of law.

2007 Acts, ch 9, §2  
NEW section

## CHAPTER 282

### SCHOOL ATTENDANCE AND TUITION

#### 282.31 Funding for special programs.

1. *a.* A child who lives in a facility pursuant to section 282.30, subsection 1, paragraph "a", and who is not enrolled in the educational program of the district of residence of the child, shall receive appropriate educational services. The area education agency shall submit a proposed program and budget to the department of education by January 1 for the next succeeding school year. The department of education shall review and approve or modify the program and proposed budget and shall notify the department of administrative services and the area education agency of its action by February 1. The department of administrative

services shall pay the approved budget amount for an area education agency in monthly installments beginning September 15 and ending June 15 of the next succeeding school year. The installments shall be as nearly equal as possible as determined by the department of management, taking into consideration the relative budget and cash position of the state's resources. The department of administrative services shall transfer the approved budget amount for an area education agency from the moneys appropriated under section 257.16 and make the payment to the area education agency. The area education agency shall submit an accounting for the actual cost of the pro-

gram to the department of education by August 1 of the following school year. The department shall review and approve or modify all expenditures incurred in compliance with the guidelines pursuant to section 256.7, subsection 10, and shall notify the department of administrative services of the approved accounting amount. The approved accounting amount shall be compared with any amounts paid by the department of administrative services to the area education agency and any differences added to or subtracted from the October payment made under this paragraph for the next school year. Any amount paid by the department of administrative services shall be deducted monthly from the state foundation aid paid under section 257.16 to all school districts in the state during the subsequent fiscal year. The portion of the total amount of the approved budget that shall be deducted from the state aid of a school district shall be the same as the ratio that the budget enrollment for the budget year of the school district bears to the total budget enrollment in the state for that budget year in which the deduction is made.

b. (1) A child who lives in a facility or home pursuant to section 282.19, and who does not require special education and who is not enrolled in the educational program of the district of residence of the child, shall be included in the basic enrollment of the school district in which the facility or home is located.

(2) However, on June 30 of a school year, if the board of directors of a school district determines that the number of children under this paragraph "b" who were counted in the basic enrollment of the school district in that school year in accordance with section 257.6, subsection 1, is fewer than the sum of the number of months all children were enrolled in the school district under this paragraph "b" during the school year divided by nine, the secretary of the school district may submit a claim to the department of education by August 1 following the school year for an amount equal to the district cost per pupil of the district for the previous school year multiplied by the difference between the number of children counted and the number of children calculated by the number of months of enrollment. The amount of the claim shall be paid by the department of administrative services to the school district by October 1. The department of administrative services shall transfer the total amount of the approved claim of a school district from the moneys appropriated under section 257.16 and the amount paid shall be deducted monthly from the state foundation aid paid to all school districts in the state during the remainder of the subsequent fiscal year in the manner provided in paragraph "a".

2. a. The actual special education instructional costs incurred for a child who lives in a facility

pursuant to section 282.19 or for a child who is placed in a facility or home pursuant to section 282.29, who requires special education and who is not enrolled in the educational program of the district of residence of the child but who receives an educational program from the district in which the facility or home is located, shall be paid by the district of residence of the child to the district in which the facility or home is located, and the costs shall include the cost of transportation.

b. A child shall not be denied special education programs and services because of a dispute over the determination of district of residence of the child. The director of the department of education shall determine the district of residence when a dispute arises regarding the determination of the district of residence for a child who requires special education pursuant to this subsection.

3. The actual special education instructional costs, including transportation, for a child who requires special education shall be paid by the department of administrative services to the school district in which the facility or home is located, only when a district of residence cannot be determined, and the child was not included in the weighted enrollment of any district pursuant to section 256B.9, and the payment pursuant to subsection 2, paragraph "a", was not made by any district. The district shall submit a proposed program and budget to the department of education by January 1 for the next succeeding school year. The department of education shall review and approve or modify the program and proposed budget and shall notify the district by February 1. The district shall submit a claim by August 1 following the school year for the actual cost of the program. The department shall review and approve or modify the claim and shall notify the department of administrative services of the approved claim amount by September 1. The total amount of the approved claim shall be paid by the department of administrative services to the school district by October 1. The total amount paid by the department of administrative services shall be deducted monthly from the state foundation aid paid under section 257.16 to all school districts in the state during the subsequent fiscal year. The portion of the total amount of the approved claims that shall be deducted from the state aid of a school district shall be the same as the ratio that the budget enrollment for the budget year of the school district bears to the total budget enrollment in the state for the budget year in which the deduction is made. The department of administrative services shall transfer the total amount of the approved claims from moneys appropriated under section 257.16 for payment to the school district.

4. For purposes of this section, "district of residence" means the school district in which the parent or legal guardian of the child resides or the dis-

trict in which the district court is located if the district court is the guardian of the child.

5. Programs may be provided during the summer and funded under this section if the school district or area education agency determines a valid

educational reason to do so.

2007 Acts, ch 22, §66  
 Subsection 1, paragraph b, unnumbered paragraph 1 editorially designated as subparagraph (1)  
 Subsection 1, paragraph b, unnumbered paragraph 2 amended and editorially designated as subparagraph (2)

## CHAPTER 283A

### SCHOOL MEAL PROGRAMS

#### 283A.2 School lunch and breakfast programs.

1. School boards may use gifts, funds disbursed to them under the provisions of this chapter, funds received from sale of school breakfasts or lunches, and any other funds legally available for the purpose of operating a school breakfast or lunch program.

2. A school district shall operate or provide for the operation of lunch programs at all attendance centers in the district. A school district may operate or provide for the operation of school breakfast programs at all attendance centers in the district, or provide access to a school breakfast program at an alternative site to students who wish to participate in a school breakfast program. The programs shall provide students with nutritionally adequate meals and shall be operated in compliance with the rules of the state board of education and

pertinent federal law and regulation. The school lunch program shall be provided for all students in each district who attend public school four or more hours each school day and wish to participate in a school lunch program. School districts may provide school breakfast and lunch programs for other students.

3. Each school district that operates or provides for a school breakfast or lunch program shall provide for the forwarding of information from the applications for the school breakfast or lunch program, for which federal funding is provided, to identify children for enrollment in the medical assistance program pursuant to chapter 249A or the healthy and well kids in Iowa program pursuant to chapter 514I to the department of human services.

2007 Acts, ch 218, §105  
 NEW subsection 3

## CHAPTER 284

### TEACHER PERFORMANCE, COMPENSATION, AND CAREER DEVELOPMENT

#### 284.1 Student achievement and teacher quality program.

A student achievement and teacher quality program is established to promote high student achievement. The program shall consist of the following five major elements:

1. Mentoring and induction programs that provide support for beginning teachers in accordance with section 284.5.

2. Career paths with compensation levels that strengthen Iowa's ability to recruit and retain teachers.

3. Professional development designed to directly support best teaching practices.

4. Evaluation of teachers against the Iowa teaching standards.

2007 Acts, ch 108, §12  
 Subsection 4 stricken and former subsection 5 renumbered as 4

#### 284.2 Definitions.

As used in this chapter, unless the context otherwise requires:

1. *“Beginning teacher”* means an individual serving under an initial or intern license, issued by the board of educational examiners under chapter 272, who is assuming a position as a teacher. For purposes of the beginning teacher mentoring and induction program created pursuant to section 284.5, *“beginning teacher”* also includes preschool teachers who are licensed by the board of educational examiners under chapter 272 and are employed by a school district or area education agency.

2. *“Comprehensive evaluation”* means a summative evaluation of a beginning teacher conducted by an evaluator for purposes of determining a beginning teacher's level of competency, for recommendation for licensure based upon the Iowa teaching standards, and to determine whether the teacher's practice meets the school district expectations for a career teacher.

3. *“Department”* means the department of education.

4. *“Director”* means the director of the depart-

ment of education.

5. “*Evaluator*” means an administrator or other practitioner who successfully completes an evaluator training program pursuant to section 284.10.

6. “*Intensive assistance*” means the provision of organizational support and technical assistance to teachers, other than beginning teachers, for the remediation of identified teaching and classroom management concerns for a period not to exceed twelve months.

7. “*Mentor*” means an individual employed by a school district or area education agency as a teacher or a retired teacher who holds a valid license issued under chapter 272. The individual must have a record of four years of successful teaching practice, must be employed on a non-probationary basis, and must demonstrate professional commitment to both the improvement of teaching and learning and the development of beginning teachers.

8. “*Performance review*” means a summative evaluation of a teacher other than a beginning teacher and used to determine whether the teacher’s practice meets school district expectations and the Iowa teaching standards, and to determine whether the teacher’s practice meets school district expectations for career advancement in accordance with section 284.7.

9. “*School board*” means the board of directors of a school district, a collaboration of boards of directors of school districts, or the board of directors of an area education agency, as the context requires.

10. “*State board*” means the state board of education.

11. “*Teacher*” means an individual who holds a practitioner’s license issued under chapter 272, or a statement of professional recognition issued under chapter 272 who is employed in a nonadministrative position by a school district or area education agency pursuant to a contract issued by a board of directors under section 279.13. A teacher may be employed in both an administrative and a nonadministrative position by a board of directors and shall be considered a part-time teacher for the portion of time that the teacher is employed in a nonadministrative position. “*Teacher*” includes a licensed individual employed on a less than full-time basis by a school district through a contract between the school district and an institution of higher education with a practitioner preparation program in which the licensed teacher is enrolled.

2007 Acts, ch 108, §13, 14  
Subsections 9 and 11 amended

### 284.3 Iowa teaching standards.

1. For purposes of this chapter and for developing teacher evaluation criteria under chapter 279, the Iowa teaching standards are as follows:

a. Demonstrates ability to enhance academic

performance and support for and implementation of the school district’s student achievement goals.

b. Demonstrates competence in content knowledge appropriate to the teaching position.

c. Demonstrates competence in planning and preparing for instruction.

d. Uses strategies to deliver instruction that meets the multiple learning needs of students.

e. Uses a variety of methods to monitor student learning.

f. Demonstrates competence in classroom management.

g. Engages in professional growth.

h. Fulfills professional responsibilities established by the school district.

2. A school board shall provide for the following:

a. For purposes of comprehensive evaluations for beginning teachers required to allow beginning teachers to progress to career teachers, standards and criteria that are the Iowa teaching standards specified in subsection 1 and the criteria for the Iowa teaching standards developed by the department in accordance with section 256.9, subsection 50. These standards and criteria shall be set forth in an instrument provided by the department. The comprehensive evaluation and instrument are not subject to negotiations or grievance procedures pursuant to chapter 20 or determinations made by the board of directors under section 279.14. A local school board and its certified bargaining representative may negotiate, pursuant to chapter 20, evaluation and grievance procedures for beginning teachers that are not in conflict with this chapter. If, in accordance with section 279.19, a beginning teacher appeals the determination of a school board to an adjudicator under section 279.17, the adjudicator selected shall have successfully completed training related to the Iowa teacher standards, the criteria adopted by the state board of education in accordance with subsection 3, and any additional training required under rules adopted by the public employment relations board in cooperation with the state board of education.

b. For purposes of performance reviews for teachers other than beginning teachers, evaluations that contain, at a minimum, the Iowa teaching standards specified in subsection 1, as well as the criteria for the Iowa teaching standards developed by the department in accordance with section 256.9, subsection 50. A local school board and its certified bargaining representative may negotiate, pursuant to chapter 20, additional teaching standards and criteria. A local school board and its certified bargaining representative shall negotiate, pursuant to chapter 20, evaluation and grievance procedures for teachers other than beginning teachers that are not in conflict with this chapter.

3. The state board shall adopt by rule pursuant to chapter 17A the criteria developed by the department in accordance with section 256.9, subsection 50.

2007 Acts, ch 108, §15  
 Subsection 2, paragraph b amended

**284.4 Participation.**

1. A school district or area education agency is eligible to receive moneys appropriated for purposes specified in this chapter if the school board applies to the department to participate in the student achievement and teacher quality program and submits a written statement declaring the school district's or agency's willingness to do all of the following:

- a. Commit and expend local moneys to improve student achievement and teacher quality.
- b. Implement a beginning teacher mentoring and induction program as provided in this chapter.
- c. Create a teacher quality committee. The committee shall have equal representation of administrators and teachers. The teacher members shall be appointed by the certified employee organization if one exists, and if not, by the school district's or agency's administration. The administrator members shall be appointed by the school board. However, if a school district can demonstrate that an existing professional development, curriculum, or student improvement committee has significant stakeholder involvement and a leadership role in the school district, the appointing authorities may mutually agree to assign to the existing committee the responsibilities set forth in this paragraph "c", to appoint members of the existing committee to the teacher quality committee, or to authorize the existing committee to serve in an advisory capacity to the teacher quality committee. The committee shall do all of the following:

- (1) Monitor the implementation of the requirements of statutes and administrative code provisions relating to this chapter, including requirements that affect any agreement negotiated pursuant to chapter 20.
- (2) Monitor the evaluation requirements of this chapter to ensure evaluations are conducted in a fair and consistent manner throughout the school district or agency. In addition to any negotiated evaluation procedures, develop model evidence for the Iowa teaching standards and criteria. The model evidence will minimize paperwork and focus on teacher improvement. The model evidence will determine which standards and criteria can be met with observation and which evidence meets multiple standards and criteria.
- (3) Determine, following the adoption of the Iowa professional development model by the state board of education, the use and distribution of the professional development funds distributed to the school district or agency as provided in section 284.13, subsection 1, paragraph "d", based upon

school district or agency, attendance center, and individual teacher and professional development plans.

(4) Monitor the professional development in each attendance center to ensure that the professional development meets school district or agency, attendance center, and individual professional development plans.

(5) Ensure the agreement negotiated pursuant to chapter 20 determines the compensation for teachers on the committee for work responsibilities required beyond the normal work day.

d. Adopt school district, attendance center, and teacher professional development plans in accordance with this chapter.

e. Adopt a teacher evaluation plan that, at minimum, requires a performance review of teachers in the district at least once every three years based upon the Iowa teaching standards and individual professional development plans, and requires administrators to complete evaluator training in accordance with section 284.10.

f. Adopt teacher career paths based upon demonstrated knowledge and skills in accordance with this chapter.

2. By July 1, 2002, each school district shall participate in the student achievement and teacher quality program if the general assembly appropriates moneys for purposes of the student achievement and teacher quality program established pursuant to this chapter.

2007 Acts, ch 108, §16 – 19  
 Subsection 1, unnumbered paragraph 1 amended  
 Subsection 1, paragraph c stricken and rewritten  
 Subsection 1, paragraphs d and e amended  
 Subsection 1, paragraph g stricken

**284.6 Teacher professional development.**

1. The department shall coordinate a statewide network of professional development for Iowa teachers. A school district or professional development provider that offers a professional development program in accordance with section 256.9, subsection 50, shall demonstrate that the program contains the following:

- a. Support that meets the professional development needs of individual teachers and is aligned with the Iowa teaching standards.
- b. Research-based instructional strategies aligned with the school district's student achievement needs and the long-range improvement goals established by the district.
- c. Instructional improvement components including student achievement data, analysis, theory, classroom demonstration and practice, technology integration, observation, reflection, and peer coaching.
- d. An evaluation component that documents the improvement in instructional practice and the effect on student learning.

2. The department shall identify models of professional development practices that produce evidence of the link between teacher training and

improved student learning.

3. A school district shall incorporate a district professional development plan into the district's comprehensive school improvement plan submitted to the department in accordance with section 256.7, subsection 21. The district professional development plan shall include a description of the means by which the school district will provide access to all teachers in the district to professional development programs or offerings that meet the requirements of subsection 1. The plan shall align all professional development with the school district's long-range student learning goals and the Iowa teaching standards. The plan shall indicate the school district's approved professional development provider or providers.

4. In cooperation with the teacher's evaluator, the career teacher employed by a school district shall develop an individual teacher professional development plan. The evaluator shall consult with the teacher's supervisor on the development of the individual teacher professional development plan. The purpose of the plan is to promote individual and group professional development. The individual plan shall be based, at minimum, on the needs of the teacher, the Iowa teaching standards, and the student achievement goals of the attendance center and the school district as outlined in the comprehensive school improvement plan. The individual plan shall include goals for the individual which are beyond those required under the attendance center professional development plan developed pursuant to subsection 7.

5. The teacher's evaluator shall annually meet with the teacher to review progress in meeting the goals in the teacher's individual plan. The teacher shall present to the evaluator evidence of progress. The purpose of the meeting shall be to review the teacher's progress in meeting professional development goals in the plan and to review collaborative work with other staff on student achievement goals and to modify as necessary the teacher's individual plan to reflect the individual teacher's and the school district's needs and the individual's progress in meeting the goals in the plan. The teacher's supervisor and the evaluator shall review, modify, or accept modifications made to the teacher's individual plan.

6. School districts, a consortium of school districts, area education agencies, higher education institutions, and other public or private entities including professional associations may be approved by the state board to provide teacher professional development. The professional development program or offering shall, at minimum, meet the requirements of subsection 1. The state board shall adopt rules for the approval of professional development providers and standards for the district development plan.

7. Each attendance center shall develop an attendance center professional development plan.

The purpose of the plan is to promote group professional development. The attendance center plan shall be based, at a minimum, on the needs of the teachers, the Iowa teaching standards, district professional development plans, and the student achievement goals of the attendance center and the school district as set forth in the comprehensive school improvement plan.

8. For each year in which a school district receives funds allocated for distribution to school districts for professional development pursuant to section 284.13, subsection 1, paragraph "d", the school district shall create quality professional development opportunities. The goal for the use of the funds is to provide one additional contract day or the equivalent thereof for professional development and use of the funds is limited to providing professional development to teachers, including additional salaries for time beyond the normal negotiated agreement; pay for substitute teachers, professional development materials, speakers, and professional development content; and costs associated with implementing the individual professional development plans. The use of the funds shall be balanced between school district, attendance center, and individual professional development plans, making every reasonable effort to provide equal access to all teachers.

9. The distribution of funds allocated for professional development pursuant to section 284.13, subsection 1, paragraph "d", shall be made in one payment on or about October 15 of the fiscal year for which the appropriation is made, taking into consideration the relative budget and cash position of the state resources. Moneys received pursuant to section 284.13, subsection 1, paragraph "d", shall not be commingled with state aid payments made under section 257.16 to a school district, shall be accounted for by the local school district separately from state aid payments, and are miscellaneous income for purposes of chapter 257. A school district shall maintain a separate listing within its budget for funds received and expenditures made pursuant to this subsection. A school district shall certify to the department of education how the school district allocated the funds and that moneys received under this subsection were used to supplement, not supplant, the professional development opportunities the school district would otherwise make available.

10. If funds are allocated for purposes of professional development pursuant to section 284.13, subsection 1, paragraph "e", the department shall, in collaboration with the area education agencies, establish teacher development academies for school-based teams of teachers and instructional leaders. Each academy shall include an institute and shall provide follow-up training and coaching.

2007 Acts, ch 108, §20 – 23

Subsection 1, unnumbered paragraph 1 and paragraph a amended

Subsections 2 – 6 amended

NEW subsections 7 – 10

### 284.7 Iowa teacher career path.

To promote continuous improvement in Iowa's quality teaching workforce and to give Iowa teachers the opportunity for career recognition that reflects the various roles teachers play as educational leaders, an Iowa teacher career path is established for teachers employed by school districts. A school district shall use funding allocated under section 284.13, subsection 1, paragraph "h", to raise teacher salaries to meet the requirements of this section. The Iowa teacher career path and salary minimums are as follows:

1. The following career path levels are established and shall be implemented in accordance with this chapter:

#### a. *Beginning teacher.*

(1) A beginning teacher is a teacher who meets the following requirements:

(a) Has successfully completed an approved practitioner preparation program as defined in section 272.1 or holds an intern teacher license issued by the board of educational examiners under chapter 272.

(b) Holds an initial or intern teacher license issued by the board of educational examiners.

(c) Participates in the beginning teacher mentoring and induction program as provided in this chapter.

(2) Beginning July 1, 2007, the minimum salary for a beginning teacher shall be twenty-six thousand five hundred dollars.

#### b. *Career teacher.*

(1) A career teacher is a teacher who meets the following requirements:

(a) Has successfully completed the beginning teacher mentoring and induction program and has successfully completed a comprehensive evaluation as provided in this chapter.

(b) Is reviewed by the school district as demonstrating the competencies of a career teacher.

(c) Holds a valid license issued by the board of educational examiners.

(d) Participates in teacher professional development as set forth in this chapter and demonstrates continuous improvement in teaching.

(2) Beginning July 1, 2007, the minimum salary for a first-year career teacher shall be twenty-seven thousand five hundred dollars and the minimum salary for all other career teachers shall be twenty-eight thousand five hundred dollars.

2. It is the intent of the general assembly to establish and require the implementation of and provide for the implementation of the following additional career path levels:

#### a. *Career II teacher.*

(1) A career II teacher is a teacher who meets the requirements of subsection 1, paragraph "b", has met the requirements established by the school district that employs the teacher, and is evaluated by the school district as demonstrating

the competencies of a career II teacher. The teacher shall have successfully completed a performance review in order to be classified as a career II teacher.

(2) It is the intent of the general assembly that the participating district shall establish a minimum salary for a career II teacher that is at least five thousand dollars greater than the minimum career teacher salary. It is further intended that the district shall adopt a plan that facilitates the transition of a career teacher to a career II level.

#### b. *Advanced teacher.*

(1) An advanced teacher is a teacher who meets the following requirements:

(a) Receives the recommendation of the review panel that the teacher possesses superior teaching skills and that the teacher should be classified as an advanced teacher.

(b) Holds a valid license from the board of educational examiners.

(c) Participates in teacher professional development as outlined in this chapter and demonstrates continuous improvement in teaching.

(d) Possesses the skills and qualifications to assume leadership roles.

(2) It is the intent of the general assembly that the participating district shall establish a minimum salary for an advanced teacher that is at least thirteen thousand five hundred dollars greater than the minimum career teacher salary. In conjunction with the development of the review panel pursuant to section 284.9, the department shall make recommendations to the general assembly by January 1, 2002, regarding the appropriate district-to-district recognition for advanced teachers and methods that facilitate the transition of a teacher to the advanced level.

3. A teacher shall be promoted one level at a time and a teacher promoted to the next career level shall remain at that level for at least one year before requesting promotion to the next career level.

4. A teacher employed in a district shall not receive less compensation in that district than the teacher received in the school year preceding participation, as set forth in section 284.4 due to implementation of this chapter. A teacher who achieves national board for professional teaching standards certification and meets the requirements of section 256.44 shall continue to receive the award as specified in section 256.44 in addition to the compensation set forth in this section.

5. a. If the licensed employees of a school district or area education agency receiving funds pursuant to section 284.13, subsection 1, paragraph "h" or "i", for purposes of this section, are organized under chapter 20 for collective bargaining purposes, the board of directors and the certified bargaining representative for the licensed employees shall mutually agree upon a formula for distributing the funds among the teachers em-



ployed by the school district or area education agency. However, the school district must comply with the salary minimums provided for in this section. The parties shall follow the negotiation and bargaining procedures specified in chapter 20 except that if the parties reach an impasse, neither impasse procedures agreed to by the parties nor sections 20.20 through 20.22 shall apply and the funds shall be paid as provided in paragraph “b”. Negotiations under this section are subject to the scope of negotiations specified in section 20.9. If a board of directors and the certified bargaining representative for licensed employees have not reached mutual agreement for the distribution of funds received pursuant to section 284.13, subsection 1, paragraph “h” or “i”, by September 15 of the fiscal year for which the funds are distributed, paragraph “b” of this subsection shall apply.

b. If, once the minimum salary requirements of this section have been met by the school district or area education agency, and the school district or area education agency receiving funds pursuant to section 284.13, subsection 1, paragraph “h” or “i”, for purposes of this section, and the certified bargaining representative for the licensed employees have not reached an agreement for distribution of the funds remaining, in accordance with paragraph “a”, the board of directors shall divide the funds remaining among full-time teachers employed by the district or area education agency whose regular compensation is equal to or greater than the minimum salary specified in this section. The payment amount for teachers employed on less than a full-time basis shall be prorated.

c. If the licensed employees of a school district or area education agency are not organized for collective bargaining purposes, the board of directors shall determine the method of distribution of such funds.

d. For the school year beginning July 1, 2008, and each succeeding school year, if the licensed employees of a school district or area education agency receiving funds pursuant to section 284.13, subsection 1, paragraph “h” or “i”, for purposes of this section, are organized under chapter 20 for collective bargaining purposes, the school board and the certified bargaining representative for the licensed employees shall negotiate a formula for distributing the funds among the teachers employed by the school district or area education agency according to chapter 20. Paragraphs “a” and “b” shall apply to any increases in the funds provided above the base year.

2007 Acts, ch 108, §24 – 30  
 Subsection 1, paragraph a, subparagraph (2) amended  
 Subsection 1, paragraph b, subparagraph (1), subparagraph subdivision (d) amended  
 Subsection 1, paragraph b, subparagraph (2) amended  
 Subsection 2, paragraph b, subparagraph (1), subparagraph subdivision (c) amended  
 Subsection 4 stricken and former subsections 5 and 6 renumbered as 4 and 5  
 Subsection 5, paragraphs a and b amended  
 Subsection 5, NEW paragraph d

#### **284.8 Performance review requirements for teachers.**

1. A school district shall review a teacher’s performance at least once every three years for purposes of assisting teachers in making continuous improvement, documenting continued competence in the Iowa teaching standards, identifying teachers in need of improvement, or to determine whether the teacher’s practice meets school district expectations for career advancement in accordance with section 284.7. The review shall include, at minimum, classroom observation of the teacher, the teacher’s progress, and implementation of the teacher’s individual professional development plan, subject to the level of funding provided to implement the plan; and shall include supporting documentation from other evaluators, teachers, parents, and students.

2. If a supervisor or an evaluator determines, at any time, as a result of a teacher’s performance that the teacher is not meeting district expectations under the Iowa teaching standards specified in section 284.3, subsection 1, paragraphs “a” through “h”, the criteria for the Iowa teaching standards developed by the department in accordance with section 256.9, subsection 50, and any other standards or criteria established in the collective bargaining agreement, the evaluator shall, at the direction of the teacher’s supervisor, recommend to the district that the teacher participate in an intensive assistance program. The intensive assistance program and its implementation are subject to negotiation and grievance procedures established pursuant to chapter 20. All school districts shall be prepared to offer an intensive assistance program.

3. If a teacher is denied advancement to the career II or advanced teacher level based upon a performance review, the teacher may appeal the decision to an adjudicator under the process established under section 279.17. However, the decision of the adjudicator is final.

4. A teacher who is not meeting the applicable standards and criteria based on a determination made pursuant to subsection 2 shall participate in an intensive assistance program.

2007 Acts, ch 108, §31, 32; 2007 Acts, ch 215, §253  
 Subsections 1 and 2 amended  
 NEW subsection 4

#### **284.11 Market factor teacher incentives.**

1. The general assembly finds that Iowa school districts need to be more competitive in recruiting and retaining talented professionals into the teaching profession. To ensure that school districts in all areas of the state have the ability to attract highly qualified teachers, it is the intent of the general assembly to encourage school districts to provide incentives for traditionally hard-to-staff schools and subject-area shortages. This section provides for state assistance to allow school

districts to add a market factor incentive paid by the school districts.

2. A school district shall be paid annually, from moneys allocated for market factor incentives pursuant to section 284.13, subsection 1, paragraph “f”, an amount of state assistance to create market factor incentives for classroom teachers in the school district. Market factor incentives may include but are not limited to salaries, educational opportunities and support, moving expenses, and housing expenses for the recruitment and retention needs of the school district in such areas as hard-to-staff schools and subject-area shortages, improving the racial or ethnic diversity on local teaching staffs, funding to prepare a teacher to attain a license or endorsement in a shortage area, or funds to support educational support personnel in pursuing a license in a shortage area. The teacher quality committee established pursuant to section 284.4, subsection 1, paragraph “c”, shall make recommendations to the school board and the certified bargaining representative regarding the expenditures of market factor incentives.

3. The allocations to each school district shall be made in one payment on or about October 15 of the fiscal year for which the appropriation is made, taking into consideration the relative budget and cash position of the state resources. Moneys received under this section shall not be commingled with state aid payments made under section 257.16 to a school district and shall be accounted for by the local school district separately from state aid payments. Payments made to school districts under this section are miscellaneous income for purposes of chapter 257. A school district shall maintain a separate listing within its budget for payments received and expenditures made pursuant to this section. A school district shall certify to the department of education how the school district allocated the funds and how the moneys received under this section were used.

4. The department shall include market factor incentives when reporting in the annual condition of education report on the use of funds allocated for purposes of this section. The department shall review the use and effectiveness of the use of funds allocated for purposes of this section and shall submit its findings and recommendations in a report to the general assembly by January 15, 2008. It is the intent of the general assembly to reevaluate the fiscal year allocations made pursuant to section 284.13, subsection 1, paragraph “f”, subparagraphs (2) and (3), based upon this report.

2007 Acts, ch 108, §33  
Section amended

**284.12 Reports — rules.**

1. The department shall annually report the statewide progress on the following:

a. Student achievement scores in mathematics and reading at the fourth and eighth grade lev-

els on a district-by-district basis as reported to the local communities pursuant to section 256.7, subsection 21, paragraph “c”.

b. Evaluator training program.

c. Changes and improvements in the evaluation of teachers under the Iowa teaching standards.

2. The report shall be made available to the chairpersons and ranking members of the senate and house committees on education, the deans of the colleges of education at approved practitioner preparation institutions in this state, the state board, the governor, and school districts by January 1. School districts shall provide information as required by the department for the compilation of the report and for accounting and auditing purposes.

3. In developing administrative rules for consideration by the state board, the department shall consult with persons representing teachers, administrators, school boards, approved practitioner preparation institutions, and other appropriate education stakeholders.

2007 Acts, ch 108, §34, 35  
Subsection 1, paragraph c stricken and former paragraph d redesignated as c  
Subsection 3 stricken and former subsection 4 renumbered as 3

**284.13 State program allocation.**

1. For each fiscal year in which moneys are appropriated by the general assembly for purposes of the student achievement and teacher quality program, the moneys shall be allocated as follows in the following priority order:

a. For each fiscal year of the fiscal period beginning July 1, 2007, and ending June 30, 2009, to the department of education, the amount of one million eighty-seven thousand five hundred dollars for the issuance of national board certification awards in accordance with section 256.44.

(1) Of the amount allocated under this paragraph “a”, not less than eighty-five thousand dollars shall be used to administer the ambassador to education position in accordance with section 256.45.

(2) Of the amount allocated under this paragraph “a”, for the fiscal year beginning July 1, 2007, and ending June 30, 2008, not less than one million dollars shall be used to supplement the allocation of funds for market factor teacher incentives made pursuant to paragraph “f”, subparagraph (1).

b. For the fiscal year beginning July 1, 2006, and succeeding fiscal years, an amount up to four million six hundred fifty thousand dollars for first-year and second-year beginning teachers, to the department of education for distribution to school districts and area education agencies for purposes of the beginning teacher mentoring and induction programs. A school district or area education agency shall receive one thousand three hundred dollars per beginning teacher participating in the program. If the funds appropriated for the pro-

gram are insufficient to pay mentors, school districts, and area education agencies as provided in this paragraph, the department shall prorate the amount distributed to school districts and area education agencies based upon the amount appropriated. Moneys received by a school district or area education agency pursuant to this paragraph shall be expended to provide each mentor with an award of five hundred dollars per semester, at a minimum, for participation in the school district's or area education agency's beginning teacher mentoring and induction program; to implement the plan; and to pay any applicable costs of the employer's share of contributions to federal social security and the Iowa public employees' retirement system or a pension and annuity retirement system established under chapter 294, for such amounts paid by the district or area education agency.

c. For each fiscal year of the fiscal period beginning July 1, 2007, and ending June 30, 2009, up to six hundred ninety-five thousand dollars to the department for purposes of implementing the professional development program requirements of section 284.6, assistance in developing model evidence for teacher quality committees established pursuant to section 284.4, subsection 1, paragraph "c", and the evaluator training program in section 284.10. A portion of the funds allocated to the department for purposes of this paragraph may be used by the department for administrative purposes and for not more than four full-time equivalent positions.

d. (1) For the fiscal year beginning July 1, 2007, and ending June 30, 2008, up to twenty million dollars to the department for use by school districts for professional development as provided in section 284.6. The department shall distribute funds allocated for the purpose of this paragraph based on the average per diem contract salary for each district as reported to the department for the school year beginning July 1, 2006, multiplied by the total number of full-time equivalent teachers in the base year. The department shall adjust each district's average per diem salary by the allowable growth rate established under section 257.8 for the fiscal year beginning July 1, 2007. The contract salary amount shall be the amount paid for their regular responsibilities but shall not include pay for extracurricular activities. These funds shall not supplant existing funding for professional development activities. Notwithstanding any provision to the contrary, moneys received by a school district under this paragraph shall not revert but shall remain available for the same purpose in the succeeding fiscal year. A school district shall submit a report to the department in a manner determined by the department describing its use of the funds received under this paragraph. The department shall submit a report on school district use of the moneys distributed pursuant to this paragraph to the general assembly and the

legislative services agency not later than January 15 of the fiscal year for which moneys are allocated for purposes of this paragraph.

(2) From moneys available under subparagraph (1) for the fiscal year beginning July 1, 2007, and ending June 30, 2008, the department shall allocate to area education agencies an amount per teacher employed by an area education agency that is approximately equivalent to the average per teacher amount allocated to the districts. The average per teacher amount shall be calculated by dividing the total number of teachers employed by school districts and the teachers employed by area education agencies into the total amount of moneys available under subparagraph (1).

e. For the fiscal year beginning July 1, 2007, and ending June 30, 2008, an amount up to one million eight hundred forty-five thousand dollars to the department for the establishment of teacher development academies in accordance with section 284.6, subsection 10. A portion of the funds allocated to the department for purposes of this paragraph may be used for administrative purposes.

f. For purposes of market factor teacher incentives pursuant to section 284.11, the following amounts are allocated to the department for the following fiscal years:

(1) (a) For each fiscal year of the fiscal period beginning July 1, 2006, and ending June 30, 2008, the sum of three million three hundred ninety thousand dollars.

(b) Of the amount allocated under subparagraph subdivision (a), for the fiscal year beginning July 1, 2007, and ending June 30, 2008, not less than one million dollars shall be used by the department to assist school districts to recruit, employ, and retain qualified teacher librarians, guidance counselors, and school nurses and to meet the goals established in section 256.11, subsections 9A and 9B. To be eligible for assistance, a school district shall submit an application to the department by September 1, 2007. The department shall distribute assistance under this subparagraph subdivision by November 1, 2007. Moneys received by a school district pursuant to this subparagraph subdivision shall be used only to comply with section 256.11, subsection 9, 9A, or 9B.

(2) For the fiscal year beginning July 1, 2008, and ending June 30, 2009, the sum of seven million five hundred thousand dollars.

(3) For the fiscal year beginning July 1, 2009, and ending June 30, 2010, the sum of six million six hundred ten thousand dollars.

The department shall use the formula set forth in paragraph "h" to distribute moneys allocated under this paragraph.

g. For purposes of the pay-for-performance and career ladder pilots established pursuant to sections 284.14 and 284.14A, the following amounts are allocated to the department of education for the following fiscal years:

(1) For the fiscal year beginning July 1, 2006,

and ending June 30, 2007, the sum of one million dollars. Of the amount allocated under this subparagraph, an amount equal to one hundred fifty thousand dollars shall be distributed to the institute for tomorrow's workforce created pursuant to section 7K.1 for the activities of the institute.

(2) For the fiscal year beginning July 1, 2007, and ending June 30, 2008, the sum of one million dollars. From the amount allocated under this subparagraph, an amount up to ten thousand dollars shall be used for purposes of the pay-for-performance commission's expenses, an amount up to one hundred thousand dollars shall be used by the department for oversight and administration of the planning pilots as provided in sections 284.14 and 284.14A, and an amount up to two hundred thousand dollars shall be used for the employment of an external evaluator.

(3) For the fiscal year beginning July 1, 2008, and ending June 30, 2009, the sum of two million five hundred thousand dollars. From the amount allocated for the fiscal year under this subparagraph, an amount up to ten thousand dollars shall be used for purposes of the pay-for-performance commission's expenses, an amount up to one hundred thousand dollars shall be used by the department for oversight and administration of the implementation pilots as provided in sections 284.14 and 284.14A, and an amount up to two hundred thousand dollars shall be used for the employment of an external evaluator.

*h.* For each fiscal year in which funds are appropriated for purposes of this chapter, the moneys remaining after distribution as provided in paragraphs "a" through "g" shall be allocated to school districts for salaries in accordance with the following formula:

(1) Fifty percent of the allocation shall be in the proportion that the basic enrollment of a school district bears to the sum of the basic enrollments of all school districts in the state for the budget year.

(2) Fifty percent of the allocation shall be based upon the proportion that the number of full-time equivalent teachers employed by a school district bears to the sum of the number of full-time equivalent teachers who are employed by all school districts in the state for the base year.

*i.* From moneys available under paragraph "h", the department shall allocate to area education agencies an amount per teacher employed by an area education agency that is approximately equivalent to the average per teacher amount allocated to the districts. The average per teacher amount shall be calculated by dividing the total number of teachers employed by school districts and the teachers employed by area education agencies into the total amount of moneys available under paragraph "h".

*j.* Notwithstanding section 8.33, any moneys remaining unencumbered or unobligated from the moneys allocated for purposes of paragraph "a",

"b", "c", or "g" shall not revert but shall remain available in the succeeding fiscal year for expenditure for the purposes designated. The provisions of section 8.39 shall not apply to the funds appropriated pursuant to this subsection.

2. A school district that is unable to meet the provisions of section 284.7, subsection 1, with funds allocated pursuant to subsection 1, paragraph "h", may request a waiver from the department to use funds appropriated under chapter 256D to meet the provisions of section 284.7, subsection 1, if the difference between the funds allocated to the school district pursuant to subsection 1, paragraph "h", and the amount required to comply with section 284.7, subsection 1, is not less than ten thousand dollars. The department shall consider the average class size of the school district, the school district's actual unspent balance from the preceding year, and the school district's current financial position.

3. Moneys received by a school district under this chapter are miscellaneous income for purposes of chapter 257 or are considered encumbered. A school district shall maintain a separate listing within its budget for payments received and expenditures made pursuant to this section.

2007 Acts, ch 108, §36 - 45, 64; 2007 Acts, ch 215, §103  
 Subsection 1, paragraphs a, c, and d amended  
 Subsection 1, paragraph e stricken and rewritten  
 Subsection 1, paragraph f, unnumbered paragraph 1 and subparagraphs (1) - (3) amended  
 Subsection 1, paragraph g, unnumbered paragraph 1 and subparagraphs (2) and (3) amended  
 Subsection 1, paragraph h, unnumbered paragraph 1 amended  
 Subsection 1, paragraphs i and j amended

**284.14 Pay-for-performance program.**

1. *Intent.* The intent of this section is to create a process by which select Iowa school districts research, develop, and implement projects designed to identify promising practices related to enhanced teacher compensation career ladders and performance pay models.

2. *Commission.* A pay-for-performance commission is established to design and implement a pay-for-performance pilot project and provide a study relating to teacher and staff compensation containing a pay-for-performance component. The study shall measure the cost and effectiveness in raising student achievement of a compensation system that provides financial incentives based on student performance. The commission is part of the executive branch of government.

3. *Development of program.* Beginning July 1, 2006, the commission shall gather sufficient information to identify a pay-for-performance program based upon student achievement gains and global content standards where student achievement gains cannot be easily measured. The commission shall review pay-for-performance programs in both the public and private sectors.

*a.* Commencing with the school year beginning July 1, 2007, the commission shall initiate planning pilots, in selected kindergarten through

grade twelve schools, to test the effectiveness of the pay-for-performance program. The purpose of the planning pilots is to identify the strengths and weaknesses of various pay-for-performance program designs, evaluate cost effectiveness, analyze student achievement needs, select formative and summative student achievement measures that align to identify needs, consider necessary supports related to the student achievement goals in the school district's comprehensive school improvement plan, review assessment needs, identify mechanisms to account for existing teacher contract provisions within the proposed career ladder salary increments, allow thorough review of data, and make necessary adjustments before proposing implementation of the pay-for-performance program statewide.

b. Commencing with the school year beginning July 1, 2007, the commission shall select two school districts as planning pilots. Participants shall provide reports or other information as required by the commission.

c. Commencing with the school year beginning July 1, 2008, the commission shall administer two implementation pilots in the school districts selected for planning pilots under paragraph "b".

4. *Reports and final study.* Based on the information generated by the planning and implementation pilots, the commission shall prepare an interim report by January 14, 2008, followed by interim progress reports annually, followed by a final study report analyzing the effectiveness of pay-for-performance in raising student achievement levels. The final study report shall be completed no later than six months after the completion of the planning and implementation pilots. The commission shall provide copies of the final study report to the department of education and to the general assembly.

5. *Iowa excellence fund.* An Iowa excellence fund is created within the office of the treasurer of state, to be administered by the commission. Notwithstanding section 8.33, moneys in the fund that remain unencumbered or unobligated at the

close of the fiscal year shall not revert but shall remain in the fund.

The commission may provide grants from this fund, according to criteria developed by the commission, for implementation of the pay-for-performance program.

2007 Acts, ch 108, §46 – 48  
NEW subsection 1 and former subsections 1 – 3 amended and renumbered as 2 – 4

Former subsection 4 stricken

#### 284.14A Career ladder pilots.

1. *Intent.* The intent of this section is to create a process by which select Iowa school districts research, develop, and implement pilots designed to identify promising practices related to enhanced teacher compensation career ladder models.

2. *Pilot established.* A career ladder pilot is established to be designed, implemented, and administered by the department. The department shall gather sufficient information to identify a career ladder pilot.

a. For the school year beginning July 1, 2007, and ending June 30, 2008, the department shall select up to eight school districts as planning pilots. Participants shall provide reports or other information as required by the department.

b. For the school year beginning July 1, 2008, and ending June 30, 2009, the department shall administer up to eight implementation pilots in the school districts selected for planning pilots under paragraph "a".

3. *Interim and final reports.* Based on the information generated by the planning and implementation pilots, the department shall submit an interim report to the general assembly by January 14 annually, and shall submit a final report summarizing the effectiveness of the pilots in raising student achievement levels to the general assembly no later than six months after the completion of the planning and implementation pilots.

2007 Acts, ch 108, §49  
Partial item veto applied  
NEW section

## CHAPTER 284A

### BEGINNING ADMINISTRATOR MENTORING PROGRAM

#### 284A.1 Administrator quality program.

An administrator quality program is established to promote high student achievement and enhanced educator quality. The program shall consist of the following three major components:

1. Mentoring and induction programs that provide support for administrators in accordance with section 284A.5.

2. Professional development designed to directly support best practices for leadership.

3. Evaluation of administrators against the Iowa standards for school administrators.

2007 Acts, ch 108, §54  
Former §284A.1 transferred to §284A.2 pursuant to directive in 2007 Acts, ch 108, §60  
NEW section

#### 284A.2 Definitions.

As used in this chapter, unless the context otherwise requires:

1. "*Administrator*" means an individual hold-

ing a professional administrator license issued under chapter 272, who is employed in a school district administrative position by a school district or area education agency pursuant to a contract issued by a board of directors under section 279.23. An administrator may be employed in both an administrative and a nonadministrative position by a board of directors and shall be considered a part-time administrator for the portion of time that the individual is employed in an administrative position.

2. *“Beginning administrator”* means an individual serving under an initial administrator license, issued by the board of educational examiners under chapter 272, who is assuming a position as a school district administrator for the first time.

3. *“Comprehensive evaluation”* means a summative evaluation of a beginning administrator conducted by an evaluator in accordance with section 284A.3 for purposes of determining a beginning administrator’s level of competency for recommendation for licensure based on the Iowa standards for school administrators adopted pursuant to section 256.7, subsection 27.

4. *“Department”* means the department of education.

5. *“Director”* means the director of the department of education.

6. *“Evaluation”* means a summative evaluation of an administrator used to determine whether the administrator’s practice meets school district expectations and the Iowa standards for school administrators adopted pursuant to section 256.7, subsection 27.

7. *“Mentor”* means an individual employed by a school district or area education agency as a school district administrator or a retired administrator who holds a valid license issued under chapter 272. The individual must have a record of four years of successful administrative experience and must demonstrate professional commitment to both the improvement of teaching and learning and the development of beginning administrators.

8. *“School board”* means the board of directors of a school district or a collaboration of boards of directors of school districts.

9. *“State board”* means the state board of education.

2007 Acts, ch 108, §50, 60  
 Former §284A.2 transferred to §284A.5 pursuant to directive in 2007 Acts, ch 108, §61  
 Section transferred from §284A.1 in Code Supplement 2007 pursuant to directive  
 NEW subsection 3 and former subsection 3 renumbered as 4  
 NEW subsections 5 and 6 and former subsections 4 – 6 renumbered as 7 – 9

**284A.3 Iowa standards for school administrators evaluations.**

By July 1, 2008, each school board shall provide for evaluations for administrators under individual professional development plans developed in accordance with section 279.23A, and the Iowa standards for school administrators and related criteria

adopted by the state board in accordance with section 256.7, subsection 27. A local school board may establish additional administrator standards and related criteria.

2007 Acts, ch 108, §55  
 Former §284A.3 transferred to §284A.8 pursuant to directive in 2007 Acts, ch 108, §62  
 NEW section

**284A.4 Participation.**

Effective July 1, 2007, each school district shall participate in the administrator quality program, and the board of directors of each school district shall do all of the following:

1. Implement a beginning administrator mentoring and induction program as provided in this chapter.

2. Adopt individual administrator professional development plans in accordance with this chapter.

3. Adopt an administrator evaluation plan that, at a minimum, requires an evaluation of administrators in the school district annually pursuant to section 279.23A and based upon the Iowa standards for school administrators and individual administrator professional development plans.

2007 Acts, ch 108, §56  
 NEW section

**284A.5 Beginning administrator mentoring and induction program.**

1. A beginning administrator mentoring and induction program is created to promote excellence in school leadership, improve classroom instruction, enhance student achievement, build a supportive environment within school districts, increase the retention of promising school leaders, and promote the personal and professional well-being of administrators.

2. The department, in collaboration with other educational partners, shall develop a model beginning administrator mentoring and induction program for all beginning administrators.

3. Each school board shall establish an administrator mentoring program for all beginning administrators. The school board may adopt the model program developed by the department pursuant to subsection 2. Each school board’s beginning administrator mentoring and induction program shall, at a minimum, provide for one year of programming to support the Iowa standards for school administrators adopted pursuant to section 256.7, subsection 27, and beginning administrators’ professional and personal needs. Each school board shall develop an initial beginning administrator mentoring and induction plan. The plan shall describe the mentor selection process, describe supports for beginning administrators, describe program organizational and collaborative structures, provide a budget, provide for sustainability of the program, and provide for program evaluation. The school board employing an administrator shall determine the conditions and re-

quirements of an administrator participating in a program established pursuant to this section. A school board shall include its plan in the school district's comprehensive school improvement plan submitted pursuant to section 256.7, subsection 21.

4. A beginning administrator shall be informed by the school district or the area education agency, prior to the beginning administrator's participation in a mentoring and induction program, of the criteria upon which the administrator will be evaluated and of the evaluation process utilized by the school district or area education agency.

5. By the end of a beginning administrator's first year of employment, the beginning administrator may be comprehensively evaluated to determine if the administrator meets expectations to move to a standard administrator license. The school district or area education agency that employs a beginning administrator shall recommend the beginning administrator for a standard license if the beginning administrator is determined through a comprehensive evaluation to demonstrate competence in the Iowa standards for school administrators adopted pursuant to section 256.7, subsection 27. A school district or area education agency may allow a beginning administrator a second year to demonstrate competence in the Iowa standards for school administrators if, after conducting a comprehensive evaluation, the school district or area education agency determines that the administrator is likely to successfully demonstrate competence in the Iowa standards for school administrators by the end of the second year. Upon notification by the school district or area education agency, the board of educational examiners shall grant a beginning administrator who has been allowed a second year to demonstrate competence a one-year extension of the beginning administrator's initial license. An administrator granted a second year to demonstrate competence shall undergo a comprehensive evaluation at the end of the second year.

2007 Acts, ch 108, §51 – 53, 61  
Section transferred from §284A.2 in Code Supplement 2007 pursuant to directive in 2007 Acts, ch 108, §61  
Subsection 3 amended  
NEW subsection 4 and former subsection 4 amended and renumbered as 5

#### **284A.6 Administrator professional development.**

1. Each school district shall be responsible for the provision of professional growth programming for individuals employed in a school district administrative position by the school district or area education agency as deemed appropriate by the board of directors of the school district or area education agency. School districts may collaborate with other educational stakeholders including other school districts, area education agencies, professional organizations, higher education institutions, and private providers, regarding the

provision of professional development for school district administrators. Professional development programming for school district administrators may include support that meets the professional development needs of individual administrators aligned to the Iowa standards for school administrators adopted pursuant to section 256.7, subsection 27, and meets individual administrator professional development plans.

2. In cooperation with the administrator's evaluator, the administrator who has a standard administrator's license issued by the board of educational examiners pursuant to chapter 272 and is employed by a school district or area education agency in a school district administrative position, shall develop an individual administrator professional development plan. The purpose of the plan is to promote individual and group professional development. The individual plan shall be based, at a minimum, on the needs of the administrator, the Iowa standards for school administrators adopted pursuant to section 256.7, subsection 27, and the student achievement goals of the attendance center and the school district as outlined in the comprehensive school improvement plan.

3. The administrator's evaluator shall meet annually as provided in section 279.23A with the administrator to review progress in meeting the goals in the administrator's individual plan. The purpose of the meeting shall be to review collaborative work with other staff on student achievement goals and to modify as necessary the administrator's individual plan to reflect the individual administrator's and the school district's needs and the individual's progress in meeting the goals in the plan. The administrator shall present to the evaluator evidence of progress. The administrator's supervisor and the evaluator shall review and the supervisor may modify the administrator's individual plan.

2007 Acts, ch 108, §57  
NEW section

#### **284A.7 Evaluation requirements for administrators.**

A school district shall conduct an evaluation of an administrator who holds a standard license issued under chapter 272 at least once every three years for purposes of assisting the administrator in making continuous improvement, documenting continued competence in the Iowa standards for school administrators adopted pursuant to section 256.7, subsection 27, or to determine whether the administrator's practice meets school district expectations. The review shall include, at a minimum, an assessment of the administrator's competence in meeting the Iowa standards for school administrators and the goals of the administrator's individual professional development plan, including supporting documentation or artifacts aligned to the Iowa standards for school administrators and the individual administrator's profes-

sional development plan.

2007 Acts, ch 108, §58  
NEW section

**284A.8 Beginning administrator mentoring and induction program — program funds.**

To the extent moneys are available, a school district shall receive one thousand five hundred dollars per beginning administrator participating in the program. If the funds appropriated for the program are insufficient to pay mentors and school districts as provided in this section, the department shall prorate the amount distributed to school districts based upon the amount appropri-

ated. Moneys received by a school district pursuant to this section shall be expended to provide each mentor with an award of five hundred dollars per semester, at a minimum, for participation in the school district's beginning administrator mentoring and induction program; to implement the plan; and to pay any applicable costs of the employer's share of contributions to federal social security and the Iowa public employees' retirement system or a pension and annuity retirement system established under chapter 294, for such amounts paid by the district.

2007 Acts, ch 108, §62; 2007 Acts, ch 214, §39  
Appropriation for 2007-2008 fiscal year; 2007 Acts, ch 214, §6  
Section transferred from §284A.3 in Code Supplement 2007 pursuant to directive in 2007 Acts, ch 108, §62  
Section amended

**CHAPTER 285**

**STATE AID FOR TRANSPORTATION**

**285.1 When entitled to state aid.**

1. The board of directors in every school district shall provide transportation, either directly or by reimbursement for transportation, for all resident pupils attending public school, kindergarten through twelfth grade, except that:

a. Elementary pupils shall be entitled to transportation only if they live more than two miles from the school designated for attendance.

b. High school pupils shall be entitled to transportation only if they live more than three miles from the school designated for attendance.

c. Children attending prekindergarten programs offered or sponsored by the district or nonpublic school and approved by the department of education or department of human services or children participating in preschool in an approved local program under chapter 256C may be provided transportation services. However, transportation services provided nonpublic school children are not eligible for reimbursement under this chapter.

d. Districts are not required to maintain seating space on school buses for students who are otherwise to be provided transportation under this subsection if the students do not or will not regularly utilize the district's transportation service for extended periods during the school year. The student, or the student's parent or legal guardian if the student is less than eighteen years of age, shall be notified by the district before transportation services may be suspended, and the suspension may continue until the student, or the student's parent or legal guardian, notifies the district that regular student ridership will continue.

For the purposes of this subsection, high school means a school which commences with either grade nine or grade ten, as determined by the board of directors of the school district or by the

governing authority of the nonpublic school in the case of nonpublic schools.

Boards in their discretion may provide transportation for some or all resident pupils attending public school or pupils who attend nonpublic schools who are not entitled to transportation. Boards in their discretion may collect from the parent or guardian of the pupil not more than the pro rata cost for such optional transportation, determined as provided in subsection 12.

2. Any pupil may be required to meet a school bus on the approved route a distance of not to exceed three-fourths of a mile without reimbursement.

3. In a district where transportation by school bus is impracticable, where necessary to implement a whole grade sharing agreement under section 282.10, or where school bus service is not available, the board may require parents or guardians to furnish transportation for their children to the schools designated for attendance. Except as provided in section 285.3, the parent or guardian shall be reimbursed for such transportation service for public and nonpublic school pupils by the board of the resident district in an amount equal to eighty dollars plus seventy-five percent of the difference between eighty dollars and the previous school year's statewide average per pupil transportation cost, as determined by the department of education.

However, a parent or guardian shall not receive reimbursement for furnishing transportation for more than three family members who attend elementary school and one family member who attends high school.

4. In all districts where unsatisfactory roads or other conditions make it advisable, the board at its discretion may require the parents or guardians of public and nonpublic school pupils to fur-



nish transportation for their children up to two miles to connect with vehicles of transportation. The parents or guardians shall be reimbursed for such transportation by the boards of the resident districts at the rate of twenty-eight cents per mile per day, one way, per family for the distance from the pupil's residence to the bus route.

5. Where transportation by school bus is impracticable or not available or other existing conditions warrant it, arrangements may be made for use of common carriers according to uniform standards established by the director of the department of education and at a cost based upon the actual cost of service and approved by the board.

6. When the school designated for attendance of pupils is engaged in the transportation of pupils, the sending or designating school shall use these facilities and pay the pro rata cost of transportation except that a district sending pupils to another school may make other arrangements when it can be shown that such arrangements will be more efficient and economical than to use facilities of the receiving school, providing such arrangements are approved by the board of the area education agency.

7. If a local board closes either elementary or high school facilities and is approved by the board of the area education agency to operate its own transportation equipment, the full cost of transportation shall be paid by the board for all pupils living beyond the statutory walking distance from the school designated for attendance.

8. Transportation service may be suspended upon any day or days, due to inclemency of the weather, conditions of roads, or the existence of other conditions, by the board of the school district operating the buses, when in their judgment it is deemed advisable and when the school or schools are closed to all children.

9. Distance to school or to a bus route shall in all cases be measured on the public highway only and over the most passable and safest route as determined by the area education agency board, starting in the roadway opposite the private entrance to the residence of the pupil and ending in the roadway opposite the entrance to the school grounds or designated point on bus route.

10. The board in any district providing transportation for nonresident pupils shall collect the pro rata cost of transportation from the district of pupil's residence for all properly designated pupils so transported.

11. Boards in districts operating buses may transport nonresident pupils who attend public school, kindergarten through junior college, who are not entitled to free transportation provided they collect the pro rata cost of transportation from the parents.

12. The pro rata cost of transportation shall be based upon the actual cost for all the children transported in all school buses. It shall include one-seventh of the original net cost of the bus and

other items as determined and approved by the director of the department of education but no part of the capital outlay cost for school buses and transportation equipment for which the school district is reimbursed from state funds or that portion of the cost of the operation of a school bus used in transporting pupils to and from extra-curricular activities shall be included in determining the pro rata cost. In a district where, because of unusual conditions, the cost of transportation is in excess of the actual operating cost of the bus route used to furnish transportation to nonresident pupils, the board of the local district may charge a cost equal to the cost of other schools supplying such service to that area, upon receiving approval of the director of the department of education.

13. When a local board fails to pay transportation costs due to another school for transportation service rendered, the board of the creditor corporation shall file a sworn statement with the area education agency board specifying the amount due. The agency board shall check such claim and if the claim is valid shall certify to the county auditor. The auditor shall transmit to the county treasurer an order directing the county treasurer to transfer the amount of such claim from the funds of the debtor corporation to the creditor corporation and the treasurer shall pay the same accordingly.

14. Resident pupils attending a nonpublic school located either within or without the school district of the pupil's residence shall be entitled to transportation on the same basis as provided for resident public school pupils under this section. The public school district providing transportation to a nonpublic school pupil shall determine the days on which bus service is provided, which shall be based upon the days for which bus service is provided to public school pupils, and the public school district shall determine bus schedules and routes. In the case of nonpublic school pupils the term "*school designated for attendance*" means the nonpublic school which is designated for attendance by the parents of the nonpublic school pupil.

15. If the nonpublic school designated for attendance is located within the public school district in which the pupil is a resident, the pupil shall be transported to the nonpublic school designated for attendance as provided in this section.

16. *a.* If the nonpublic school designated for attendance of a pupil is located outside the boundary line of the school district of the pupil's residence, the pupil may be transported by the district of residence to a public school or other location within the district of the pupil's residence. A public school district in which a nonpublic school is located may establish school bus collection locations within its district from which nonresident nonpublic school pupils may be transported to and from a nonpublic school located in the district. If a pupil receives such transportation, the district of the pupil's residence shall be relieved of any re-

quirement to provide transportation.

b. As an alternative to paragraph “a” of this subsection, subject to section 285.9, subsection 3, where practicable, and at the option of the public school district in which a nonpublic school pupil resides, the school district may transport a nonpublic school pupil to a nonpublic school located outside the boundary lines of the public school district if the nonpublic school is located in a school district contiguous to the school district which is transporting the nonpublic school pupils, or may contract with the contiguous public school district in which a nonpublic school is located for the contiguous school district to transport the nonpublic school pupils to the nonpublic school of attendance within the boundary lines of the contiguous school district.

c. If the nonpublic school designated for attendance of a pupil is located outside the boundary line of the school district of the pupil’s residence and the district of residence meets the requirements of subsections 14 to 16 of this section by using subsection 17, paragraph “c”, of this section and the district in which the nonpublic school is located is contiguous to the district of the pupil’s residence and is willing to provide transportation under subsection 17, paragraph “a” or “b”, of this section, the district in which the nonpublic school is located may provide transportation services, subject to section 285.9, subsection 3, and may make the claim for reimbursement under section 285.2. The district in which the nonpublic school is located shall notify the district of the pupil’s residence that it is making the claim for reimbursement, and the district of the pupil’s residence shall be relieved of the requirement for providing transportation and shall not make a claim for reimbursement for those nonpublic school pupils for which a claim is filed by the district in which the nonpublic school is located.

17. The public school district may meet the requirements of subsections 14 to 16 by any of the following:

a. Transportation in a school bus operated by a public school district.

b. Contracting with private parties as provided in section 285.5. However, contracts shall not provide payment in excess of the average per pupil

transportation costs of the school district for that year.

c. Utilizing the transportation reimbursement provision of subsection 3.

d. Contracting with a contiguous public school district to transport resident nonpublic school pupils the entire distance from the nonpublic pupil’s residence to the nonpublic school located in the contiguous public school district or from the boundary line of the public school district to the nonpublic school.

18. The director of the department of education may review all transportation arrangements to see that they meet all legal and established uniform standard requirements.

19. Transportation authorized by this chapter is exempt from all laws of this state regulating common carriers.

20. Transportation for which the pro rata cost or other charge is collected shall not be provided outside the state of Iowa except in accordance with rules adopted by the department of education in accordance with chapter 17A. The rules shall take into account any applicable federal requirements.

21. Boards in districts operating buses may in their discretion transport senior citizens, children, persons with disabilities, and other persons and groups, who are not otherwise entitled to free transportation, and shall collect the pro rata cost of transportation. Transportation under this subsection shall not be provided when the school bus is being used to transport pupils to or from school unless the board determines that such transportation is desirable and will not interfere with or delay the transportation of pupils.

22. Notwithstanding subsection 1, paragraph “a”, a parent or guardian of an elementary pupil entitled to transportation pursuant to subsection 1, may request that a child care facility be designated for purposes of subsection 9 rather than the residence of the pupil. The request shall be submitted for a period of time of at least one semester and may not be submitted more than twice during a school year.

2007 Acts, ch 148, §9  
Open enrollment provisions require parent or guardian to pay cost of transporting pupil to receiving district’s regular school bus route; §282.18 Subsection 1, paragraph c amended

## CHAPTER 297

### SCHOOLHOUSES AND SCHOOLHOUSE SITES

#### 297.14 Barbed wire.

No school attendance center fence shall be constructed of barbed wire, nor shall any barbed wire fence be placed within ten feet of any school attendance center. Any person violating the provisions

of this section shall be guilty of a simple misdemeanor.

2007 Acts, ch 126, §51  
Section amended

## CHAPTER 299

### COMPULSORY EDUCATION

#### 299.4 Reports as to private instruction.

The parent, guardian, or legal custodian of a child who is of compulsory attendance age, who places the child under competent private instruction under either section 299A.2 or 299A.3, not in an accredited school or a home school assistance program operated by a public or accredited non-public school, shall furnish a report in duplicate on forms provided by the public school district, to the district by the earliest starting date specified in section 279.10, subsection 1. The secretary shall retain and file one copy and forward the other copy to the district's area education agency. The report shall state the name and age of the child, the period of time during which the child has been or will

be under competent private instruction for the year, an outline of the course of study, texts used, and the name and address of the instructor. The parent, guardian, or legal custodian of a child, who is placing the child under competent private instruction for the first time, shall also provide the district with evidence that the child has had the immunizations required under section 139A.8, and, if the child is elementary school age, a blood lead test in accordance with section 135.105D. The term "*outline of course of study*" shall include subjects covered, lesson plans, and time spent on the areas of study.

2007 Acts, ch 79, §4  
Section amended

## CHAPTER 299A

### PRIVATE INSTRUCTION

#### 299A.8 Dual enrollment.

If a parent, guardian, or legal custodian of a child who is receiving competent private instruction under this chapter or a child over compulsory age who is receiving private instruction submits a request, the child shall also be registered in a public school for dual enrollment purposes. If the child is enrolled in a public school district for dual enrollment purposes, the child shall be permitted to participate in any academic activities in the district and shall also be permitted to participate on the same basis as public school children in any extracurricular activities available to children in the child's grade or group, and the parent, guardian,

or legal custodian shall not be required to pay the costs of any annual evaluation under this chapter. If the child is enrolled for dual enrollment purposes, the child shall be included in the public school's basic enrollment under section 257.6. A pupil who is participating only in extracurricular activities shall be counted under section 257.6, subsection 1, paragraph "a", subparagraph (6). A pupil enrolled in grades nine through twelve under this section shall be counted in the same manner as a shared-time pupil under section 257.6, subsection 1, paragraph "a", subparagraph (3).

2007 Acts, ch 22, §67  
Section amended

## CHAPTER 303

### DEPARTMENT OF CULTURAL AFFAIRS

#### 303.1 Department of cultural affairs.

1. The department of cultural affairs is created. The department is under the control of a director who shall be appointed by the governor, subject to confirmation by the senate, and shall serve at the pleasure of the governor. The salary of the director shall be set by the governor within a range set by the general assembly.

2. The department has primary responsibility for development of the state's interest in the areas of the arts, history, and other cultural matters. In fulfilling this responsibility, the department will be advised and assisted by the state historical soci-

ety and its board of trustees, and the Iowa arts council.

The department shall:

a. Develop a comprehensive, co-ordinated, and efficient policy to preserve, research, interpret, and promote to the public an awareness and understanding of local, state, and regional history.

b. Stimulate and encourage throughout the state the study and presentation of the performing and fine arts and public interest and participation in them.

c. Implement tourism-related art and history projects as directed by the general assembly.

*d.* Design a comprehensive, statewide, long-range plan with the assistance of the Iowa arts council to develop the arts in Iowa. The department is designated as the state agency for carrying out the plan.

*e.* Encourage the use of volunteers throughout its divisions, especially for purposes of restoring books and manuscripts.

3. The department shall consist of the following:

*a.* Historical division.

*b.* Arts division.

*c.* Other divisions created by rule.

*d.* Administrative section.

4. The director may create, combine, eliminate, alter or reorganize the organization of the department by rule.

5. The department by rule may establish advisory groups necessary for the receipt of federal funds or grants or the administration of any of the department's programs.

6. The divisions shall be administered by administrators who shall be appointed by the director and serve at the director's pleasure. The administrators shall:

*a.* Organize the activities of the division.

*b.* Submit a biennial report to the governor on the activities and an evaluation of the division and its programs and policies.

*c.* Control all property of the division.

*d.* Perform other duties imposed by law.

7. The department may develop and implement fee-based educational programming opportunities, including preschool programs, related to arts, history, and other cultural matters for Iowans of all ages.

2007 Acts, ch 215, §104  
Confirmation, see §2.32  
NEW subsection 7

### **303.3C Iowa great places program.**

1. *a.* The department of cultural affairs shall establish and administer an Iowa great places program for purposes of combining resources of state government in an effort to showcase the unique and authentic qualities of communities, regions, neighborhoods, and districts that make such places exceptional places to work and live. The department of cultural affairs shall provide administrative assistance to the Iowa great places board. The department of cultural affairs shall coordinate the efforts of the Iowa great places board with the efforts of state agencies participating in the program which shall include, but not be limited to, the department of economic development, the Iowa finance authority, the department of human rights, the department of natural resources, the state department of transportation, and the department of workforce development.

*b.* The program shall combine resources from state government to capitalize on all of the following aspects of the chosen Iowa great places:

(1) Arts and culture.

(2) Historic fabric.

(3) Architecture.

(4) Natural environment.

(5) Housing options.

(6) Amenities.

(7) Entrepreneurial incentive for business development.

(8) Diversity.

*c.* Initially, three Iowa great places projects shall be identified by the Iowa great places board. The board may identify additional Iowa great places for participation under the program when places develop dimensions and meet readiness criteria for participation under the program.

*d.* The department of cultural affairs shall work in cooperation with the vision Iowa and community attraction and tourism programs for purposes of maximizing and leveraging moneys appropriated to identified Iowa great places.

*e.* As a condition of receiving state funds, an identified Iowa great place shall present information to the board concerning the proposed activities and total financial needs of the project.

*f.* The department of cultural affairs shall account for any funds appropriated from the endowment for Iowa's health restricted capitals fund for an identified Iowa great place.

2. *a.* The Iowa great places board is established consisting of twelve members. The board shall be located for administrative purposes within the department of cultural affairs and the director shall provide office space, staff assistance, and necessary supplies and equipment for the board. The director shall budget moneys to pay the compensation and expenses of the board. In performing its functions, the board is performing a public function on behalf of the state and is a public instrumentality of the state.

*b.* The members of the board shall be appointed by the governor, subject to confirmation by the senate. At least one member shall be less than thirty years old on the date the member is appointed by the governor. The board shall include representatives of cities and counties, local government officials, cultural leaders, housing developers, business owners, and parks officials.

*c.* The chairperson and vice chairperson shall be elected by the board members from the membership of the board. In the case of the absence or disability of the chairperson and vice chairperson, the members of the board shall elect a temporary chairperson by a majority vote of those members who are present and voting, provided a quorum is present.

*d.* Members of the board shall be appointed to three-year staggered terms and the terms shall commence and end as provided in section 69.19. If a vacancy occurs, a successor shall be appointed in the same manner and subject to the same qualifications as the original appointment to serve the

unexpired term.

*e.* A majority of the members of the board constitutes a quorum.

*f.* A member of the board shall abstain from voting on the provision of financial assistance to a project which is located in the county in which the member of the board resides.

*g.* The members of the board are entitled to receive reimbursement for actual expenses incurred while engaged in the performance of official duties. A board member may also be eligible to receive compensation as provided in section 7E.6.

3. The board shall do all of the following:

*a.* Organize.

*b.* Identify Iowa great places for purposes of receiving a package of resources under the program.

*c.* Identify a combination of state resources

which can be provided to Iowa great places.

4. Notwithstanding any restriction, requirement, or duty to the contrary, in considering an application for a grant, loan, or other financial or technical assistance for a project identified in an Iowa great places agreement developed pursuant to this section, a state agency shall give additional consideration or additional points in the application of rating or evaluation criteria to such applications. This subsection applies to applications filed within three years of the Iowa great places board's identification of the project for participation in the program.

2007 Acts, ch 43, §1, 2

Confirmation, see §2.32

Endowment for Iowa's health account, §12E.12

Community attraction and tourism program, §15F.202

Vision Iowa program, §15F.302

Subsection 1, paragraph c amended

NEW subsection 4

## CHAPTER 303A

### IOWA CULTURAL TRUST

#### **303A.7 Iowa cultural trust grant account.**

1. An Iowa cultural trust grant account is created in the office of the treasurer of state under the control of the board to receive interest attributable to the investment of trust fund moneys as required by section 303A.4, subsection 4. The moneys in the grant account are appropriated to the board for purposes of the Iowa cultural trust created in section 303A.4. Moneys in the grant account shall not be subject to appropriation for any other purpose by the general assembly, but shall be used only for the purposes of the Iowa cultural trust. The treasurer of state shall act as custodian of the grant account and disburse moneys contained in the grant account as directed by the board. The board shall make expenditures from the grant account consis-

tent with the purposes of the Iowa cultural trust.

2. Moneys in the grant account are not subject to section 8.33. Notwithstanding section 12C.7, subsection 2, interest or earnings on moneys in the grant account shall be credited to the grant account.

3. At any time when the principal balance in the trust fund equals or exceeds three million dollars, the board may use moneys in the grant account for a statewide educational program to promote participation in, expanded support of, and local endowment building for, Iowa nonprofit arts, history, and sciences and humanities organizations.

2007 Acts, ch 73, §1

Subsection 3 amended

## CHAPTER 306C

### JUNKYARD BEAUTIFICATION AND BILLBOARD CONTROL

#### **306C.11 Advertising prohibited.**

Subject to the provisions made in section 306C.13 regarding control of bonus interstate highways and section 306D.4 regarding scenic highways or byways, an advertising device shall not be erected or maintained within any adjacent area, or on the right-of-way of any primary highway, except the following:

1. Advertising devices concerning the sale or lease of property upon which they are located.

2. Advertising devices concerning activities conducted on the property on which they are locat-

ed, nor shall the property upon which they are located be construed to mean located upon any contiguous area having inconsistent use, size, shape, or ownership. However, businesses located within the limits of a commercial or industrial development may be advertised on a sign located anywhere within the development regardless of land ownership.

3. *a.* Advertising devices within the adjacent area located in commercial or industrial zones or in unzoned commercial or industrial areas in compliance with the regulatory standards of this divi-

sion and rules promulgated by the department.

b. The rules shall be consistent with national standards promulgated pursuant to 23 U.S.C. § 131 and shall include at least the following:

(1) Provision for a fee schedule to cover the direct and indirect costs related to issuing permits and control of outdoor advertising.

(2) Specific permit requirements.

(3) Criteria for on-premise signs.

(4) Provisions specifying the measurement of required spacing.

(5) Provisions specifying conforming sign configurations.

4. Official and directional signs and notices which shall include, but not be limited to, signs and notices pertaining to natural wonders, scenic and historic attractions, and recreational attractions. The signs and notices shall conform with rules promulgated by the department, provided that such rules shall be consistent with national standards promulgated pursuant to 23 U.S.C. § 131(c).

5. Signs, displays, and devices giving specific information of interest to the traveling public, shall be erected by the department and maintained within the right-of-way in the areas, and at appropriate distances from interchanges on the interstate system and freeway primary highways as shall conform with the rules adopted by the department. The rules shall be consistent with national standards promulgated from time to time or as permitted by the appropriate authority of the federal government pursuant to 23 U.S.C. § 131(f) except as provided in this section. The rules shall include but are not limited to the following:

a. Criteria for eligibility for signing.

b. Criteria for limiting or excluding businesses that maintain advertising devices that do not conform to the requirements of chapter 306B, this division, or other statutes or administrative rules regulating outdoor advertising.

c. Provisions for a fee schedule to cover the direct and indirect costs of sign erection and maintenance and related administrative costs.

d. Provisions for specifying the maximum distance to eligible businesses.

e. Provisions specifying the maximum number of signs permitted per panel and per interchange.

f. Provisions for determining what businesses are signed when there are more applicants than the maximum number of signs permitted.

g. Provisions for removing signs when businesses cease to meet minimum requirements for participation and related costs.

For purposes of this division, “*specific information of interest to the traveling public*” means only information about public places for camping, lodging, eating, and motor fuel and associated services, including trade names which have telephone facilities available when the public place is open for business and businesses engaged in selling motor fuel which have free air for tire inflation and restroom facilities available when the public place is open for business.

Business signs supplied to the department by commercial vendors shall be on panels, with dimensional and material specifications established by the department. A business sign included under the provisions of this section shall not be posted unless it is in compliance with these specifications. The commercial vendor shall pay to the department a fee based upon the schedule adopted under this subsection for each business sign supplied for posting. Upon furnishing the business signs to the department and payment of all fees, the department shall post the business signs on eligible specific information panels. Faded signs shall be replaced and the commercial vendor charged for the cost of replacement based upon the fee schedule adopted. There is created in the office of the treasurer of state a fund to be known as the “highway beautification fund” and all funds received for the posting on specific information panels shall be deposited in the “highway beautification fund”. Information on motor fuel and associated services may include vehicle service and repair where the same is available.

6. The publication title of a newspaper on a delivery receptacle attached to a mailbox or mailbox support.

2007 Acts, ch 143, §1  
Subsection 2 amended

## CHAPTER 307

### DEPARTMENT OF TRANSPORTATION (DOT)

#### 307.21 Administrative services.

The department’s administrator of administrative services shall:

1. Provide for the proper maintenance and protection of the grounds, buildings, and equipment of the department, in cooperation with the department of administrative services.

2. Establish, supervise, and maintain a system of centralized electronic data processing for the department, in cooperation with the department of administrative services.

3. Assist the director in preparing the departmental budget.

4. a. Provide centralized purchasing services

for the department, in cooperation with the department of administrative services. The administrator shall, when the price is reasonably competitive and the quality as intended, purchase soybean-based inks and plastic products with recycled content, including but not limited to plastic garbage can liners, and shall purchase these items in accordance with the schedule established in section 8A.315. However, the administrator need not purchase garbage can liners in accordance with the schedule if the liners are utilized by a facility approved by the environmental protection commission created under section 455A.6, for purposes of recycling. For purposes of this subsection, “*recycled content*” means that the content of the product contains a minimum of thirty percent postconsumer material.

b. The administrator shall do all of the following:

(1) Purchase and use recycled printing and writing paper in accordance with the schedule established in section 8A.315.

(2) Establish a wastepaper recycling program in accordance with recommendations made by the department of natural resources and the requirements of section 8A.329.

(3) Require in accordance with section 8A.311 product content statements and compliance with requirements regarding procurement specifications.

(4) Comply with the requirements for the purchase of lubricating oils, industrial oils, greases, and hydraulic fluids as established pursuant to section 8A.316.

c. The department shall report to the general assembly by February 1 of each year, the following:

(1) A listing of plastic products which are regularly purchased by the board for which recycled content product alternatives are available, including the cost of the plastic products purchased and the cost of the recycled content product alternatives.

(2) Information relating to soybean-based inks and plastic garbage can liners with recycled content regularly purchased by the department, including the cost of purchasing soybean-based inks and plastic garbage can liners with recycled content and the percentages of soybean-based inks and plastic garbage can liners with recycled content that have been purchased.

d. A motor vehicle purchased by the administrator shall not operate on gasoline other than ethanol blended gasoline as defined in section 214A.1. A state-issued credit card used to purchase gasoline shall not be valid to purchase gasoline other than ethanol blended gasoline. The motor vehicle shall also be affixed with a brightly visible sticker which notifies the traveling public that the motor vehicle is being operated on ethanol blended gasoline. However, the sticker is not re-

quired to be affixed to an unmarked vehicle used for purposes of providing law enforcement or security.

5. a. Of all new passenger vehicles and light pickup trucks purchased by the administrator, a minimum of ten percent of all such vehicles and trucks purchased shall be equipped with engines which utilize alternative methods of propulsion, including but not limited to any of the following:

(1) A flexible fuel which is any of the following:

(a) E-85 gasoline as provided in section 214A.2.

(b) B-20 biodiesel blended fuel as provided in section 214A.2.

(c) A renewable fuel approved by the office of renewable fuels and coproducts pursuant to section 159A.3.

(2) Compressed or liquefied natural gas.

(3) Propane gas.

(4) Solar energy.

(5) Electricity.

b. The provisions of this subsection do not apply to vehicles and trucks purchased and directly used for law enforcement or off-road maintenance work.

6. The administrator shall, whenever technically feasible, purchase and use degradable loose foam packing material manufactured from grain starches or other renewable resources, unless the cost of the packing material is more than ten percent greater than the cost of packing material made from nonrenewable resources. For the purposes of this subsection, “*packing material*” means material, other than an exterior packing shell, that is used to stabilize, protect, cushion, or brace the contents of a package.

7. Assist the director in employing the professional, technical, clerical and secretarial staff for the department and maintain employee records, in cooperation with the department of administrative services and provide personnel services, including but not limited to training, safety education and employee counseling.

8. Assist the director in coordinating the responsibilities and duties of the various divisions within the department.

9. Carry out all other general administrative duties for the department.

10. Perform such other duties and responsibilities as may be assigned by the director.

The administrator of administrative services may purchase items from the department of administrative services and may cooperate with the director of the department of administrative services by providing purchasing services for the department of administrative services.

2007 Acts, ch 22, §68

Subsection 5, unnumbered paragraph 1 editorially designated as paragraph a

Subsection 5, former paragraph a, unnumbered paragraph 1 amended and editorially redesignated as subparagraph (1) of paragraph a

Subsection 5, former subparagraphs (1) – (3) of paragraph a editorially redesignated as subparagraph subdivisions (a) – (c) of paragraph a, sub-

paragraph (1)

Subsection 5, former paragraphs b – e editorially redesignated as subparagraphs (2) – (5) of paragraph a

Subsection 5, former unnumbered paragraph 2 editorially designated as paragraph b

**307.31 Periodic review of revenues — evaluation of alternative funding sources.**

1. The department shall periodically review the current revenue levels of the road use tax fund and the sufficiency of those revenues for the projected construction and maintenance needs of city, county, and state governments in the future. The department shall submit a written report to the general assembly regarding its findings by De-

ember 31 every five years, beginning in 2011. The report may include recommendations concerning funding levels needed to support the future mobility and accessibility for users of Iowa’s public road system.

2. The department shall evaluate alternative funding sources for road maintenance and construction and report to the general assembly at least every five years on the advantages and disadvantages and the viability of alternative funding mechanisms. The department’s evaluation of alternative funding sources may be included in the report submitted to the general assembly under subsection 1.

2007 Acts, ch 200, §5  
NEW section

**CHAPTER 309**

**SECONDARY ROADS**

**309.17 Engineer — term.**

The board of supervisors shall employ one or more licensed civil engineers who shall be known as county engineers. The board shall fix their term of employment which shall not exceed three years,

but the tenure of office may be terminated at any time by the board.

2007 Acts, ch 126, §52  
Section amended

**CHAPTER 312**

**ROAD USE TAX FUND**

**312.2 Allocations from fund.**

The treasurer of the state shall, on the first day of each month, credit all road use tax funds which have been received by the treasurer, to the primary road fund, the secondary road fund of the counties, the farm-to-market road fund, and the street construction fund of cities in the following manner and amounts:

1. To the primary road fund, forty-seven and one-half percent.
2. To the secondary road fund of the counties, twenty-four and one-half percent.
3. To the farm-to-market road fund, eight percent.
4. To the street construction fund of the cities, twenty percent.

5. The treasurer of state shall before making the above allotments credit annually to the highway grade crossing safety fund the sum of seven hundred thousand dollars, credit annually from the road use tax fund the sum of nine hundred thousand dollars to the highway railroad grade crossing surface repair fund, credit monthly to the primary road fund the dollars yielded from an allotment of sixty-five hundredths of one percent of all road use tax funds for the express purpose of carrying out subsection 11 of section 307A.2, sec-

tion 313.4, subsection 2, and section 307.45, and credit annually to the primary road fund the sum of five hundred thousand dollars to be used for paying expenses incurred by the state department of transportation other than expenses incurred for extensions of primary roads in cities. All unobligated funds provided by this subsection, except those funds credited to the highway grade crossing safety fund, shall at the end of each year revert to the road use tax fund. Funds in the highway grade crossing safety fund shall not revert to the road use tax fund except to the extent they exceed five hundred thousand dollars at the end of any bien-nium. The cost of each highway railroad grade crossing repair project shall be allocated in the following manner:

- a. Twenty percent of the project cost shall be paid by the railroad company.
- b. Twenty percent of the project cost shall be paid by the highway authority having jurisdiction of the road crossing the railroad.
- c. Sixty percent of the project cost shall be paid from the highway railroad grade crossing surface repair fund.

6. The treasurer of state shall before making the allotments provided for in this section credit monthly to the state department of transportation



funds sufficient in amount to pay the costs of purchasing certificate of title and registration forms, and supplies and materials and for the cost of prison labor used in manufacturing motor vehicle registration plates, decalcomania emblems, and validation stickers at the prison industries.

7. The treasurer of state, before making the allotments provided in this section, shall credit annually to the primary road fund from the road use tax fund the sum of seven million one hundred thousand dollars.

8. The treasurer of state, before making any allotments to counties under this section, shall reduce the allotment to a county for the secondary road fund by the amount by which the total funds that the county transferred or provided during the prior fiscal year under section 331.429, subsection 1, paragraphs "a", "b", "d", and "e", are less than seventy-five percent of the sum of the following:

a. From the general fund of the county, the dollar equivalent of a tax of sixteen and seven-eighths cents per thousand dollars of assessed value on all taxable property in the county.

b. From the rural services fund of the county, the dollar equivalent of a tax of three dollars and three-eighths of a cent per thousand dollars of assessed value on all taxable property not located within the corporate limits of a city in the county.

Funds remaining in the secondary road fund of the counties due to a reduction of allocations to counties for failure to maintain a minimum local tax effort shall be reallocated to counties that are not reduced under this subsection pursuant to the allocation provisions of section 312.3, subsection 1, based upon the needs and area of the county. Information necessary to make allocations under this subsection shall be provided by the state department of transportation or the director of the department of management upon request by the treasurer of state.

9. The treasurer of state, before making the allotments provided for in this section, shall credit annually to the living roadway trust fund created under section 314.21 one hundred fifty thousand dollars from the road use tax fund.

10. The treasurer of state, before making the other allotments provided for in this section, shall credit annually to the primary road fund from the road use tax fund the sum of four million four hundred thousand dollars and to the farm-to-market road fund from the road use tax fund the sum of one million five hundred thousand dollars for partial compensation of allowing trucks to operate on the roads of this state as provided in section 321.463.

11. The treasurer of state, before making the allotments provided for in this section, shall credit annually to the living roadway trust fund created under section 314.21 one hundred thousand dollars from the road use tax fund.

12. The treasurer of state, before making the allotments provided for in this section, shall credit

monthly from the road use tax fund to the revitalize Iowa's sound economy fund, created under section 315.2, the revenue accruing to the road use tax fund in the amount equal to the revenues collected under each of the following:

a. From the excise tax on motor fuel and special fuel imposed under the tax rate of section 452A.3 except aviation gasoline, the amount of excise tax collected from one and three-fourths cents per gallon.

b. From the excise tax on special fuel for diesel engines, the amount of excise tax collected from one and three-fourths cents per gallon.

13. The treasurer of state, before making the allotments provided for in this section, shall credit monthly from the road use tax fund to the secondary road fund the revenue accruing to the road use tax fund in the amount equal to the revenues collected under each of the following:

a. From the excise tax on motor fuel and special fuel imposed under the tax rate of section 452A.3, except aviation gasoline, the amount of excise tax collected from one-fourth cent per gallon.

b. From the excise tax on special fuel for diesel engines, the amount of excise tax collected from one-fourth cent per gallon.

14. The treasurer of state, before making the allotments provided for in this section, shall credit monthly from the road use tax fund to the state department of transportation from revenue credited to the road use tax fund under section 423.43, subsection 1, paragraph "b", an amount equal to one-twentieth of eighty percent of the revenue from the operation of section 423.26, to be used for purposes of public transit assistance under chapter 324A.

15. The treasurer of state, before making the allotments provided for in this section, shall credit monthly from the road use tax fund to the state department of transportation for county, city and state traffic safety improvement projects an amount equal to one-half of one percent of moneys credited to the road use tax fund.

16. The treasurer of state, before making the allotments provided for in this section, shall credit monthly from the road use tax fund to the motorcycle rider education fund established in section 321.180B, an amount equal to one dollar per year of license validity for each issued or renewed driver's license which is valid for the operation of a motorcycle. Moneys credited to the motorcycle rider education fund under this subsection shall be taken from moneys credited to the road use tax fund under section 423.43.

17. a. The treasurer of state, before making the allotments provided for in this section, for the fiscal year beginning July 1, 1990, and each succeeding fiscal year, shall credit from the road use tax fund two million dollars to the county bridge construction fund, which is hereby created. Moneys credited to the county bridge construction fund

shall be allocated to counties by the department for bridge construction, reconstruction, replacement, or realignment based on needs in accordance with rules adopted by the department.

b. The treasurer of state, before making the allotments provided for in this section, for the fiscal year beginning July 1, 1990, and each succeeding fiscal year, shall credit from the road use tax fund five hundred thousand dollars to the city bridge construction fund, which is hereby created. Moneys credited to the city bridge construction fund shall be allocated to cities by the department for bridge construction and reconstruction based on needs in accordance with rules adopted by the department.

18. The treasurer of state, before making the

allotments provided for in this section, shall credit annually from the road use tax fund to the state department of transportation the sum of six hundred fifty thousand dollars for the purpose of providing county treasurers with automation and telecommunications equipment and support for vehicle registration and titling and driver licensing. Notwithstanding section 8.33, unobligated funds credited under this subsection remaining on June 30 of the fiscal year shall not revert but shall remain available for expenditure for purposes of this subsection in subsequent fiscal years.

2007 Acts, ch 200, §6  
 Legislative intent that moneys directed to be deposited in road use tax fund under §312.1 not be used for loans, grants, or other financial assistance for passenger rail service; 2000 Acts, ch 1168, §4  
 Subsections 12 and 13 amended

## CHAPTER 312A

### TIME-21 FUND

Chapter to be repealed June 30, 2028; see §312A.4

#### 312A.1 Definitions.

As used in this chapter, unless the context otherwise requires:

1. “*Department*” means the state department of transportation.
2. “*Fund*”, or “*TIME-21 fund*”, means the transportation investment moves the economy in the twenty-first century fund.

2007 Acts, ch 200, §1  
 NEW section

#### 312A.2 Transportation investment moves the economy in the twenty-first century (TIME-21) fund.

A transportation investment moves the economy in the twenty-first century fund is created in the state treasury under the control of the department. The fund shall be known and referred to as the TIME-21 fund. The fund shall consist of any moneys appropriated by the general assembly and any revenues credited by law to the TIME-21 fund. Moneys in the fund are not subject to section 8.33. Notwithstanding section 12C.7, subsection 2, interest or earnings on moneys deposited in the fund shall be credited to the fund.

2007 Acts, ch 200, §2  
 Committee to address revenue needs of fund; report to general assembly;  
 2007 Acts, ch 200, §8  
 NEW section

#### 312A.3 Allocation and use of funds.

Moneys in the TIME-21 fund shall be credited and used as follows:

1. Sixty percent for deposit in the primary road fund to be used exclusively for highway maintenance and construction, including purchase of right-of-way but not including project planning

and design. The following projects are eligible for funding under this subsection and shall have funding priority in the order listed:

a. Completion of projects on highways designated as access Iowa highways pursuant to 2005 Iowa Acts, ch. 178, section 41.

b. Projects on highways in the commercial and industrial highway network that are included in the department’s five-year plan, or in the long-range plan, for the primary road system. Priority shall be given to projects in areas of the state that have existing biodiesel, ethanol, or other biorefinery plants.

c. Projects on interstate highways.

2. Twenty percent for deposit in the secondary road fund, for apportionment according to the methodology adopted pursuant to section 312.3C, to be used by counties for construction and maintenance projects on secondary road bridges and on highways in the farm-to-market road system. At least ten percent of the moneys allocated to a county under this subsection shall be used for bridge construction, repair, and maintenance, with priority given to projects that aid and support economic development and job creation.

3. Twenty percent for deposit in the street construction fund of the cities, apportioned on the basis of population in the manner provided in section 312.3, to be used to sustain and improve the municipal street system.

2007 Acts, ch 200, §3  
 NEW section

#### 312A.4 Future repeal.

This chapter is repealed June 30, 2028.

2007 Acts, ch 200, §4  
 NEW section

## CHAPTER 314

## ADMINISTRATIVE PROVISIONS FOR HIGHWAYS

**314.1B Bid threshold subcommittees — adjustments — notice.**1. *Horizontal infrastructure.*

a. The director of the department shall appoint, from the members of the appropriate advisory committee established under section 314.1A, a horizontal infrastructure bid threshold subcommittee for highway, bridge, or culvert projects. The subcommittee shall consist of seven members, three of whom shall be representatives of cities and counties, three of whom shall be representatives of private sector contractor organizations, and with the remaining member being the director or the director's designee, who shall serve as chairperson of the subcommittee. A vacancy in the membership of the subcommittee shall be filled by the director.

b. The subcommittee shall review the competitive bid thresholds applicable to city and county highway, bridge, and culvert projects. The subcommittee shall review price adjustments for all types of city and county highway, bridge, and culvert construction, reconstruction, and improvement projects, based on changes in the construction price index from the preceding year. Upon completion of the review the subcommittee may make adjustments in the applicable bid thresholds for types of work based on the price adjustments.

c. A bid threshold, under this subsection, shall not be adjusted to an amount that is less than the bid threshold applicable to a city or county on July 1, 2006, as provided in section 73A.18, 309.40, 310.14, or 314.1. An adjusted bid threshold shall take effect as provided in subsection 3, and shall remain in effect until a new adjusted bid threshold is established and becomes effective as provided in this section.

2. *Vertical infrastructure.*

a. The director of the department shall appoint, from the members of the appropriate advisory committee established under section 314.1A, a vertical infrastructure bid threshold subcommittee for public improvements as defined in section 26.2. The subcommittee shall consist of seven members, three of whom shall be representatives of governmental entities as defined in section 26.2, three of whom shall be representatives of private sector vertical infrastructure contractor organizations, and with the remaining member being the director or the director's designee, who shall serve

as chairperson of the subcommittee. A vacancy in the membership of the subcommittee shall be filled by the director.

b. The subcommittee appointed under this subsection shall review the competitive bid thresholds applicable to governmental entities under chapter 26. The subcommittee shall review price adjustments for all types of construction, reconstruction, and public improvement projects based on the changes in the construction price index, building cost index, and material cost index from the preceding adjustment. Upon completion of the review the subcommittee may make adjustments in the applicable bid thresholds for types of work based on the price adjustments.

c. The subcommittee shall not make an initial adjustment to the competitive bid threshold in section 26.3 to be effective prior to January 1, 2012. Thereafter, the subcommittee shall adjust the bid threshold amount in accordance with subsection 3 but shall not adjust the bid threshold to an amount less than the bid threshold applicable to a governmental entity on January 1, 2007.

d. Beginning July 1, 2006, the subcommittee shall make adjustments to the competitive quotation threshold amounts in section 26.14 for vertical infrastructure in accordance with the methodology of paragraph "b".

e. After 2012, the subcommittee shall adjust the competitive quotation threshold amounts in section 26.14 at the same time and by the same percentage as adjustments are made to the competitive bid threshold.

3. *Review — publication.* Each subcommittee shall meet to conduct the review and make the adjustments described in this section on or before August 1 of every other year, or of every year if determined necessary by the subcommittee. By September 1 of each year in which a subcommittee makes adjustments in the bid or quotation thresholds, the director shall cause an advisory notice to be published in the Iowa administrative bulletin and in a newspaper of general circulation in this state, stating the adjusted bid and quotation thresholds to be in effect on January 1 of the following year, as established by the subcommittees under this section.

2007 Acts, ch 144, §11, 12  
Subsection 2, paragraphs b and d amended  
Subsection 2, NEW paragraph e

## CHAPTER 315

### REVITALIZE IOWA'S SOUND ECONOMY FUND

#### 315.4 Allocation of fund.

1. Moneys credited to the RISE fund shall be allocated as follows:

*a.* Four-sevenths for deposit in the primary road fund for the use of the department on primary road projects as follows:

(1) Fifty percent for highways that support the production or transport of renewable fuels, including primary highways that connect biofuel facilities to highways in the commercial and industrial highway network.

(2) Fifty percent for highways that have been designated by the state transportation commission as access Iowa highways pursuant to 2005 Iowa Acts, ch. 178, section 41.

*b.* One-seventh for the use of counties on secondary road projects, including secondary roads that connect biofuel facilities to highways in the commercial and industrial highway network.

*c.* Two-sevenths for the use of cities on city street projects.

2. Commencing June 30, 1990, all uncommitted moneys in the RISE fund on June 30 of each year which are allocated under this section for the use of counties on secondary road projects shall be credited to the secondary road fund.

2007 Acts, ch 200, §7

Section amended and editorially renumbered

#### 315.6 Funding of projects.

1. Qualifying projects may be funded as follows:

*a.* Primary road and state park road projects may be financed entirely by the fund, or by combining money from the fund with money from the primary road fund, federal aid primary funds received by the state, money from cities or counties raised through the sale of general obligation bonds of the cities or counties, other city or county revenues, or money from participating private parties.

*b.* Secondary road, state park road, and county conservation parkway projects may be funded entirely by the fund or by combining money from the fund with money from the county's portion of road use tax funds, federal aid secondary funds, other county revenues, money raised through the sale of general obligation bonds of the county, or money from participating private parties.

*c.* City street and state park road projects may be funded entirely by the fund, or by combining money from the fund with money from the city's portion of road use tax funds, federal aid urban system funds, other municipal revenues, money raised through the sale of general obligation bonds of the city, or money from participating private parties.

2. A county or city may, at its option, apply moneys allocated for use on secondary road or city street projects under section 315.4, subsection 1, paragraph "b" or "c", toward qualifying primary road, state park road, and county conservation parkway projects.

Section not amended; internal reference change applied and section editorially renumbered

## CHAPTER 321

### MOTOR VEHICLES AND LAW OF THE ROAD

#### 321.16 Giving of notices.

1. When the department is authorized or required to give notice under this chapter or any other law regulating the operation of vehicles, unless a different method of giving notice is expressly prescribed, notice shall be given either by personal delivery to the person to be so notified or by personal service in the manner of original notice by rule of civil procedure 1.305(1), or by first class mail addressed to the person at the address shown in the records of the department, notwithstanding chapter 17A. The department shall adopt rules regarding the giving of notice by first class mail, the updating of addresses in department records, and the development of affidavits verifying the mailing of notices under this chapter and chapter 321J.

A person's refusal to accept or a claim of failure to receive a notice of revocation, suspension, or bar mailed by first class mail to the person's last known address shall not be a defense to a charge of driving while suspended, revoked, denied, or barred.

2. Proof of the giving of notice by personal service may be made by the certificate of any officer or employee of the department or affidavit of any person over eighteen years of age, naming the person to whom such notice was given and specifying the time, place, and manner of the giving thereof.

3. If a peace officer serves notice of immediate suspension or revocation of a driver's license as provided in this chapter or any other chapter, the peace officer may destroy the license or send the li-

cense to the department.

2007 Acts, ch 143, §7  
Unnumbered paragraphs 1 and 2 editorially designated as subsections 1 and 2  
NEW subsection 3

**321.18 Vehicles subject to registration — exception.**

Every motor vehicle, trailer, and semitrailer when driven or moved upon a highway shall be subject to the registration provisions of this chapter except:

1. Any such vehicle driven or moved upon a highway in conformance with the provisions of this chapter relating to manufacturers, transporters, dealers, or nonresidents as contemplated by section 321.53 and chapter 326, or under a temporary registration permit issued by the department as hereinafter authorized.

2. Any such vehicle which is driven or moved upon a highway only for the purpose of crossing such highway from one property to another.

3. Any implement of husbandry.

4. Any special mobile equipment as herein defined.

5. Any vehicle which is used exclusively for interplant purposes, in the operation of an industrial or manufacturing plant, consisting of a single unit comprising a group of buildings separated by streets, alleys, or railroad tracks, and which vehicle is used solely to transport materials from one part of the plant to another or from an adjacent railroad track to the plant and in so doing incidentally using said streets or alleys for not more than one thousand feet.

6. Any vehicle which is propelled by electric power obtained from overhead trolley wires, but not operated upon rails.

7. Any school bus in this state used exclusively for the transportation of pupils to and from school or a school function or for the purposes provided in section 285.1, subsection 1, and section 285.10, subsection 9, or used exclusively for the transportation of children enrolled in a federal head start program. Upon application the department shall, without charge, issue a registration certificate and shall also issue registration plates which shall have imprinted thereon the words "Private School Bus" and a distinguishing number assigned to the applicant. Such plates shall be attached to the front and rear of each bus exempt from registration under this subsection.

8. Any mobile home or manufactured home and any temporary undercarriage used solely for transporting manufactured homes, modular homes, or other portable buildings used or intended to be used for human occupancy.

9. A motor home purchased by a nonresident at a rally in this state pursuant to section 322E.2, which is driven on a highway solely for the purpose of removing the motor home from the state.

2007 Acts, ch 131, §1, 6  
For the period beginning July 1, 2007, and ending June 30, 2012, new

subsection 9 applies only to motor home manufacturers' club rallies held annually on the grounds of the county fair in Clay county; reporting of violations; 2007 Acts, ch 131, §6  
NEW subsection 9

**321.20B Proof of security against liability — driving without liability coverage.**

1. Notwithstanding chapter 321A, which requires certain persons to maintain proof of financial responsibility, a person shall not drive a motor vehicle on the highways of this state unless financial liability coverage, as defined in section 321.1, subsection 24B, is in effect for the motor vehicle and unless the driver has in the motor vehicle the proof of financial liability coverage card issued for the motor vehicle, or if the vehicle is registered in another state, other evidence that financial liability coverage is in effect for the motor vehicle.

It shall be conclusively presumed that a motor vehicle driven upon a parking lot which is available to the public without charge or which is available to customers or invitees of a business or facility without charge was driven on the highways of this state in order to enter the parking lot, and this section shall be applicable to such a motor vehicle. As used in this section, "parking lot" includes access roads, drives, lanes, aisles, entrances, and exits to and from a parking lot described in this paragraph.

This subsection does not apply to the operator of a motor vehicle owned by or leased to the United States, this state or another state, or any political subdivision of this state or of another state, or to a motor vehicle which is subject to section 325A.6 or 327B.6.

2. *a.* An insurance company transacting business in this state shall issue to its insured owners of motor vehicles registered in this state a financial liability coverage card for each motor vehicle insured. Each financial liability coverage card shall identify the registration number or vehicle identification number of the motor vehicle insured and shall indicate the expiration date of the applicable insurance coverage. The financial liability coverage card shall also contain the name and address of the insurer or the name of the insurer and the name and address of the insurance agency, the name of the insured, and an emergency telephone number of the insurer or emergency telephone number of the insurance agency.

*b.* The department shall adopt rules regarding the contents of a financial liability coverage card to be issued pursuant to this section.

(1) Notwithstanding the provisions of this section, a fleet owner who is issued a certificate of self-insurance pursuant to section 321A.34, subsection 1, is not required to maintain in each vehicle a financial liability coverage card with the individual registration number or the vehicle identification number of the vehicle included on the card. Such fleet owner shall be required to maintain a financial liability coverage card in each vehicle in the fleet including information deemed appropri-

ate by the director.

(2) An association of individual members that is issued a certificate of self-insurance pursuant to section 321A.34, subsection 2, is required to maintain in each vehicle of an individual member a financial liability coverage card that complies with the provisions of this section and in addition contains information relating to the association and the association's certificate of self-insurance as is deemed appropriate by the director.

3. If the financial liability coverage for a motor vehicle which is registered in this state is canceled or terminated effective prior to the expiration date indicated on the financial liability coverage card issued for the vehicle, the person to whom the financial liability coverage card was issued shall destroy the card.

4. *a.* If a peace officer stops a motor vehicle registered in this state and the driver is unable to provide proof of financial liability coverage, the peace officer shall do one of the following:

(1) Issue a warning memorandum to the driver.

(2) Issue a citation to the driver.

(3) Issue a citation and remove the motor vehicle's license plates and registration receipt. Upon removing the license plates and registration receipt, the peace officer shall deliver the plates for destruction, as appropriate, and forward the registration receipt and evidence of the violation, as determined by the department, to the county treasurer of the county in which the motor vehicle is registered. The motor vehicle may be driven for a time period of up to forty-eight hours after receiving the citation solely for the purpose of removing the motor vehicle from the highways of this state, unless the driver's operating privileges are otherwise suspended.

After receiving the citation, the driver shall keep the citation in the motor vehicle at all times while driving the motor vehicle as provided in this subparagraph, as proof of the driver's privilege to drive the motor vehicle for such limited time and purpose.

(4) (a) Issue a citation, remove the motor vehicle's license plates and registration receipt, and impound the motor vehicle. The peace officer shall deliver the plates for destruction, as appropriate, and forward the registration receipt and evidence of the violation, as determined by the department, to the county treasurer of the county in which the motor vehicle is registered.

(b) A motor vehicle which is impounded may be claimed by a person if the owner provides proof of financial liability coverage and proof of payment of any applicable fine and the costs of towing and storage for the motor vehicle. If the motor vehicle is not claimed within thirty days after impoundment, the motor vehicle may be treated as an abandoned vehicle pursuant to section 321.89.

(c) The holder of a security interest in a motor

vehicle which is impounded pursuant to this subparagraph shall be notified of the impoundment within seventy-two hours of the impoundment of the motor vehicle and shall have the right to claim the motor vehicle upon the payment of all fees. However, if the value of the vehicle is less than the security interest, all fees shall be divided equally between the lienholder and the political subdivision impounding the vehicle.

*b.* An owner or driver of a motor vehicle who is charged with a violation of subsection 1 and issued a citation under paragraph "a", subparagraph (3) or (4), is subject to the following:

(1) An owner or driver who produces to the clerk of court, prior to the date of the individual's court appearance as indicated on the citation, proof that financial liability coverage was in effect for the motor vehicle at the time the person was stopped and cited, or, if the driver is not the owner of the motor vehicle, proof that liability coverage was in effect for the driver with respect to the motor vehicle being driven at the time the driver was stopped and cited, in the same manner as if the motor vehicle were owned by the driver, shall be given a receipt indicating that such proof was provided and be subject to one of the following:

(a) If the person was cited pursuant to paragraph "a", subparagraph (3), the owner or driver shall provide a copy of the receipt to the county treasurer of the county in which the motor vehicle is registered and the owner shall be assessed a fifteen dollar administrative fee by the county treasurer who shall issue new license plates and registration to the person after payment of the fee.

(b) If the person was cited pursuant to paragraph "a", subparagraph (4), the owner or driver, after the owner provides proof of financial liability coverage to the clerk of court, may claim the motor vehicle after such person pays any applicable fine and the costs of towing and storage for the motor vehicle, and the owner or driver provides a copy of the receipt and the owner pays to the county treasurer of the county in which the motor vehicle is registered a fifteen dollar administrative fee, and the county treasurer shall issue new license plates and registration to the person.

(2) An owner or driver who is charged with a violation of subsection 1 and is unable to show that financial liability coverage was in effect for the motor vehicle at the time the person was stopped and cited may do either of the following:

(a) Sign an admission of violation on the citation and remit to the clerk of court a scheduled fine as provided in section 805.8A, subsection 14, paragraph "f", for a violation of subsection 1. Upon payment of the fine to the clerk of court of the county where the citation was issued, payment of a fifteen dollar administrative fee to the county treasurer of the county in which the motor vehicle is registered, and providing proof of payment of any applicable fine and proof of financial liability coverages

to the county treasurer of the county in which the motor vehicle is registered, the treasurer shall issue new license plates and registration to the owner.

(b) Request an appearance before the court on the matter. If the matter goes before the court, and the owner or driver is found guilty of a violation of subsection 1, the court may impose a fine as provided in section 805.8A, subsection 14, paragraph “f”, for a violation of subsection 1, or the court may order the person to perform unpaid community service instead of the fine. Upon the payment of the fine or the entry of the order for unpaid community service, the person shall provide proof of payment or entry of such order and the county treasurer of the county in which the motor vehicle is registered shall issue new license plates and registration to the owner upon the owner providing proof of financial liability coverage and paying a fifteen dollar administrative fee to the county treasurer.

c. An owner or driver cited for a violation of subsection 1, who produces to the clerk of court prior to the date of the person’s court appearance as indicated on the citation proof that financial liability coverage was in effect for the motor vehicle at the time the person was stopped and cited, shall not be convicted of such violation and the citation issued shall be dismissed by the court. Upon dismissal, the court or clerk of court shall assess the costs of the action against the defendant named on the citation.

5. If the motor vehicle is not registered in this state and the driver is a nonresident, the peace officer shall do one of the following:

a. Issue a warning memorandum to the driver.

b. Issue a citation. An owner or driver who produces to the clerk of court prior to the date of the person’s court appearance as indicated on the citation proof that the financial liability coverage was in effect for the motor vehicle at the time the person was stopped and cited, or if the driver is not the owner of the motor vehicle, proof that liability coverage was in effect for the driver with respect to the motor vehicle being driven at the time the driver was stopped and cited in the same manner as if the motor vehicle were owned by the driver, shall be given a receipt indicating that proof was provided, and the citation issued shall be dismissed by the court. Upon dismissal, the court or clerk of court shall assess the costs of the action against the defendant named on the citation.

6. This section does not apply to a snowmobile or all-terrain vehicle or to a motor vehicle identified in section 321.18, subsections 1 through 6, and subsection 8.

7. This section does not apply to a lienholder who has a security interest in a motor vehicle subject to the registration requirements of this chapter, so long as such lienholder maintains financial liability coverage for any motor vehicle driven or moved by the lienholder in which the lienholder

has an interest.

8. This section does not apply to a motor vehicle owned by a motor vehicle dealer or wholesaler licensed pursuant to chapter 322.

9. The director of transportation and the commissioner of insurance shall adopt rules pursuant to chapter 17A to administer this section.

2007 Acts, ch 215, §105  
Subsection 2, paragraph b amended

### **321.24 Issuance of registration and certificate of title.**

1. Upon receipt of the application for title and payment of the required fees for a motor vehicle, trailer, or semitrailer, the county treasurer or the department shall, when satisfied as to the application’s genuineness and regularity, and, in the case of a mobile home or manufactured home, that taxes are not owing under chapter 435, issue a certificate of title and, except for a mobile home or manufactured home, a registration receipt, and shall file the application, the manufacturer’s or importer’s certificate, the certificate of title, or other evidence of ownership, as prescribed by the department. The registration receipt shall be delivered to the owner and shall contain upon its face the date issued, the name and address of the owner, the registration number assigned to the vehicle, the amount of the fee paid, the amount of tax paid pursuant to section 423.26, the type of fuel used, a description of the vehicle as determined by the department, and a form for notice of transfer of the vehicle. The name and address of any lessee of the vehicle shall not be printed on the registration receipt or certificate of title. Up to three owners may be listed on the registration receipt and certificate of title.

2. The county treasurer shall maintain in the county record system information contained on the registration receipt. The information shall be accessible by registration number and shall be open for public inspection during reasonable business hours. Copies the department requires shall be sent to the department in the manner and at the time the department directs.

3. The certificate of title shall contain upon its face the identical information required upon the face of the registration receipt. In addition, the certificate of title shall contain a statement of the owner’s title, the title number assigned to the owner or owners of the vehicle, the amount of tax paid pursuant to section 423.26, the name and address of the previous owner, and a statement of all security interests and encumbrances as shown in the application, upon the vehicle described, including the nature of the security interest, date of perfection, and name and address of the secured party.

4. If the prior certificate of title is from another state and indicates that the vehicle was rebuilt, the new certificate of title and registration receipt shall contain the designation “REBUILT” printed on its face together with the name of the state issu-

ing the prior title. The designation shall be retained on the face of all subsequent certificates of title and registration receipts for the vehicle.

5. If the prior certificate of title is from another state and indicates that the vehicle was junked, an Iowa junking certificate shall be issued according to section 321.52, subsections 2 and 3. If the prior certificate of title from another state indicates that the vehicle is salvaged and not rebuilt or is a salvage certificate of title, an Iowa salvage certificate of title shall be issued and a "SALVAGE" designation shall be retained on all subsequent Iowa certificates of title and registration receipts for the vehicle, except as provided under section 321.52, subsection 4, paragraph "b". The department may require that subsequent Iowa certificates of title retain other states' designations which indicate that a vehicle had incurred prior damage. The department shall determine the manner in which other states' rebuilt, salvage, or other designations are to be indicated on Iowa titles.

6. If the prior certificate of title is from another state and indicates that the vehicle was returned to the manufacturer pursuant to a law of another state similar to chapter 322G, the new registration receipt and certificate of title, and all subsequent registration receipts and certificates of title issued for the vehicle, shall contain a designation indicating the vehicle was returned to the manufacturer. The department shall determine the manner in which other states' designations are to be indicated on Iowa registration receipts and certificates of title. The department may determine that a "REBUILT" or "SALVAGE" designation supersedes the designation required by this subsection and include the "REBUILT" or "SALVAGE" designation on the registration receipt and certificate of title in lieu of the designation required by this subsection.

7. The certificate shall contain the name of the county treasurer or of the department and, if the certificate of title is printed, the signature of the county treasurer, the deputy county treasurer, or the department director or deputy designee. The certificate of title shall contain upon the reverse side a form for assignment of title or interest and warranty by the owner, for reassignments by a dealer licensed in this state or in another state if the state in which the dealer is licensed permits Iowa licensed dealers to similarly reassign certificates of title. However, titles for mobile homes or manufactured homes shall not be reassigned by licensed dealers. Notwithstanding section 321.1, subsection 17, as used in this paragraph "dealer" means every person engaged in the business of buying, selling, or exchanging vehicles of a type required to be registered under this chapter.

8. The original certificate of title shall be delivered to the owner if there is no security interest. Otherwise the certificate of title shall be delivered by the county treasurer or the department to the

person holding the first security interest. Delivery may be made using electronic means.

9. The county treasurer or the department shall maintain in the county or department records system information contained on the certificate of title. The information shall be accessible by title certificate number for a period of three years from the date of notification of cancellation of title or that a new title has been issued as provided in this chapter. Copies the department requires shall be sent to the department in the manner and at the time the department directs. The department shall designate a uniform system of title numbers to indicate the county of issuance.

10. A vehicle shall be registered for the registration year. A vehicle registered for the first time in this state shall be registered for the remaining unexpired months of the registration year and pay a registration fee prorated for the remaining unexpired months of the registration year. Except for a vehicle registered under chapter 326, a vehicle registered for the first time during the eleventh month of the owner's registration year may be registered for the remaining unexpired months of the registration year as provided in this paragraph or for the remaining unexpired months of the registration year and for the next registration year, upon payment of the applicable registration fees.

11. If the county treasurer or department is not satisfied as to the ownership of the vehicle or that there are no undisclosed security interests in it, or a junking certificate has been issued for the vehicle but a certificate of title will not be reissued under section 321.52, subsection 3, and the vehicle qualifies as an antique vehicle under section 321.115, subsection 1, the county treasurer or department may register the vehicle but shall, as a condition of issuing a certificate of title and registration receipt, require the applicant to file with the department a bond in the form prescribed by the department and executed by the applicant, and either accompanied by the deposit of cash with the department or also executed by a person authorized to conduct a surety business in this state. The owner of a vehicle subject to the bond requirements of this subsection shall apply for a certificate of title and registration for the vehicle at the county treasurer's office within thirty days of issuance of written authorization from the department. The bond shall be in an amount equal to one and one-half times the current value of the vehicle as determined by the department and conditioned to indemnify any prior owner and secured party and any subsequent purchaser of the vehicle or person acquiring any security interest in it, and their respective successors in interest, against any expense, loss, or damage, including reasonable attorney fees, by reason of the issuance of the certificate of title of the vehicle or on account of any defect in or undisclosed security interest upon the right, title, and interest of the applicant in and



to the vehicle. Any such interested person has a right of action to recover on the bond for any breach of its conditions, but the aggregate liability of the surety to all persons shall not exceed the amount of the bond. The bond, and any deposit accompanying it, shall be returned at the end of three years or earlier if the vehicle is no longer registered in this state and the currently valid certificate of title is surrendered to the department, unless the department has been notified of the pendency of an action to recover on the bond. The department may authorize issuance of a certificate of title as provided in this subsection for a vehicle with an unreleased security interest upon presentation of satisfactory evidence that the security interest has been extinguished or that the holder of the security interest cannot be located to release the security interest as provided in section 321.50.

2007 Acts, ch 143, §8  
Subsection 11 amended

### **321.25 Application for registration and title — cards attached.**

A vehicle may be operated upon the highways of this state without registration plates for a period of forty-five days after the date of delivery of the vehicle to the purchaser from a dealer if a card bearing the words “registration applied for” is attached on the rear of the vehicle. The card shall have plainly stamped or stenciled the registration number of the dealer from whom the vehicle was purchased and the date of delivery of the vehicle. In addition, a dealer licensed to sell new motor vehicles may attach the card to a new motor vehicle delivered by the dealer to the purchaser even if the vehicle was purchased from an out-of-state dealer and the card shall bear the registration number of the dealer that delivered the vehicle. A dealer shall not issue a card to a person known to the dealer to be in possession of registration plates which may be attached to the vehicle. A dealer shall not issue a card unless an application for registration and certificate of title has been made by the purchaser and a receipt issued to the purchaser of the vehicle showing the fee paid by the person making the application. Dealers’ records shall indicate the agency to which the fee is sent and the date the fee is sent. The dealer shall forward the application by the purchaser to the county treasurer or state office within thirty calendar days from the date of delivery of the vehicle. However, if the vehicle is subject to a security interest and has been offered for sale pursuant to section 321.48, subsection 1, the dealer shall forward the application by the purchaser to the county treasurer or state office within thirty calendar days from the date of the delivery of the vehicle to the purchaser.

The department shall, upon request by any dealer, furnish “registration applied for” cards free of charge. Only cards furnished by the department shall be used. Only one card shall be issued

in accordance with this subsection for each vehicle purchased.

For applicable scheduled fine, see §805.8A, subsection 2, paragraph c  
Future amendments to this section stricken by 2007 Acts, ch 143, §33  
Section not amended; footnotes revised

### **321.30 Grounds for refusing registration or title.**

1. The department or the county treasurer shall refuse registration and issuance of a certificate of title or any transfer of title and registration upon any of the following grounds:

a. That the application contains any false or fraudulent statement or that the applicant has failed to furnish required information or reasonable additional information requested by the department or that the applicant is not entitled to registration and issuance of a certificate of title of the vehicle under this chapter.

b. That the vehicle is mechanically unfit or unsafe to be operated or moved upon the highways, providing such condition is revealed by a member of this department, or any peace officer.

c. That the department or the county treasurer has reasonable ground to believe that the vehicle is a stolen or embezzled vehicle or that the granting of registration and issuance of a certificate of title would constitute a fraud against the rightful owner.

d. That the registration of the vehicle stands suspended or revoked for any reason as provided in the motor vehicle laws of this state.

e. That the required fee has not been paid except as provided in section 321.48.

f. That the required use tax has not been paid.

g. If application for registration and certificate of title for a new vehicle is not accompanied by a manufacturer’s or importer’s certificate duly assigned.

h. If application for a transfer of registration and issuance of a certificate of title for a used vehicle registered in this state is not accompanied by a certificate of title duly assigned.

i. If application and supporting documents are insufficient to authorize the issuance of a certificate of title as provided by this chapter, except that an initial registration or transfer of registration may be issued as provided in section 321.23.

j. In the case of a mobile home or manufactured home, that taxes are owing under chapter 435 for a previous year.

k. In the case of a mobile home or manufactured home converted from real estate, real estate taxes which are delinquent.

l. If a commercial motor vehicle has been assigned to be operated by a commercial motor carrier whose ability to operate has been terminated or denied by a federal agency.

2. Unless otherwise provided for in this chapter, the department or the county treasurer shall refuse registration and issuance of a certificate of title unless the vehicle bears a manufacturer’s la-

bel pursuant to 49 C.F.R. pt. 567 certifying that the vehicle meets federal motor vehicle safety standards.

3. The department or the county treasurer shall refuse registration of a vehicle on the following grounds:

*a.* If the applicant is under the age of eighteen years, unless the applicant has an Iowa driver's license or the application is being made by more than one applicant and one of the applicants is at least eighteen years of age.

*b.* If the applicant for registration of the vehicle has failed to pay the required registration fees of any vehicle owned or previously owned when the registration fee was required to be paid by the applicant, and for which vehicle the registration was suspended or revoked under section 321.101, subsection 1, paragraph "d", or section 321.101A, until the fees are paid together with any accrued penalties.

2007 Acts, ch 126, §53  
See also §321.40  
Section amended

**321.34 Plates or validation sticker furnished — retained by owner — special plates.**

1. *Plates issued.* The county treasurer upon receiving application, accompanied by proper fee, for registration of a vehicle shall issue to the owner one registration plate for a motorcycle, motorized bicycle, truck tractor, trailer, or semitrailer and two registration plates for every other motor vehicle. The registration plates, including special registration plates, shall be assigned to the owner of a vehicle. When the owner of a registered vehicle transfers or assigns ownership of the vehicle to another person, the owner shall remove the registration plates from the vehicle. The owner shall forward the plates to the county treasurer where the vehicle is registered or the owner may have the plates assigned to another vehicle within thirty days after transfer, upon payment of the fees required by law. The owner shall immediately affix registration plates retained by the owner to another vehicle owned or acquired by the owner, providing the owner complies with section 321.46. The department shall adopt rules providing for the assignment of registration plates to the transferee of a vehicle for which a credit is allowed under section 321.46, subsection 6.

2. *Validation stickers.* In lieu of issuing new registration plates each registration year for a vehicle renewing registration, the department may reassign the registration plates previously issued to the vehicle and may adopt and prescribe an annual validation sticker indicating payment of registration fees. The department shall issue one validation sticker for each set of registration plates. The sticker shall specify the month and year of expiration of the registration plates. The sticker shall be displayed only on the rear registration plate, except that the sticker shall be displayed on

the front registration plate of a truck tractor.

The state department of transportation shall adopt rules to provide for the placement of the motor vehicle registration validation sticker.

3. *Radio operators plates.* The owner of an automobile, motorcycle, trailer, or motor truck who holds an amateur radio license issued by the federal communications commission may, upon written application to the county treasurer accompanied by a fee of five dollars, order special registration plates bearing the call letters authorized the radio station covered by the person's amateur radio license. When received by the county treasurer, such special registration plates shall be issued to the applicant in exchange for the registration plates previously issued to the person. Not more than one set of special registration plates may be issued to an applicant. Said fee shall be in addition to and not in lieu of the fee for regular registration plates. Special registration plates must be surrendered upon expiration of the owner's amateur radio license and the owner shall thereupon be entitled to the owner's regular registration plates. The county treasurer shall validate special plates in the same manner as regular registration plates, upon payment of five dollars in addition to the regular annual registration fee.

4. *Multiyear plates.* In lieu of issuing annual registration plates for trailers, semitrailers, motor trucks, and truck tractors, the department may issue a multiyear registration plate for a three-year period or a permanent registration plate for trailers and semitrailers licensed under chapter 326, and a permanent registration plate for motor trucks and truck tractors licensed under chapter 326, upon payment of the appropriate registration fee. Payment of fees for trailers and semitrailers for a permanent registration plate shall, at the option of the registrant, be made at five-year intervals or on an annual basis. Fees from three-year and five-year payments shall not be reduced or prorated. Payment of fees for motor trucks and truck tractors shall be made on an annual basis.

5. *Personalized registration plates.*

*a.* Upon application and the payment of a fee of twenty-five dollars, the director may issue to the owner of a motor vehicle registered in this state or a trailer or travel trailer registered in this state, personalized registration plates marked with up to seven initials, letters, or combination of numerals and letters requested by the owner. However, personalized registration plates for motorcycles and motorized bicycles shall be marked with no more than six initials, letters, or combinations of numerals and letters. Upon receipt of the personalized registration plates, the applicant shall surrender the regular registration plates to the county treasurer. The fee for issuance of the personalized registration plates shall be in addition to the regular annual registration fee.

b. The county treasurer shall validate personalized registration plates in the same manner as regular registration plates are validated under this section at an annual fee of five dollars in addition to the regular annual registration fee. A person renewing a personalized registration plate within one month following the time requirements under section 321.40 may renew the personalized plate without paying the additional registration fee under paragraph “a” but shall pay the five-dollar fee in addition to the regular registration fee and any penalties subject to regular registration plate holders for late renewal.

c. The fees collected by the director under this section shall be paid to the treasurer of state and credited by the treasurer of state as provided in section 321.145.

6. *Sample vehicle registration plates.* Vehicle registration plates displaying the general design of regular registration plates, with the word “sample” displayed on the plate, may be furnished to any person upon payment of a fee of three dollars, except that such plates may be furnished to governmental agencies without cost. Sample registration plates shall not be attached to a vehicle moved on the highways of this state.

7. *Collegiate plates.*

a. Upon application and payment of the proper fees, the director may issue to the owner of a motor vehicle, trailer, or travel trailer registered in this state, collegiate registration plates. Upon receipt of the collegiate registration plates, the applicant shall surrender the regular registration plates to the county treasurer.

b. Collegiate registration plates shall be designed for each of the three state universities. The collegiate registration plates shall be designated as follows:

(1) The letters “ISU” followed by a four-digit number all in cardinal on a gold background for Iowa state university of science and technology.

(2) The letters “UNI” followed by a four-digit number all in purple on a gold background for the university of northern Iowa.

(3) The letters “UI” followed by a four-digit number all in black on a gold background for the state university of Iowa.

(4) In lieu of the letter number designation provided under subparagraphs (1) through (3), the collegiate registration plates may be designated in the manner provided for personalized registration plates under subsection 5, paragraph “a”, in the colors designated for the respective universities under subparagraphs (1) through (3).

c. The fees for a collegiate registration plate are as follows:

(1) A registration fee of twenty-five dollars.

(2) A special collegiate registration fee of twenty-five dollars.

These fees are in addition to the regular annual registration fee. The fees collected by the director under this subsection shall be paid monthly to the

treasurer of state and credited by the treasurer of state to the road use tax fund. Notwithstanding section 423.43 and prior to the revenues being credited to the road use tax fund under section 423.43, subsection 1, paragraph “b”, the treasurer of state shall credit monthly from those revenues respectively, to Iowa state university of science and technology, the university of northern Iowa, and the state university of Iowa, the amount of the special collegiate registration fees collected in the previous month for collegiate registration plates designed for the university. The moneys credited are appropriated to the respective universities to be used for scholarships for students attending the universities.

d. The county treasurer shall validate collegiate registration plates in the same manner as regular registration plates are validated under this section at an annual fee of five dollars in addition to the regular annual registration fee.

e. A collegiate registration plate shall not be issued if its combination of alphanumeric characters are identical to those contained on a current personalized registration plate issued under subsection 5. However, the owner of a motor vehicle who has a personalized registration plate issued for the motor vehicle may, after proper application and payment of fees, be issued a collegiate registration plate containing the same alphanumeric characters as those on the personalized plate. Upon receipt of the collegiate registration plates, the owner shall surrender the personalized registration plates to the county treasurer.

8. *Medal of honor plates.* The owner of a motor vehicle subject to registration under section 321.109, subsection 1, motorcycle, trailer, or motor truck who has been awarded the medal of honor may, upon written application to the department, order special registration plates which shall be red, white, and blue in color and shall bear an emblem of the medal of honor and an identifying number. Each applicant applying for special registration plates under this subsection may order only one set of registration plates under this subsection. The application is subject to approval by the department and the special registration plates shall be issued at no charge to the applicant in exchange for the registration plates previously issued to the person. A person who is issued special plates under this subsection is exempt from payment of any annual registration fee for the motor vehicle bearing the special plates. The department shall validate the special plates in the same manner as regular registration plates are validated under this section. The department shall not issue special registration plates until service organizations in the state have furnished the department either the special dies or the cost of the special dies necessary for the manufacture of the special registration plate.

The surviving spouse of a person who was issued special plates under this subsection may continue

to use the special plates subject to registration of the special plates in the surviving spouse's name. If the surviving spouse remarries, the surviving spouse shall return the special plates to the department and the department shall issue regular registration plates to the surviving spouse.

8A. *Ex-prisoner of war special plates.* The owner of a motor vehicle subject to registration under section 321.109, subsection 1, motorcycle, trailer, or motor truck who was a prisoner of war during a time of military conflict may, upon written application to the department, order only one set of special registration plates with an ex-prisoner of war processed emblem. The emblem shall be designed by the department in cooperation with the adjutant general and shall signify that the owner was a prisoner of war as described in this subsection. The application is subject to approval by the department, in consultation with the adjutant general. The special plates shall be issued at no charge and are subject to an annual registration fee of fifteen dollars. The county treasurer shall validate the special plates in the same manner as regular registration plates are validated under this section.

The surviving spouse of a person who was issued special plates under this subsection may continue to use or apply for and use the special plates subject to registration of the special plates in the surviving spouse's name and upon payment of the annual registration fee. If the surviving spouse remarries, the surviving spouse shall return the special plates to the department and the department shall issue regular registration plates to the surviving spouse.

9. *Leased vehicles.* Registration plates under this section, including disabled veteran plates specified in section 321.105, may be issued to the lessee of a motor vehicle if the lessee provides evidence of a lease for a period of more than sixty days and if the lessee complies with the requirements, under this section, for issuance of the specific registration plates.

10. *Fire fighter plates.*

a. An owner referred to in subsection 12 who is a current or retired member of a paid or volunteer fire department may, upon written application to the department, order special registration plates, designed by the department in cooperation with representatives designated by the Iowa fire fighters' associations, which signify that the applicant is a current or retired member of a paid or volunteer fire department.

b. The application shall be approved by the department in consultation with representatives designated by the Iowa fire fighters' associations, and the special registration plates shall be issued to the applicant in exchange for the registration plates previously issued to the person. The fee for the special plates is twenty-five dollars which shall be paid in addition to the regular annual registration fee. The department shall validate the

special plates in the same manner as regular registration plates are validated under this section at the regular annual registration fee.

c. The special fees collected by the director under this subsection shall be paid monthly to the treasurer of state and credited to the road use tax fund. Notwithstanding section 423.43, and prior to the crediting of revenues to the road use tax fund under section 423.43, subsection 1, paragraph "b", the treasurer of state shall transfer monthly from those revenues to the Paul Ryan memorial fire fighter safety training fund created pursuant to section 100B.12 the amount of the special fees collected in the previous month for the fire fighter plates.

d. For purposes of this subsection, a person is considered to be retired if the person is recognized by the chief of the fire department where the individual served, and on record, as officially retired from the fire department. Special registration plates with a fire fighter emblem shall be surrendered, as provided in subsection 12, in exchange for regular registration plates upon termination of the motor vehicle owner's membership in the paid or volunteer fire department, unless the person is a retired member in good standing.

10A. *Emergency medical services plates.*

a. The owner of a motor vehicle referred to in subsection 12 who is a current member of a paid or volunteer emergency medical services agency may, upon written application to the department, order special registration plates, designed by the department in cooperation with representatives designated by the Iowa emergency medical services association, which plates signify that the applicant is a current member of a paid or volunteer emergency medical services agency. The application shall be approved by the department, in consultation with representatives designated by the Iowa emergency medical services association, and the special registration plates shall be issued to the applicant in exchange for the registration plates previously issued to the person. The fee for the special plates is twenty-five dollars which is in addition to the regular annual registration fee. The department shall validate the special plates in the same manner as regular registration plates are validated under this section at the regular annual registration fee.

b. The special fees collected by the director under this subsection shall be paid monthly to the treasurer of state and credited to the road use tax fund. Notwithstanding section 423.43, and prior to the crediting of revenues to the road use tax fund under section 423.43, subsection 1, paragraph "b", the treasurer of state shall transfer monthly from those revenues to the emergency medical services fund created in section 135.25 the amount of the special fees collected in the previous month for issuance of emergency medical services plates.

11. *Natural resources plates.*

a. Upon application and payment of the proper fees, the director may issue natural resources plates to the owner of a motor vehicle subject to registration under section 321.109, subsection 1, motor truck, motor home, multipurpose vehicle, motorcycle, trailer, or travel trailer.

b. Natural resources plates shall be designed by the department in cooperation with the department of natural resources which design shall include on the plate the name of the county where the vehicle is registered.

c. The special natural resources fee for letter number designated natural resources plates is forty-five dollars. The fee for personalized natural resources plates is forty-five dollars which shall be paid in addition to the special natural resources fee of forty-five dollars. The fees collected by the director under this subsection shall be paid monthly to the treasurer of state and credited to the road use tax fund. Notwithstanding section 423.43, and prior to the crediting of revenues to the road use tax fund under section 423.43, subsection 1, paragraph "b", the treasurer of state shall credit monthly from those revenues to the Iowa resources enhancement and protection fund created pursuant to section 455A.18, the amount of the special natural resources fees collected in the previous month for the natural resources plates.

From the moneys credited to the Iowa resources enhancement and protection fund under this paragraph "c", ten dollars of the fee collected for each natural resources plate issued, and fifteen dollars from each renewal fee, shall be allocated to the department of natural resources wildlife bureau to be used for nongame wildlife programs.

d. Upon receipt of the special registration plates, the applicant shall surrender the current registration plates to the county treasurer. The county treasurer shall validate the special registration plates in the same manner as regular registration plates are validated under this section. The annual special natural resources fee for letter number designated plates is twenty-five dollars which shall be paid in addition to the regular annual registration fee. The annual fee for personalized natural resources plates is five dollars which shall be paid in addition to the annual special natural resources fee and the regular annual registration fee. The annual special natural resources fee shall be credited as provided under paragraph "c".

11A. *Love our kids plates.*

a. Upon application and payment of the proper fees, the director may issue "love our kids" plates to the owner of a motor vehicle subject to registration under section 321.109, subsection 1, motor truck, motor home, multipurpose vehicle, motorcycle, trailer, or travel trailer.

b. Love our kids plates shall be designed by the department in cooperation with the Iowa department of public health.

c. The special fee for letter number designated

love our kids plates is thirty-five dollars. The fee for personalized love our kids plates is twenty-five dollars, which shall be paid in addition to the special love our kids fee of thirty-five dollars. The fees collected by the director under this subsection shall be paid monthly to the treasurer of state and credited to the road use tax fund. Notwithstanding section 423.43, and prior to the crediting of revenues to the road use tax fund under section 423.43, subsection 1, paragraph "b", the treasurer of state shall transfer monthly from those revenues to the Iowa department of public health the amount of the special fees collected in the previous month for the love our kids plates. Notwithstanding section 8.33, moneys transferred under this subsection shall not revert to the general fund of the state.

d. Upon receipt of the special registration plates, the applicant shall surrender the current registration plates to the county treasurer. The county treasurer shall validate the special registration plates in the same manner as regular registration plates are validated under this section. The annual special love our kids fee for letter number designated plates is ten dollars, which shall be paid in addition to the regular annual registration fee. The annual fee for personalized love our kids plates is five dollars, which shall be paid in addition to the annual special love our kids fee and the regular annual registration fee. The annual love our kids fee shall be credited as provided under paragraph "c".

11B. *Motorcycle rider education plates.*

a. Upon application and payment of the proper fees, the director may issue "motorcycle rider education" plates to the owner of a motor vehicle subject to registration under section 321.109, subsection 1, motor truck, motor home, multipurpose vehicle, motorcycle, trailer, or travel trailer.

b. Motorcycle rider education plates shall be designed by the department.

c. The special fee for letter number designated motorcycle rider education plates is thirty-five dollars. The fee for personalized motorcycle rider education plates is twenty-five dollars, which shall be paid in addition to the special motorcycle rider education fee of thirty-five dollars. The fees collected by the director under this subsection shall be paid monthly to the treasurer of state and credited to the road use tax fund. Notwithstanding section 423.43, and prior to the crediting of revenues to the road use tax fund under section 423.43, subsection 1, paragraph "b", the treasurer of state shall transfer monthly from those revenues to the department for use in accordance with section 321.180B, subsection 6, the amount of the special fees collected in the previous month for the motorcycle rider education plates.

d. Upon receipt of the special registration plates, the applicant shall surrender the current registration plates to the county treasurer. The county treasurer shall validate the special regis-

tration plates in the same manner as regular registration plates are validated under this section. The annual special motorcycle rider education fee for letter number designated plates is ten dollars, which shall be paid in addition to the regular annual registration fee. The annual fee for personalized motorcycle rider education plates is five dollars, which shall be paid in addition to the annual special motorcycle rider education fee and the regular annual registration fee. The annual motorcycle rider education fee shall be credited as provided under paragraph “c”.

12. *Special registration plates — general provisions.*

a. The owner of a motor vehicle subject to registration pursuant to section 321.109, subsection 1, motor truck, motor home, multipurpose vehicle, motorcycle, trailer, or travel trailer may, upon written application to the department, order special registration plates with a distinguishing processed emblem as authorized by this section or as approved by the department. The fee for the issuance of special registration plates is twenty-five dollars for each vehicle, unless otherwise provided by this section, which fee is in addition to the regular annual registration fee. The county treasurer shall validate special registration plates with a distinguishing processed emblem in the same manner as regular registration plates, upon payment of five dollars in addition to the regular annual registration fee.

b. Upon receipt of a special registration plate with a distinguishing processed emblem as authorized by this section or as approved by the department, the applicant shall surrender the regular registration plates to the county treasurer. An applicant no longer eligible for a special registration plate shall surrender the special vehicle registration plates to the county treasurer for issuance of regular registration plates.

c. An applicant may, upon payment of the additional fee for a personalized plate as provided in subsection 5, obtain a personalized special registration plate with a processed emblem. Personalized plates authorized by this section with the processed emblem shall be limited to no more than five initials, letters, or combinations of numerals and letters.

d. A special registration plate issued for a motorcycle or motorized bicycle under this section shall be designated in the manner provided for personalized registration plates under subsection 5, paragraph “a”.

12A. *Special registration plates — armed forces services.*

a. An owner of a vehicle referred to in subsection 12 who applies for any type of special registration plates associated with service in the United States armed forces shall be issued one set of the special registration plates at no charge, but shall be subject to the annual registration fee of fifteen dollars, if the owner is eligible for, but has relin-

quished to the department or the county treasurer or has not been issued, ex-prisoner of war or legion of merit special registration plates under this section.

b. An owner of a vehicle referred to in subsection 12 who applies for any type of special registration plates associated with service in the United States armed forces shall be issued one set of the special registration plates at no charge and subject to no annual registration fee if the owner is eligible for, but has relinquished to the department or the county treasurer or has not been issued, medal of honor registration plates under subsection 8 or disabled veteran registration plates under section 321.105.

c. The owner shall provide the appropriate information regarding the owner’s eligibility for any of the special registration plates described in paragraph “a” or “b”, and regarding the owner’s eligibility for the special registration plates for which the owner has applied, as required by the department.

d. The surviving spouse of a person who was issued special plates under this subsection may continue to use the special plates subject to registration of the special plates in the surviving spouse’s name and upon payment of the same annual registration fee, if applicable. If the surviving spouse remarries, the surviving spouse shall return the special plates to the department and the department shall issue regular registration plates to the surviving spouse.

13. *New special registration plates — department review.*

a. Any person may submit a request to the department to recommend a new special registration plate with a processed emblem. The request shall provide a proposed design for the processed emblem, the purpose of the special registration plate with the processed emblem, any eligibility requirements for purchase or receipt of the special registration plate with the processed emblem, and evidence there is sufficient interest in the special registration plate with the processed emblem to pay implementation costs. The department shall consider the request and make a recommendation based upon criteria established by the department which shall include consideration of the information included in the request, the number of special registration plates with processed emblems currently authorized, and any other relevant factors.

b. If a request for a proposed special registration plate with a processed emblem meets the criteria established by the department, the department shall, in consultation with the persons seeking the special registration plate with the processed emblem, approve a recommended design for the processed emblem, and propose eligibility requirements for the special registration plate with the processed emblem.

c. The department shall adopt rules pursuant to chapter 17A regarding the approval and issu-

ance of special registration plates.

*d.* A state agency may submit a request to the department recommending a special registration plate. The alternate fee for letter number designated plates is thirty-five dollars with a ten dollar annual special renewal fee. The fee for personalized plates is twenty-five dollars which is in addition to the alternative fee of thirty-five dollars with an annual personalized plate renewal fee of five dollars which is in addition to the special renewal fee of ten dollars. The alternate fees are in addition to the regular annual registration fee. The alternate fees collected under this paragraph shall be paid monthly to the treasurer of state and credited to the road use tax fund. Notwithstanding section 423.43, and prior to the crediting of the revenues to the road use tax fund under section 423.43, subsection 1, paragraph "b", the treasurer of state shall credit monthly the amount of the alternate fees collected in the previous month to the state agency that recommended the special registration plate.

14. *Persons with disabilities special plates.* An owner referred to in subsection 12 or an owner of a trailer used to transport a wheelchair who is a person with a disability, or who is the parent or guardian of a child who resides with the parent or guardian owner and who is a person with a disability, as defined in section 321L.1, may, upon written application to the department, order special registration plates with a persons with disabilities processed emblem designed by the department bearing the international symbol of accessibility. The special registration plates with a persons with disabilities processed emblem shall only be issued if the application is accompanied with a statement from a physician licensed under chapter 148, 149, 150, or 150A, a physician assistant licensed under chapter 148C, an advanced registered nurse practitioner licensed under chapter 152, or a chiropractor licensed under chapter 151, written on the physician's, physician assistant's, nurse practitioner's, or chiropractor's stationery, stating the nature of the applicant's or the applicant's child's disability and such additional information as required by rules adopted by the department, including proof of residency of a child who is a person with a disability. If the application is approved by the department, the special registration plates with a persons with disabilities processed emblem shall be issued to the applicant. There shall be no fee in addition to the regular annual registration fee for the special registration plates with a persons with disabilities processed emblem. The authorization for special registration plates with a persons with disabilities processed emblem shall not be renewed without the applicant furnishing evidence to the department that the owner of the vehicle or the owner's child is still a person with a disability as defined in section 321L.1. An owner who has a child who is a person with a disability shall provide satisfactory evidence to the depart-

ment that the child with a disability continues to reside with the owner. The registration plates with a persons with disabilities processed emblem shall be surrendered in exchange for regular registration plates as provided in subsection 12 when the owner of the vehicle or the owner's child no longer qualifies as a person with a disability as defined in section 321L.1 or when the owner's child who is a person with a disability no longer resides with the owner.

15. *Legion of merit special plates.* The owner of a motor vehicle subject to registration under section 321.109, subsection 1, motorcycle, trailer, or motor truck who has been awarded the legion of merit shall be issued one set of special registration plates with a legion of merit processed emblem, upon written application to the department and presentation of satisfactory proof of the award of the legion of merit as established by the Congress of the United States. The emblem shall be designed by the department in cooperation with the adjutant general and shall signify that the owner was awarded the legion of merit. The application is subject to approval by the department, in consultation with the adjutant general. The special plates shall be issued at no charge and are subject to an annual registration fee of fifteen dollars. The county treasurer shall validate the special plates in the same manner as regular registration plates are validated under this section.

The surviving spouse of a person who was issued special plates under this subsection may continue to use or apply for and use the special plates subject to registration of the special plates in the surviving spouse's name and upon payment of the annual registration fee. If the surviving spouse remarries, the surviving spouse shall return the special plates to the department and the department shall issue regular registration plates to the surviving spouse.

16. *National guard special plates.* An owner referred to in subsection 12 who is a member of the national guard, as defined in chapter 29A, may, upon written application to the department, order special registration plates with a national guard processed emblem with the emblem designed by the department in cooperation with the adjutant general which emblem signifies that the applicant is a member of the national guard. The application shall be approved by the department in consultation with the adjutant general. The special plate fees collected by the director under subsection 12, paragraph "a", from the issuance and annual validation of letter-number designated and personalized national guard plates shall be paid monthly to the treasurer of state and credited to the road use tax fund. Notwithstanding section 423.43, and prior to the crediting of revenues to the road use tax fund under section 423.43, subsection 1, paragraph "b", the treasurer of state shall transfer monthly from those revenues to the veterans license fee fund created in section 35A.11 the

amount of the special fees collected in the previous month for national guard plates. Special registration plates with a national guard processed emblem shall be surrendered, as provided in subsection 12, in exchange for regular registration plates upon termination of the owner's membership in the active national guard.

The surviving spouse of a person who was issued special plates under this subsection may continue to use or apply for and use the special plates subject to registration of the special plates in the surviving spouse's name and upon payment of the annual five-dollar special plate fee and the regular annual registration fee for the vehicle. If the surviving spouse remarries, the surviving spouse shall return the special plates to the department and the department shall issue regular registration plates to the surviving spouse.

17. *Pearl Harbor special plates.* An owner referred to in subsection 12 who was at Pearl Harbor, Hawaii, as a member of the armed services of the United States on December 7, 1941, may, upon written application to the department, order special registration plates with a Pearl Harbor processed emblem. The emblem shall be designed by the department in consultation with service organizations. The application is subject to approval by the department. The special plate fees collected by the director under subsection 12, paragraph "a", from the issuance and annual validation of letter-number designated and personalized Pearl Harbor plates shall be paid monthly to the treasurer of state and credited to the road use tax fund. Notwithstanding section 423.43, and prior to the crediting of revenues to the road use tax fund under section 423.43, subsection 1, paragraph "b", the treasurer of state shall transfer monthly from those revenues to the veterans license fee fund created in section 35A.11 the amount of the special fees collected in the previous month for Pearl Harbor plates.

The surviving spouse of a person who was issued special plates under this subsection may continue to use or apply for and use the special plates subject to registration of the special plates in the surviving spouse's name and upon payment of the annual five-dollar special plate fee and the regular annual registration fee for the vehicle. If the surviving spouse remarries, the surviving spouse shall return the special plates to the department and the department shall issue regular registration plates to the surviving spouse.

18. *Purple heart special plates.* An owner referred to in subsection 12 who was awarded a purple heart medal by the United States government for wounds received in military or naval combat against an armed enemy of the United States may, upon written application to the department and presentation of satisfactory proof of the award of the purple heart medal, order special registration plates with a purple heart processed emblem. The design of the emblem shall include a representa-

tion of a purple heart medal and ribbon. The application is subject to approval by the department in consultation with the adjutant general. The special plate fees collected by the director under subsection 12, paragraph "a", from the issuance and annual validation of letter-number designated and personalized purple heart plates shall be paid monthly to the treasurer of state and credited to the road use tax fund. Notwithstanding section 423.43, and prior to the crediting of revenues to the road use tax fund under section 423.43, subsection 1, paragraph "b", the treasurer of state shall transfer monthly from those revenues to the veterans license fee fund created in section 35A.11 the amount of the special fees collected in the previous month for purple heart plates.

The surviving spouse of a person who was issued special plates under this subsection may continue to use or apply for and use the special plates subject to registration of the special plates in the surviving spouse's name and upon payment of the annual five-dollar special plate fee and the regular annual registration fee for the vehicle. If the surviving spouse remarries, the surviving spouse shall return the special plates to the department and the department shall issue regular registration plates to the surviving spouse.

19. *United States armed forces retired special plates.* An owner referred to in subsection 12 who is a retired member of the United States armed forces may, upon written application to the department and upon presentation of satisfactory proof of membership, order special registration plates with a United States armed forces retired processed emblem. The emblem shall be designed by the department in consultation with service organizations. The application is subject to approval by the department. For purposes of this subsection, a person is considered to be retired if the person is recognized by the United States armed forces as retired from the United States armed forces. The special plate fees collected by the director under subsection 12, paragraph "a", from the issuance and annual validation of letter-number designated and personalized armed forces retired plates shall be paid monthly to the treasurer of state and credited to the road use tax fund. Notwithstanding section 423.43, and prior to the crediting of revenues to the road use tax fund under section 423.43, subsection 1, paragraph "b", the treasurer of state shall transfer monthly from those revenues to the veterans license fee fund created in section 35A.11 the amount of the special fees collected in the previous month for armed forces retired plates.

The surviving spouse of a person who was issued special plates under this subsection may continue to use or apply for and use the special plates subject to registration of the special plates in the surviving spouse's name and upon payment of the annual five-dollar special plate fee and the regular annual registration fee for the vehicle. If the sur-



living spouse remarries, the surviving spouse shall return the special plates to the department and the department shall issue regular registration plates to the surviving spouse.

20. *Silver or bronze star plates.* An owner referred to in subsection 12 who was awarded a silver or a bronze star by the United States government, may, upon written application to the department and presentation of satisfactory proof of the award of the silver or bronze star, order special registration plates with a silver or bronze star processed emblem. The emblem shall be designed by the department in consultation with the adjutant general. The special plate fees collected by the director under subsection 12, paragraph "a", from the issuance and annual validation of letter-number designated and personalized silver star and bronze star plates shall be paid monthly to the treasurer of state and credited to the road use tax fund. Notwithstanding section 423.43, and prior to the crediting of revenues to the road use tax fund under section 423.43, subsection 1, paragraph "b", the treasurer of state shall transfer monthly from those revenues to the veterans license fee fund created in section 35A.11 the amount of the special fees collected in the previous month for silver star and bronze star plates.

The surviving spouse of a person who was issued special plates under this subsection may continue to use or apply for and use the special plates subject to registration of the special plates in the surviving spouse's name and upon payment of the annual five-dollar special plate fee and the regular annual registration fee for the vehicle. If the surviving spouse remarries, the surviving spouse shall return the special plates to the department and the department shall issue regular registration plates to the surviving spouse.

20A. *Distinguished service, navy, or air force cross plates.* An owner referred to in subsection 12 who was awarded a distinguished service cross, a navy cross, or an air force cross by the United States government may, upon written application to the department and presentation of satisfactory proof of the award, order special registration plates with a distinguished service cross, navy cross, or air force cross processed emblem. The emblem shall be designed by the department in consultation with the adjutant general. The special plate fees collected by the director under subsection 12, paragraph "a", from the issuance and annual validation of letter-number designated and personalized distinguished service cross, navy cross, and air force cross plates shall be paid monthly to the treasurer of state and credited to the road use tax fund. Notwithstanding section 423.43, and prior to the crediting of revenues to the road use tax fund under section 423.43, subsection 1, paragraph "b", the treasurer of state shall transfer monthly from those revenues to the veterans license fee fund created in section 35A.11 the amount of the special fees collected in the pre-

vious month for distinguished service cross, navy cross, and air force cross plates.

The surviving spouse of a person who was issued special plates under this subsection may continue to use or apply for and use the special plates subject to registration of the special plates in the surviving spouse's name and upon payment of the annual five-dollar special plate fee and the regular annual registration fee for the vehicle. If the surviving spouse remarries, the surviving spouse shall return the special plates to the department and the department shall issue regular registration plates to the surviving spouse.

20B. *Soldier's, navy and marine corps, or airman's medal plates.* An owner referred to in subsection 12 who was awarded a soldier's medal, a navy and marine corps medal, or an airman's medal by the United States government may, upon written application to the department and presentation of satisfactory proof of the award, order special registration plates with a soldier's medal, navy and marine corps medal, or airman's medal processed emblem. The emblem shall be designed by the department in consultation with the adjutant general. The special plate fees collected by the director under subsection 12, paragraph "a", from the issuance and annual validation of letter-number designated and personalized soldier's medal, navy and marine corps medal, and airman's medal plates shall be paid monthly to the treasurer of state and credited to the road use tax fund. Notwithstanding section 423.43, and prior to the crediting of revenues to the road use tax fund under section 423.43, subsection 1, paragraph "b", the treasurer of state shall transfer monthly from those revenues to the veterans license fee fund created in section 35A.11 the amount of the special fees collected in the previous month for soldier's medal, navy and marine corps medal, and airman's medal plates.

The surviving spouse of a person who was issued special plates under this subsection may continue to use or apply for and use the special plates subject to registration of the special plates in the surviving spouse's name and upon payment of the annual five-dollar special plate fee and the regular annual registration fee for the vehicle. If the surviving spouse remarries, the surviving spouse shall return the special plates to the department and the department shall issue regular registration plates to the surviving spouse.

21. *Iowa heritage special plates.*

a. An owner referred to in subsection 12 may, upon written application to the department, order special registration plates with an Iowa heritage emblem. The emblem shall contain a picture of the American gothic house and the words "Iowa Heritage" and shall be designed by the department in consultation with the state historical society of Iowa.

b. The special Iowa heritage fee for letter number designated plates is thirty-five dollars. The

special fee for personalized Iowa heritage plates is twenty-five dollars which shall be paid in addition to the special fee of thirty-five dollars. The annual special Iowa heritage fee is ten dollars for letter number designated registration plates and is fifteen dollars for personalized registration plates which shall be paid in addition to the regular annual registration fee.

c. The special fees collected by the director under this subsection shall be paid monthly to the treasurer of state and credited to the road use tax fund. Notwithstanding section 423.43, and prior to the crediting of revenues to the road use tax fund under section 423.43, subsection 1, paragraph "b", the treasurer of state shall credit monthly to the Iowa heritage fund created under section 303.9A the amount of the special fees collected in the previous month for the Iowa heritage plates.

22. *Education plates.*

a. An owner referred to in subsection 12, upon written application to the department, may order special registration plates with an education emblem. The education emblem shall be designed by the department in cooperation with the department of education.

b. The special school transportation fee for letter number designated education plates is thirty-five dollars. The fee for personalized education plates is twenty-five dollars, which shall be paid in addition to the special school transportation fee of thirty-five dollars. The annual special school transportation fee is ten dollars for letter number designated registration plates and is fifteen dollars for personalized registration plates which shall be paid in addition to the regular annual registration fee. The fees collected by the director under this subsection shall be paid monthly to the treasurer of state and credited to the road use tax fund. Notwithstanding section 423.43, and prior to the crediting of revenues to the road use tax fund under section 423.43, subsection 1, paragraph "b", the treasurer of state shall transfer monthly from those revenues to the school budget review committee in accordance with section 257.31, subsection 17, the amount of the special school transportation fees collected in the previous month for the education plates.

23. *Breast cancer awareness plates.*

a. Upon application and payment of the proper fees, the director may issue breast cancer awareness plates to an owner of a motor vehicle referred to in subsection 12.

b. Breast cancer awareness plates shall contain an image of a pink ribbon and shall be designed by the department in consultation with the Susan G. Komen foundation.

c. The special fee for letter number designated breast cancer awareness plates is thirty-five dollars. The fee for personalized breast cancer awareness plates is twenty-five dollars, which shall be

paid in addition to the special breast cancer awareness fee of thirty-five dollars. The fees collected by the director under this subsection shall be paid monthly to the treasurer of state and credited to the road use tax fund. Notwithstanding section 423.43, and prior to the crediting of revenues to the road use tax fund under section 423.43, subsection 1, paragraph "b", the treasurer of state shall transfer monthly from those revenues to the Iowa department of public health the amount of the special fees collected in the previous month for the breast cancer awareness plates and such funds are appropriated to the Iowa department of public health. The Iowa department of public health shall distribute one hundred percent of the funds received monthly in the form of grants to support breast cancer screenings for both men and women who meet eligibility requirements like those established by the Susan G. Komen foundation. In the awarding of grants, the Iowa department of public health shall give first consideration to affiliates of the Susan G. Komen foundation and similar nonprofit organizations providing for breast cancer screenings at no cost in Iowa. Notwithstanding section 8.33, moneys transferred under this subsection shall not revert to the general fund of the state.

d. Upon receipt of the special registration plates, the applicant shall surrender the current registration plates to the county treasurer. The county treasurer shall validate the special registration plates in the same manner as regular registration plates are validated under this section. The annual special breast cancer awareness fee for letter number designated plates is ten dollars, which shall be paid in addition to the regular annual registration fee. The annual special fee for personalized breast cancer awareness plates is five dollars, which shall be paid in addition to the annual special breast cancer awareness fee and the regular annual registration fee. The annual special breast cancer awareness fee shall be credited and transferred as provided under paragraph "c".

24. *Gold star plates.* An owner referred to in subsection 12 who is the surviving spouse, parent, child, or sibling of a deceased member of the United States armed forces who died while serving on active duty during a time of military conflict may order special registration plates bearing a gold star emblem upon written application to the department accompanied by satisfactory supporting documentation as determined by the department. The gold star emblem shall be designed by the department in cooperation with the commission of veterans affairs. The special plate fees collected by the director under subsection 12, paragraph "a", from the issuance and annual validation of letter-number designated and personalized gold star plates shall be paid monthly to the treasurer of state and credited to the road use tax fund.

Notwithstanding section 423.43, and prior to the crediting of revenues to the road use tax fund under section 423.43, subsection 1, paragraph “b”, the treasurer of state shall transfer monthly from those revenues to the veterans license fee fund created in section 35A.11 the amount of the special fees collected in the previous month for gold star plates.

2007 Acts, ch 143, §9; 2007 Acts, ch 178, §2, 3; 2007 Acts, ch 184, §2–5, 7; 2007 Acts, ch 215, §106, 107, 130

For applicable scheduled fines, see §805.8A, subsection 2, paragraph a Subsections 20A, 20B, and 24 are effective January 1, 2008; 2007 Acts, ch 178, §3; 2007 Acts, ch 184, §7

Subsections 8, 10A, and 12A amended

Subsection 15, unnumbered paragraph 1 amended

Subsections 16 – 20 amended

NEW subsections 20A, 20B, and 24

### **321.40 Application for renewal — notification — reasons for refusal.**

1. Application for renewal of a vehicle registration shall be made on or after the first day of the month prior to the month of expiration of registration and up to and including the last day of the month following the month of expiration of registration. The registration shall be renewed upon payment of the appropriate registration fee. Application for renewal for a vehicle registered under chapter 326 shall be made on or after the first day of the month of expiration of registration and up to and including the last day of the month following the month of expiration of registration.

2. On or before the fifteenth day of the eleventh month of a vehicle’s registration year, the department shall create an electronic file and the county treasurer shall send a statement of fees due to the appropriate owner of record. After the department has generated the electronic file used to produce statements for a registration month, and before the fifteenth day of the month following expiration of a vehicle’s registration year, the department shall create a subsequent electronic file and the county treasurer shall send a statement of fees due to the appropriate owner of record for any vehicle subsequently registered for that registration month. The statement shall be mailed or electronically transmitted to the most current address of record, showing information sufficient to identify the vehicle and a listing of the various fees as appropriate. Failure to receive a statement shall have no effect upon the accrual of penalty at the appropriate date.

3. Registration receipts issued for renewals shall have the word “renewal” imprinted thereon and, if the owner making a renewal application has been issued a certificate of title, the title number shall appear on the registration receipt. All registration receipts for renewals shall be type-written or printed by other mechanical means. The applicant shall receive a registration receipt.

4. The county treasurer shall refuse to renew the registration of a vehicle registered to a person

when notified by the department through the distributed teleprocessing network that the person has not paid restitution as defined under section 910.1, subsection 4, to a clerk of the court located within the state. Each clerk of court shall, on a daily basis, notify the department through the Iowa court information system of the full name and social security number of all persons who owe delinquent restitution and whose restitution obligation has been satisfied or canceled. This subsection does not apply to the transfer of a registration or the issuance of a new registration.

5. The county treasurer shall refuse to renew the registration of a vehicle registered to the applicant for renewal of registration if the applicant has failed to pay any local vehicle taxes due in that county on that vehicle or any other vehicle owned or previously owned by the applicant until such local vehicle taxes are paid.

6. The department or the county treasurer shall refuse to renew the registration of a vehicle registered to the applicant if the department or the county treasurer knows that the applicant has a delinquent account, charge, fee, loan, taxes, or other indebtedness owed to or being collected by the state, from information provided pursuant to sections 8A.504 and 421.17. An applicant may contest this action by requesting a contested case proceeding from the agency that referred the debt for collection pursuant to section 8A.504.

7. The county treasurer shall refuse to renew the registration of a vehicle registered to an applicant if the county treasurer knows that the applicant has one or more uncontested, delinquent parking tickets issued pursuant to section 321.236, subsection 1, paragraph “a”, owing to the county, or owing to a city with which the county has an agreement authorized under section 331.553. However, a county treasurer may renew the registration if the treasurer determines that an error was made by the county or city in identifying the vehicle involved in the parking violation or if the citation has been dismissed as against the owner of the vehicle pursuant to section 321.484. This subsection does not apply to the transfer of a registration or the issuance of a new registration. Notwithstanding section 28E.10, a county treasurer may utilize the department’s vehicle registration and titling system to facilitate the purposes of this paragraph.

8. When application is made for the renewal of a motor vehicle registration on or after December 1, 1982, the person in whose name the registration is recorded shall notify the county treasurer of the type of fuel used by the vehicle if the type of fuel used is different from that which is shown on the registration receipt. If a motor vehicle registration indicates that the vehicle uses or may use a special fuel as defined in chapter 452A the county treasurer shall issue a special fuel user identifica-

tion sticker. The person who owns or controls the vehicle shall affix the sticker in a prominent place on the vehicle adjacent to the place where the special fuel is delivered into the motor vehicle fuel supply tank.

2005 Acts, ch 54, §1, 12; 2007 Acts, ch 126, §54  
2005 amendment adding new subsection 7 is effective July 1, 2007; 2005 Acts, ch 54, §12

Unnumbered paragraphs 1 – 5 editorially numbered as subsections 1 – 5

Former unnumbered paragraph 6 amended and editorially numbered as subsection 6

NEW subsection 7

Former unnumbered paragraph 7 editorially numbered as subsection 8

### **321.52 Out-of-state sales — junked, dismantled, wrecked, or salvage vehicles.**

1. When a vehicle is sold outside the state for purposes other than for junk, the owner, dealer or otherwise, shall detach the registration plates and registration card and shall indicate on the registration card the name and address of the foreign purchaser or transferee over the person's signature. Unless the registration plates are legally attached to another vehicle, the owner shall surrender the registration plates and registration card to the county treasurer, who shall cancel the records, destroy the registration plates, and forward the registration card to the department. The department shall make a notation on the records of the out-of-state sale and, after a reasonable period, may destroy the files for that particular vehicle. The department is not authorized to make a refund of registration fees on a vehicle sold out of state unless it receives the registration card completed as provided in this section.

2. The purchaser or transferee of a motor vehicle for which a certificate of title is issued which is sold for scrap or junk shall surrender the certificate of title, properly endorsed and signed by the previous owner, to the county treasurer of the county of residence of the transferee, and shall apply for a junking certificate from the county treasurer, within thirty days after assignment of the certificate of title. The county treasurer shall issue to such person without fee a junking certificate. A junking certificate shall authorize the holder to possess, transport, or transfer by endorsement the ownership of the junked vehicle. A certificate of title shall not again be issued for the vehicle subsequent to the issuance of a junking certificate except as provided in subsection 3. The county treasurer shall cancel the record of the vehicle. The junking certificate shall be printed on the registration receipt form and shall be imprinted with the words "junking certificate", as prescribed by the department. A space for transfer by endorsement shall be on the junking certificate. A separate form for the notation of the transfer of component parts shall be attached to the junking certificate when the certificate is issued.

3. When a vehicle for which a certificate of title is issued is junked or dismantled by the owner, the owner shall detach the registration plates and sur-

render the plates to the county treasurer, unless the plates are properly assigned to another vehicle. The owner shall also surrender the certificate of title to the county treasurer. Upon surrendering the certificate of title and application for junking certificate, the county treasurer shall issue to the person, without fee, a junking certificate, which shall authorize the holder to possess, transport or transfer ownership of the junked vehicle by endorsement of the junking certificate. The county treasurer shall hold the surrendered certificate of title, registration receipt, application for junking certificate, and, if applicable, the registration plates for a period of fourteen days following the issuance of a junking certificate under this subsection. Within the fourteen-day period the person who was issued the junking certificate and to whom the vehicle was titled or assigned may surrender to the county treasurer the junking certificate, and upon the person's payment of appropriate fees and taxes and payment of any credit for registration fees received by the person for the vehicle under section 321.46, subsection 3, the county treasurer shall issue to the person a certificate of title for the vehicle. After the expiration of the fourteen-day period, a county treasurer shall not issue a certificate of title for a junked vehicle for which a junking certificate is issued. The county treasurer shall cancel the record of the vehicle and forward the certificate of title to the department.

However, upon application the department upon a showing of good cause may issue a certificate of title after the fourteen-day period for a junked vehicle for which a junking certificate has been issued. For purposes of this subsection, "good cause" means that the junking certificate was obtained by mistake or inadvertence. If a person's application to the department is denied, the person may make application for a certificate of title under the bonding procedure as provided in section 321.24, if the vehicle qualifies as an antique vehicle under section 321.115, subsection 1, or the person may seek judicial review as provided under sections 17A.19 and 17A.20.

4. *a.* A vehicle rebuilder or a person engaged in the business of buying, selling, or exchanging vehicles of a type required to be registered in this state, upon acquisition of a wrecked or salvage vehicle, shall surrender the certificate of title or manufacturer's or importer's statement of origin properly assigned, together with an application for a salvage certificate of title, to the county treasurer of the county of residence of the purchaser or transferee within thirty days after the date of assignment of the certificate of title for the wrecked or salvage motor vehicle. This subsection applies only to vehicles with a fair market value of five hundred dollars or more, based on the value before the vehicle became wrecked or salvage. Upon payment of a fee of two dollars, the county treasurer shall issue a salvage certificate of title which shall bear the word "SALVAGE" stamped or printed on

the face of the title in a manner prescribed by the department. A salvage certificate of title may be assigned to an educational institution, a new motor vehicle dealer licensed under chapter 322, a person engaged in the business of purchasing bodies, parts of bodies, frames or component parts of vehicles for sale as scrap metal, a salvage pool, or an authorized vehicle recycler licensed under chapter 321H. An authorized vehicle recycler licensed under chapter 321H or a new motor vehicle dealer licensed under chapter 322 may assign or reassign an Iowa salvage certificate of title or a salvage certificate of title from another state to any person, and the provisions of section 321.24, subsection 5, requiring issuance of an Iowa salvage certificate of title shall not apply. A vehicle on which ownership has transferred to an insurer of the vehicle as a result of a settlement with the owner of the vehicle arising out of damage to, or unrecovered theft of, the vehicle shall be deemed to be a wrecked or salvage vehicle and the insurer shall comply with this subsection to obtain a salvage certificate of title within thirty days after the date of assignment of the certificate of title of the vehicle.

b. When a wrecked or salvage vehicle has been repaired, the owner may apply for a regular certificate of title by paying the appropriate fees and surrendering the salvage certificate of title and a properly executed salvage theft examination certificate. A motor vehicle with a gross vehicle weight rating of thirty thousand pounds or more is not subject to the salvage theft examination otherwise required under paragraph "c", and the owner of such vehicle is not required to submit a salvage theft examination certificate. The county treasurer shall issue a regular certificate of title which shall bear a designation printed on the face of the title and printed on the registration receipt indicating that the vehicle was previously titled on a salvage certificate of title in a form approved by the department. This designation shall be included on every Iowa certificate of title and registration receipt issued thereafter for the vehicle. However, if ownership of a stolen vehicle has been transferred to an insurer organized under the laws of this state or admitted to do business in this state, or if the transfer was the result of a settlement with the owner of the vehicle arising from damage to or the unrecovered theft of the vehicle, and if the insurer certifies to the county treasurer on a form approved by the department that the insurance company has received one or more written estimates which state that the retail cost of repairs including labor, parts, and other materials of all damage to the vehicle is less than three thousand dollars, the county treasurer shall issue to the insurance company the regular certificate of title and registration receipt without this designation.

c. A salvage theft examination shall be made

by a peace officer who has been specially certified and recertified when required by the Iowa law enforcement academy to do salvage theft examinations. The Iowa law enforcement academy shall determine standards for training and certification, conduct training, and may approve alternative training programs which satisfy the academy's standards for training and certification. The owner of the salvage vehicle shall make the vehicle available for examination at a time and location designated by the peace officer doing the examination. The owner may obtain a permit to drive the vehicle to and from the examination location by submitting a repair affidavit to the agency performing the examination stating that the vehicle is reasonably safe for operation and listing the repairs which have been made to the vehicle. The owner must be present for the examination and have available for inspection the salvage title, bills of sale for all essential parts changed, and the repair affidavit. The examination shall be for the purposes of determining whether the vehicle or repair components have been stolen. The examination is not a safety inspection and a signed salvage theft examination certificate shall not be construed by any court of law to be a certification that the vehicle is safe to be operated. There shall be no cause of action against the peace officer or the agency conducting the examination or the county treasurer for failure to discover or note safety defects. If the vehicle passes the theft examination, the peace officer shall indicate that the vehicle passed examination on the salvage theft examination certificate. The permit and salvage theft examination certificate shall be on controlled forms prescribed and furnished by the department. The owner shall pay a fee of thirty dollars upon completion of the examination. The agency performing the examinations shall retain twenty dollars of the fee and shall pay five dollars of the fee to the department and five dollars of the fee to the treasurer of state for deposit in the general fund of the state. Moneys deposited to the general fund under this paragraph are subject to the requirements of section 8.60 and shall be used by the Iowa law enforcement academy to provide for the special training, certification, and recertification of officers as required by this subsection.

The state department of transportation shall adopt rules in accordance with chapter 17A to carry out this section.

d. For purposes of this subsection, "*wrecked or salvage vehicle*" means a damaged motor vehicle subject to registration for which the cost of repair exceeds fifty percent of the fair market value of the vehicle, as determined in accordance with rules adopted by the department, before it became damaged.

2007 Acts, ch 143, §10

Surcharge imposed; §321.52A

For applicable scheduled fine, see §805.8A, subsection 2, paragraph c  
Subsection 4, paragraph a amended

### 321.57 Operation under special plates.

1. A dealer owning any vehicle of a type otherwise required to be registered under this chapter may operate or move the vehicle upon the highways solely for purposes of transporting, testing, demonstrating, or selling the vehicle without registering the vehicle, upon condition that the vehicle display in the manner prescribed in sections 321.37 and 321.38 a special plate issued to the owner as provided in sections 321.58 through 321.62. A dealer may operate or move upon the highways a vehicle owned by the dealer for either private or business purposes without registering it if the vehicle is in the dealer's inventory and is continuously offered for sale at retail, and there is displayed on it a special plate issued to the dealer as provided in sections 321.58 through 321.62. A dealer may operate or move upon the highways an unregistered vehicle owned by a lessor licensed pursuant to chapter 321F solely for the purpose of delivering the vehicle to the owner or transporting the vehicle to or from an auction if there is displayed on the vehicle a special plate issued to the dealer as provided in sections 321.58 through 321.62.

2. In addition, while a service customer is having the customer's own vehicle serviced or repaired by the dealer, the service customer of the dealer may operate upon the highways a motor vehicle owned by the dealer, except a motor truck or truck tractor, upon which there is displayed a special plate issued to the dealer, provided all of the requirements of this section are complied with.

3. Also a transporter may operate or move any vehicle of like type upon the highways solely for the purpose of delivery upon likewise displaying thereon like plates issued to the transporter as provided in these sections.

4. The provisions of this section and sections 321.58 to 321.62 shall not apply to any vehicles offered for hire, work or service vehicles owned by a transporter or dealer.

5. A dealer licensed as a wholesaler for a new motor vehicle model under chapter 322 may operate a new motor vehicle of that model, owned by the wholesaler, upon the highway when there is displayed on the vehicle a special plate issued to the wholesaler as provided in sections 321.58 through 321.62 and when operated solely for the purposes of demonstration, show, or exhibition.

6. A manufacturer licensed under chapter 322 that manufactures ambulances, rescue vehicles, or fire vehicles may operate or move a new ambulance, rescue vehicle, or fire vehicle manufactured and owned by the manufacturer solely for purposes of transporting, demonstrating, showing, or exhibiting the vehicle when there is displayed on the vehicle a special plate issued to the manufacturer as provided in sections 321.58 through 321.62.

2007 Acts, ch 102, §1

For applicable scheduled fine, see §805.8A, subsection 2, paragraph c  
NEW subsection 6

### 321.101 Suspension or revocation of registration or cancellation of certificate of title by department.

1. The department is hereby authorized to suspend or revoke the registration of a vehicle, registration card, registration plate, or any non-resident or other permit in any of the following events:

*a.* When the department is satisfied that such registration card, plate, or permit was fraudulently or erroneously issued.

*b.* When the department determines that a registered vehicle is mechanically unfit or unsafe to be operated or moved upon the highways.

*c.* When a registered vehicle has been dismantled or wrecked.

*d.* When the department determines that the required fee has not been paid and the fee is not paid upon reasonable notice and demand.

*e.* When a registration card, registration plate, or permit is knowingly displayed upon a vehicle other than the one for which issued.

*f.* When the department determines that the owner has committed any offense under this chapter involving the registration card, plate, or permit to be suspended or revoked.

*g.* When the department is so authorized under any other provision of law.

*h.* If a commercial motor vehicle has been assigned to be operated by a commercial motor carrier whose ability to operate has been terminated or denied by a federal agency.

2. The department shall cancel a certificate of title that appears to have been improperly issued or fraudulently obtained or, in the case of a mobile home or manufactured home, if taxes were owing under chapter 435 at the time the certificate was issued and have not been paid. However, before the certificate to a mobile home or manufactured home for which taxes were owing can be canceled, notice and opportunity to pay the taxes must be given to the person to whom the certificate was issued. Upon cancellation of a certificate of title, the department shall notify the county treasurer who issued it, who shall enter the cancellation upon the records. The department shall also notify the person to whom the certificate of title was issued, as well as each lienholder who has a perfected lien, of the cancellation and shall demand the surrender of the certificate of title, but the cancellation shall not affect the validity of any perfected lien.

3. Notice of suspension or revocation of the registration of a vehicle, registration card, registration plate, or any nonresident or other permit under the terms of this section shall be by personal delivery of the notice to the person to be so notified or by certified mail addressed to the person at the person's address as shown on the registration record. A return acknowledgment is not necessary to prove such latter service.

4. If a vehicle, for which the registration has

been suspended or revoked pursuant to subsection 1, paragraph “d”, or section 321.101A, is transferred to a bona fide purchaser for value without actual knowledge of such suspension or revocation, then the vehicle shall be deemed to be registered and the provisions of sections 321.28 and 321.30, subsection 1, paragraphs “d” and “e”, shall not be applicable to such vehicle for the failure of the previous owner to pay the required fees.

2007 Acts, ch 126, §55  
Subsection 3, unnumbered paragraph 2 amended and editorially designated as subsection 4

### **321.112 Minimum motor vehicle fee.**

No motor vehicle, except as provided in sections 321.115 and 321.117 shall be registered for a registration year for less than ten dollars.

For future amendments to this section effective July 1, 2008, see 2007 Acts, ch 143, §11, 35  
Section not amended; footnote added

### **321.115 Antique vehicles — model year plates permitted.**

1. A motor vehicle twenty-five years old or older, whose owner desires to use the motor vehicle exclusively for exhibition or educational purposes at state or county fairs, or other places where the motor vehicle may be exhibited for entertainment or educational purposes, shall be given a registration for a registration fee of five dollars per annum permitting the driving of the motor vehicle upon the public roads to and from state and county fairs or other places of entertainment or education for exhibition or educational purposes and to and from service stations for the purpose of receiving necessary maintenance.

2. The sale of a motor vehicle twenty years old or older which is primarily of value as a collector’s item and not as transportation is not subject to chapter 322 and any person may sell such a vehicle at retail without a license as required under chapter 322.

3. The owner of a motor vehicle which is registered under subsection 1, may display a registration plate from or representing the model year of the motor vehicle, furnished by the person, in lieu of a current and valid Iowa registration plate issued to the vehicle, provided that any replaced current and valid Iowa registration plate and the registration card issued to the vehicle are simultaneously carried within the vehicle and are available for inspection to any peace officer upon the officer’s request.

4. Truck tractors and semitrailers used in combination for exhibition and educational purposes as described in subsection 1 may be registered, exhibited, and driven according to the provisions of subsection 1. Subsection 3 shall not apply to vehicles registered in accordance with this subsection.

5. A person convicted of a violation of this section is guilty of a simple misdemeanor punishable as a scheduled violation under section 805.8A, subsection 2, paragraph “b”.

For future amendments to this section effective July 1, 2008, see 2007 Acts, ch 143, §12, 35  
Section not amended; footnote added

### **321.134 Monthly penalty.**

1. On the first day of the second month following the beginning of each registration year a penalty of five percent of the annual registration fee shall be added to the registration fees not paid by that date and an additional penalty of five percent shall be added the first day of each succeeding month, until the fee is paid. A penalty shall not be less than five dollars. If the owner of a vehicle surrenders the registration plates for a vehicle prior to the plates becoming delinquent, to the county treasurer of the county where the vehicle is registered, or to the department if the vehicle is registered under chapter 326, the owner may register the vehicle any time thereafter upon payment of the registration fee for the registration year without penalty. The penalty on vehicles registered under chapter 326 shall accrue February 1 of each year. To avoid a penalty or an additional penalty in the case of a delinquent registration, if the last calendar day of a month falls on Saturday, Sunday, or a holiday, the payment deadline is extended to include the first business day of the following month. For payments made through a county treasurer’s authorized website only, if the last day of the month falls on a Saturday, Sunday, or a holiday, the electronic payment must be initiated by midnight on the first business day of the next month. All other electronic payments must be initiated by midnight on the last day of the month preceding the delinquent date.

2. The annual registration fee for trucks, truck tractors, and road tractors, as provided in sections 321.121 and 321.122, may be payable in two equal semiannual installments if the annual registration fee exceeds the registration fee for a vehicle with a gross weight exceeding five tons. The penalties provided in subsection 1 shall be computed on the amount of the first installment only and on the first day of the seventh month of the registration period the same rate of penalty shall apply to the second installment, until the fee is paid. Semiannual installments do not apply to commercial vehicles, as defined under section 326.2, subject to proportional registration, with a base state other than the state of Iowa, as defined in section 326.2, subsection 1. The penalty on vehicles registered under chapter 326 accrues August 1 of each year except as provided in section 326.6. The department shall not allow the registration fee for a commercial vehicle registered under chapter 326 to be paid in two equal semiannual installments for five years after the registrant has paid the registration

fee late for two consecutive years.

3. If a penalty applies to a vehicle registration fee provided for in sections 321.121 and 321.122, the same penalty shall be assessed on the fees collected to increase the registered gross weight of the vehicle, if the increased gross weight is requested within forty-five days from the date the delinquent vehicle is registered for the current registration period.

4. Notwithstanding subsections 1 through 3, if a vehicle registration is delinquent for twenty-four months or more, a flat penalty and fee shall be assessed for the delinquent period in addition to the current registration fee. The flat penalty and fee shall be one hundred fifty percent of the current annual registration fee.

5. The department shall waive the penalties imposed by this section for an owner who is in the military service of the United States and who has been relocated as a result of being placed on active duty on or after September 11, 2001. The department shall adopt rules to implement this subsection, including, if necessary, procedures for refunding penalties collected prior to March 29, 2004.

2007 Acts, ch 143, §13  
Subsection 2 amended

### **321.166 Vehicle plate specifications.**

Vehicle registration plates shall conform to the following specifications:

1. Registration plates shall be of metal and of a size not to exceed six inches by twelve inches, except that the size of plates issued for use on motorized bicycles, motorcycles, motorcycle trailers, and trailers with an empty weight of two thousand pounds or less shall be established by the department.

Trailers with empty weights of two thousand pounds or less may, upon request, be licensed with regular-sized license plates.

2. Every registration plate or pair of plates shall display a registration plate number which shall consist of alphabetical or numerical characters or a combination thereof and the name of this state, which may be abbreviated. Every registration plate issued by the county treasurer shall display the name of the county, including any plate issued pursuant to section 321.34, except Pearl Harbor and purple heart registration plates issued prior to January 1, 1997, and collegiate, fire fighter, and medal of honor registration plates. Special truck registration plates shall display the word "special".

3. The registration plate number shall be displayed in characters which shall not exceed a height of four inches nor a stroke width exceeding five-eighths of an inch. Special plates issued to dealers shall display the alphabetical character "D", which shall be of the same size as the charac-

ters in the registration plate. The registration plate number issued for motorized bicycles, motorcycles, trailers with an empty weight of two thousand pounds or less, and motorcycle trailers shall be a size prescribed by the department.

4. The registration plate number, except on motorized bicycle, motorcycle, motorcycle trailer, and trailers with an empty weight of two thousand pounds or less shall be of sufficient size to be readable from a distance of one hundred feet during daylight.

5. There shall be a marked contrast between the color of the registration plates and the data which is required to be displayed on the registration plates. When a new series of registration plates is issued to replace a current series, the new registration plates shall be of a distinctively different color from the series which is replaced, except for collegiate registration plates issued under section 321.34, subsection 7.

6. Registration plates issued to a disabled veteran under the provisions of section 321.105 shall display the alphabetical characters "DV" which shall precede the registration plate number. The plates may also display a persons with disabilities parking sticker if issued to the disabled veteran by the department under section 321L.2.

7. The year and month of expiration of registration, which may be abbreviated, shall be displayed on vehicle registration plates issued by the county treasurer. A distinctive emblem or validation sticker may be prescribed by the department to designate the year and month of expiration. The year and month of expiration shall not be required to be displayed on plates issued under section 321.19.

8. The owner of a trailer with an empty weight of two thousand pounds or less shall receive registration plates for the trailer smaller than plates regularly issued for automobiles pursuant to rules adopted by the department in accordance with this section unless the owner requests regular-sized plates.

9. Special registration plates issued pursuant to section 321.34 beginning January 1, 1997, other than medal of honor, collegiate, fire fighter, and natural resources registration plates, shall be consistent with the design and color of regular registration plates but shall provide a space on a portion of the plate for the purpose of allowing the placement of a distinguishing processed emblem. Special registration plates shall also comply with the requirements for regular registration plates as provided in this section to the extent the requirements are consistent with the section authorizing a particular special vehicle registration plate.

10. If the department reissues a new registration plate design for a special registration plate under section 321.34, all persons who have pur-



chased or obtained the special registration plates shall not be required to pay the issuance fee.

2007 Acts, ch 184, §6, 7  
Subsections 2 and 9 amended

**321.178 Driver education — restricted license — reciprocity.**

1. *Approved course.*

a. An approved driver education course as programmed by the department shall consist of at least thirty clock hours of classroom instruction, of which no more than one hundred eighty minutes shall be provided to a student in a single day, and six or more clock hours of laboratory instruction of which at least three clock hours shall consist of street or highway driving. Classroom instruction shall include all of the following:

- (1) A minimum of four hours of instruction concerning substance abuse.
- (2) A minimum of twenty minutes of instruction concerning railroad crossing safety.
- (3) Instruction relating to becoming an organ donor under the revised uniform anatomical gift Act as provided in chapter 142C.

(4) Instruction providing an awareness about sharing the road with bicycles and motorcycles. The instruction course shall be first approved by the state department of transportation. Instructional materials creating an awareness about sharing the road with bicycles and motorcycles shall also be distributed during the course of instruction.

b. To be qualified as a classroom driver education instructor, a person shall have satisfied the educational requirements for a teaching license at the elementary or secondary level and hold a valid license to teach driver education in the public schools of this state.

c. Every public school district in Iowa shall offer or make available to all students residing in the school district or Iowa students attending a nonpublic school in the district an approved course in driver education. The receiving district shall be the school district responsible for making driver education available to a student participating in open enrollment under section 282.18. The courses may be offered at sites other than at the public school, including nonpublic school facilities within the public school districts. An approved course offered during the summer months, on Saturdays, after regular school hours during the regular terms or partly in one term or summer vacation period and partly in the succeeding term or summer vacation period, as the case may be, shall satisfy the requirements of this section to the same extent as an approved course offered during the regular school hours of the school term. A student who successfully completes and obtains certification in an approved course in driver education or an approved course in motorcycle education may, upon proof of such fact, be excused from any field test which the student would otherwise be re-

quired to take in demonstrating the student's ability to operate a motor vehicle. A student shall not be excused from any field test if a parent, guardian, or instructor requests that a test be administered. Street or highway driving instruction may be provided by a person qualified as a classroom driver education instructor or a person certified by the department and authorized by the board of educational examiners. A person shall not be required to hold a current Iowa teacher or administrator license at the elementary or secondary level or to have satisfied the educational requirements for an Iowa teacher license at the elementary or secondary level in order to be certified by the department or authorized by the board of educational examiners to provide street or highway driving instruction. A final field test prior to a student's completion of an approved course shall be administered by a person qualified as a classroom driver education instructor. The department shall adopt rules pursuant to chapter 17A to provide for certification of persons qualified to provide street or highway driving instruction. The board of educational examiners shall adopt rules pursuant to chapter 17A to provide for authorization of persons certified by the department to provide street or highway driving instruction.

d. "*Student*", for purposes of this section, means a person between the ages of fourteen years and twenty-one years who satisfies the preliminary licensing requirements of the department.

e. Any person who successfully completes an approved driver education course at a private or commercial driver education school licensed by the department shall likewise be eligible for a driver's license as provided in section 321.180B or 321.194.

2. *Restricted license.*

a. A person between sixteen and eighteen years of age who has completed an approved driver's education course and is not in attendance at school and has not met the requirements described in section 299.2, subsection 1, may be issued a restricted license only for travel to and from work or to transport dependents to and from temporary care facilities, if necessary for the person to maintain the person's present employment. The restricted license shall be issued by the department only upon confirmation of the person's employment and need for a restricted license to travel to and from work or to transport dependents to and from temporary care facilities if necessary to maintain the person's employment. The employer shall notify the department if the employment of the person is terminated before the person attains the age of eighteen.

b. The department may suspend a restricted license issued under this section upon receiving a record of the person's conviction for one violation and shall revoke the license upon receiving a record of conviction for two or more violations of a law of this state or a city ordinance regulating the op-

eration of motor vehicles on highways, other than parking violations as defined in section 321.210. After revoking a license under this section the department shall not grant an application for a new license or permit until the expiration of one year or until the person attains the age of eighteen whichever is the longer period.

3. *Driver's license reciprocity.*

a. The department may issue a class C or M driver's license to a person who is sixteen or seventeen years of age and who is a current resident of the state, but who has been driving as a resident of another state for at least one year prior to residency within the state.

b. The following criteria must be met prior to issuance of a driver's license pursuant to this subsection:

(1) The minor must reside with a parent or guardian.

(2) The minor must have driven under a valid driver's license for at least one year in the prior state of residence. Six months of the one year computation may include driving with an instruction permit.

(3) The minor must have had no moving traffic violations on the minor's driving record.

(4) The minor must pass the written and driving skills tests as required by the department, but is not required to have taken a driver's education class.

2007 Acts, ch 44, §28; 2007 Acts, ch 214, §40

Driver education courses to include instruction relating to energy efficiency and safety; 90 Acts, ch 1252, §54

Department of public health to cooperate to provide materials and information relating to becoming an organ donor; 94 Acts, ch 1102, §3

Restricted license issued under subsection 2 prior to July 1, 2005, effective as long as license remains valid or minor reaches eighteen; 2005 Acts, ch 8, §44

Subsection 1, paragraph a, subparagraph (3) amended

Subsection 1, paragraph c amended

**321.189 Driver's license — content.**

1. *Classification and issuance.* Upon payment of the required fee, the department shall issue to every qualified applicant a driver's license. Driver's licenses shall be classified as follows:

a. Class A — Valid for the operation of vehicles with a gross combination weight rating of twenty-six thousand one or more pounds if the towed vehicle or vehicles have a gross vehicle weight rating or gross combination weight rating of ten thousand one or more pounds, and also valid for the operation of vehicles with lower gross combination weight ratings and other vehicles except motorcycles.

b. Class B — Valid for the operation of a vehicle with a gross vehicle weight rating of twenty-six thousand one or more pounds or a combination of vehicles with a gross combination weight rating of twenty-six thousand one or more pounds if the towing vehicle has a gross vehicle weight rating of twenty-six thousand one or more pounds and the towed vehicle or vehicles have a gross vehicle weight rating or gross combination weight rating

of less than ten thousand one pounds, and also valid for the operation of vehicles with lower gross vehicle weight ratings or gross combination weight ratings except motorcycles.

c. Class C — Valid for the operation of a vehicle, other than a motorcycle, or a combination of vehicles with a gross combination weight rating of twenty-six thousand one or more pounds provided the towing vehicle has a gross vehicle weight rating of less than twenty-six thousand one pounds and each towed vehicle has a gross vehicle weight rating of less than ten thousand one pounds, or a combination of vehicles with a gross vehicle weight rating or gross combination weight rating of less than twenty-six thousand one pounds and also valid for the operation of any vehicle, other than a motorcycle, for which the operator is exempt from commercial driver's license requirements under section 321.176A.

d. Class D — Valid for the operation of a motor vehicle as a chauffeur.

e. Class M — Valid for the operation of a motorcycle.

A driver's license may be issued for more than one class. Class A and B driver's licenses shall only be issued as commercial driver's licenses. Class C and M driver's licenses may be issued as commercial driver's licenses. A driver's license is not valid for the operation of a vehicle requiring an endorsement unless the driver's license is endorsed for the vehicle. A class D driver's license is also valid as a noncommercial class C driver's license. The holder of a commercial driver's license is not required to obtain a class D driver's license to operate a motor vehicle as a chauffeur. When necessary, the department shall by rule create additional classes or modify existing classes of driver's licenses, however, the rule shall be temporary and if within sixty days after the next regular session of the general assembly convenes the general assembly has not made corresponding changes in this chapter, the temporary classification or modification shall be nullified.

2. *Content of license.*

a. Appearing on the driver's license shall be a distinguishing number assigned to the licensee; the licensee's full name, date of birth, sex, and residence address; a colored photograph; a physical description of the licensee; the name of the state; the dates of issuance and expiration; and the usual signature of the licensee. The license shall identify the class of vehicle the licensee may operate and the applicable endorsements and restrictions which the department shall require by rule.

b. A commercial driver's license shall include the licensee's address as required under federal regulations, and the words "commercial driver's license" or "CDL" shall appear prominently on the face of the license. If the applicant is a nonresident, the license must conspicuously display the word "nonresident".

c. The department shall assign an applicant for a driver's license a distinguishing driver's license number other than the applicant's social security number.

d. The license may contain other information as required under the department's rules.

3. *Replacement.* If prior to the renewal date, a person desires to obtain a driver's license in the form authorized by this section, a license may be issued as a voluntary replacement upon payment of the required fee as set by the department by rule. A person shall return a driver's license and be issued a new license when the first license contains inaccurate information upon payment of the required fee as set by the department by rule.

4. *Symbols.* Upon the request of a licensee, the department shall indicate on the license the presence of a medical condition, that the licensee is a donor under the revised uniform anatomical gift Act as provided in chapter 142C, or that the licensee has in effect a medical advance directive. For purposes of this subsection, a medical advance directive includes but is not limited to a valid durable power of attorney for health care as defined in section 144B.1. The license may contain such other information as the department may require by rule.

5. *Tamperproofing.* The department shall issue a driver's license by a method or process which prevents as nearly as possible the alteration, reproduction, or superimposition of a photograph on the license without ready detection.

6. *Licenses issued to persons under age twenty-one.* A driver's license issued to a person under eighteen years of age shall contain the same information as any other driver's license except that the words "under eighteen" shall appear prominently on the face of the license. A driver's license issued to a person eighteen years of age or older but less than twenty-one years of age shall contain the same information as any other driver's license except that the words "under twenty-one" shall appear prominently on the face of the license. Upon attaining the age of eighteen or upon attaining the age of twenty-one, and upon payment of a one dollar fee, the person shall be entitled to a new driver's license or nonoperator's identification card for the unexpired months of the driver's license or card. An instruction permit or intermediate license issued under section 321.180B, subsection 1 or 2, shall include a distinctive color bar. An intermediate license issued under section 321.180B, subsection 2, shall include the words "intermediate license" printed prominently on the face of the license.

7. *Motorized bicycle.*

a. The department may issue a driver's license valid only for operation of a motorized bicycle to a person fourteen years of age or older who has passed a vision test or who files a vision report as provided in section 321.186A which shows that the

applicant's visual acuity level meets or exceeds those required by the department and who passes a written examination on the rules of the road. A person under the age of sixteen applying for a driver's license valid only for operation of a motorized bicycle shall also be required to successfully complete a motorized bicycle education course approved and established by the department or successfully complete an approved motorized bicycle education course at a private or commercial driver education school licensed by the department. A public school district shall charge a student a fee which shall not exceed the actual cost of instruction. A driver's license valid only for operation of a motorized bicycle entitles the licensee to operate a motorized bicycle upon the highway while having the license in the licensee's immediate possession. The license is valid for a period not to exceed two years from the licensee's birthday anniversary in the year of issuance, subject to termination or cancellation as provided in this section.

b. A driver's license valid only for operation of a motorized bicycle shall be canceled upon a conviction for a moving traffic violation and reapplication may be made thirty days after the date of cancellation. The cancellation of the license upon conviction for a moving traffic violation shall not result in requiring the applicant to maintain proof of financial responsibility under section 321A.17, unless the conviction would otherwise result in a suspension or revocation of a person's driver's license.

c. As used in this section, "moving traffic violation" does not include a parking violation as defined in section 321.210 or a violation of a section of the Code or municipal ordinance pertaining to standards to be maintained for motor vehicle equipment except sections 321.430 and 321.431, or except a municipal ordinance pertaining to motor vehicle brake requirements as applicable to motorized bicycles.

d. The holder of any class of driver's license may operate a motorized bicycle.

2007 Acts, ch 44, §29  
Fee, see §321.191  
Subsection 4 amended

### 321.206 Surrender of license — duty of court.

If a person is convicted in court of an offense for which this chapter requires mandatory revocation of the person's driver's license or, if the person's license is a commercial driver's license and the conviction disqualifies the person from operating a commercial motor vehicle, the court shall require the person to surrender the driver's license held by the person and the court shall destroy the license or forward the license together with a record of the conviction to the department as provided in section 321.491.

2007 Acts, ch 143, §14  
Section amended

**321.210A Suspension for failure to pay fine, penalty, surcharge, or court costs.**

1. The department shall suspend the driver's license of a person who, upon conviction of violating a law regulating the operation of a motor vehicle, has failed to pay the criminal fine or penalty, surcharge, or court costs, as follows:

*a.* Upon the failure of a person to timely pay the fine, penalty, surcharge, or court costs the clerk of the district court shall notify the person by regular mail that if the fine, penalty, surcharge, or court costs remain unpaid after sixty days from the date of mailing, the clerk will notify the department of the failure for purposes of instituting suspension procedures.

*b.* Upon the failure of a person to pay the fine, penalty, surcharge, or court costs within sixty days' notice by the clerk of the district court as provided in paragraph "b", the clerk shall report the failure to the department.

*c.* Upon receipt of a report of a failure to pay the fine, penalty, surcharge, or court costs from the clerk of the district court, the department shall in accordance with its rules, suspend the person's driver's license until the fine, penalty, surcharge, or court costs are paid, unless the person proves to the satisfaction of the department that the person cannot pay the fine, penalty, surcharge, or court costs.

2. If after suspension, the person enters into an installment agreement with the county attorney in accordance with section 321.210B to pay the fine, penalty, court cost, or surcharge, the person's license shall be reinstated by the department upon receipt of a report of an executed installment agreement.

2007 Acts, ch 196, §1  
Former unnumbered paragraph 1 and subsections 1 – 3 editorially redesignated as subsection 1, unnumbered paragraph 1 and paragraphs a – c

NEW subsection 2

**321.210B Installment agreement.**

1. If a person's fine, penalty, surcharge, or court cost is deemed delinquent as provided in section 602.8107, subsection 3, and the person's driver's license has been suspended pursuant to section 321.210A, the person may execute an installment agreement with the county attorney or the county attorney's designee to pay the delinquent amount and the fee assessed in subsection 7 in installments. Prior to execution of the installment agreement, the person shall provide the county attorney or the county attorney's designee with a financial statement in order for the parties to the agreement to determine the amount of the installment payments.

2. A person shall execute an installment agreement in the county where the fine, penalty, surcharge, or court cost was imposed. If the county where the fine, penalty, surcharge, or court cost was imposed does not have an installment agree-

ment program, the person shall execute an installment agreement in the person's county of residence. If the county of residence does not have an installment agreement program, the person may execute an installment agreement with any county attorney or county attorney's designee.

3. The county attorney or the county attorney's designee shall file the installment agreement with the clerk of the district court in the county where the fine, penalty, surcharge, or court cost was imposed, within five days of execution of the agreement.

4. Upon receipt of an executed installment agreement and after the first installment payment, the clerk of the district court shall report the receipt of the executed installment agreement to the department of transportation.

5. Upon receipt of the report from the clerk of the district court and payment of the reinstatement fee as provided in section 321.191, the department shall immediately reinstate the driver's license of the person unless the driver's license of the person is otherwise suspended, revoked, denied, or barred under another provision of law.

6. If a driver's license is reinstated upon receipt of a report of an executed installment agreement the driver shall provide proof of financial responsibility pursuant to section 321A.17, if otherwise required by law.

7. The civil penalty, if assessed pursuant to section 321.218A, shall be added to the amount owing under the installment agreement. The clerk of the district court shall transmit to the department, from the first moneys collected, an amount equal to the amount of any civil penalty assessed and added to the installment agreement. The department shall transmit the money received from the clerk of the district court pursuant to this subsection to the treasurer of state for deposit in the juvenile detention home fund created in section 232.142.

8. Upon determination by the county attorney or the county attorney's designee that the person is in default, the county attorney or the county attorney's designee shall notify the clerk of the district court.

9. The clerk of the district court, upon receipt of a notification of a default from the county attorney or the county attorney's designee, shall report the default to the department of transportation.

10. Upon receipt of a report of a default from the clerk of the district court, the department shall suspend the driver's license of a person as provided in section 321.210A. For purposes of suspension and reinstatement of the driver's license of a person in default, the suspension and any subsequent reinstatement shall be considered a suspension pursuant to section 321.210A.

11. If a new fine, penalty, surcharge, or court cost is imposed on a person after the person has executed an installment agreement with the county

attorney or the county attorney's designee, and the new fine, penalty, surcharge, or court cost is deemed delinquent as provided in section 602.8107, subsection 3, and the person's driver's license has been suspended pursuant to section 321.210A, the person may enter into a second installment agreement with the county attorney or county attorney's designee to pay the delinquent amount and the fee, if assessed, in subsection 7 in installments.

12. If an installment agreement is in default, the fine, penalty, surcharge, or court cost covered under the agreement shall not become part of any new installment agreement.

13. A person is eligible to enter into five installment agreements in the person's lifetime.

14. Except for the civil penalty if assessed and collected pursuant to subsection 7, any amount collected under the installment agreement shall be distributed as provided in section 602.8107, subsection 4.

2007 Acts, ch 196, §2, 17

Installment agreements not to be executed, except in Polk or Linn county, until January 1, 2008; reinstatement of licenses in Polk or Linn counties; 2007 Acts, ch 196, §17

NEW section

### **321.210C Probation period.**

1. A person whose driver's license or operating privileges have been suspended, revoked, or barred under this chapter for a conviction of a moving traffic violation, or suspended, revoked, or barred under section 321.205 or section 321.210, subsection 1, paragraph "e", must satisfactorily complete a twelve-month probation period beginning immediately after the end of the period of suspension, revocation, or bar. Upon a second conviction of a moving traffic violation which occurred during the probation period, the department may suspend the driver's license or operating privileges for an additional period equal in duration to the original period of suspension, revocation, or bar, or for one year, whichever is the shorter period.

2. A person whose driver's license or operating privileges have been revoked under chapter 321J, must satisfactorily complete a twelve-month probation period beginning immediately after the end of the period of revocation. Upon conviction of a moving traffic violation which occurs during the probation period, the department may revoke the driver's license or operating privileges for an additional period equal in duration to the original period of revocation, or for one year, whichever is the shorter period.

3. For purposes of determining a conviction under this section, the department shall not consider the first two speeding violations within the probation period that are ten miles per hour or less over the legal speed limit in speed zones having a legal speed limit between thirty-four miles per hour and fifty-six miles per hour.

2007 Acts, ch 196, §4

Section amended

### **321.215 Temporary restricted license.**

1. *a.* The department, on application, may issue a temporary restricted license to a person whose noncommercial driver's license is suspended or revoked under this chapter, allowing the person to drive to and from the person's home and specified places at specified times which can be verified by the department and which are required by any of the following:

(1) The person's full-time or part-time employment.

(2) The person's continuing health care or the continuing health care of another who is dependent upon the person.

(3) The person's continuing education while enrolled in an educational institution on a part-time or full-time basis and while pursuing a course of study leading to a diploma, degree, or other certification of successful educational completion.

(4) The person's substance abuse treatment.

(5) The person's court-ordered community service responsibilities.

(6) The person's appointments with the person's parole or probation officer.

*b.* However, a temporary restricted license shall not be issued to a person whose license is revoked pursuant to a court order issued under section 901.5, subsection 10, or under section 321.209, subsections 1 through 5 or subsection 7; to a juvenile whose license has been suspended or revoked pursuant to a dispositional order under section 232.52, subsection 2, paragraph "a", for a violation of chapter 124 or 453B or section 126.3; to a juvenile whose license has been suspended under section 321.213B; or to a person whose license has been suspended pursuant to a court order under section 714.7D. A temporary restricted license may be issued to a person whose license is revoked under section 321.209, subsection 6, only if the person has no previous drag racing convictions. A person holding a temporary restricted license issued by the department under this section shall not operate a motor vehicle for pleasure.

2. *a.* Upon conviction and the suspension or revocation of a person's noncommercial driver's license under section 321.209, subsection 5 or 6; section 321.210; 321.210A; or 321.513; or upon revocation pursuant to a court order issued under section 901.5, subsection 10; or upon the denial of issuance of a noncommercial driver's license under section 321.560, based solely on offenses enumerated in section 321.555, subsection 1, paragraph "c", or section 321.555, subsection 2; or a juvenile, whose license has been suspended or revoked pursuant to a dispositional order under section 232.52, subsection 2, paragraph "a", for a violation of chapter 124 or 453B, or section 126.3; or upon suspension of a driver's license pursuant to a court order under section 714.7D, a person may petition the district court having jurisdiction over the residence of the person for a temporary restricted li-

cense to operate a motor vehicle for the limited purpose or purposes specified in subsection 1. The petition shall include a current certified copy of the petitioner's official driving record issued by the department. The application may be granted only if all of the following criteria are satisfied:

(1) The temporary restricted license is requested only for a case of extreme hardship or compelling circumstances where alternative means of transportation do not exist.

(2) The license applicant has not made an application for a temporary restricted license in any district court in the state which was denied.

(3) The temporary restricted license is restricted to the limited purpose or purposes specified in subsection 1 at times specified in the license.

(4) Proof of financial responsibility is established as defined in chapter 321A. However, such proof is not required if the driver's license was suspended under section 321.210A or 321.513 or revoked pursuant to a court order issued under section 901.5, subsection 10.

*b.* If the district court determines that a temporary restricted license is necessary, the court shall order the department to issue a temporary restricted license to the applicant. The court shall forward a record of each application for a temporary restricted license to the department, together with the results of the disposition of the request by the court.

3. The temporary restricted license shall be canceled upon conviction of a moving traffic violation or upon a violation of a term of the license. A "moving traffic violation" does not include a parking violation as defined in section 321.210.

4. The temporary restricted license is not valid to operate a commercial motor vehicle if a commercial driver's license is required for the person's operation of the commercial motor vehicle.

2007 Acts, ch 196, §3  
 Subsection 1, unnumbered paragraph 1, paragraphs a – e, and unnumbered paragraph 2 editorially redesignated as subsection 1, paragraph a, subparagraphs (1) – (5), and paragraph b, respectively  
 Subsection 1, paragraph a, NEW subparagraph (6)  
 Subsection 2, unnumbered paragraph 1, paragraphs a – d, and unnumbered paragraph 2 editorially redesignated as subsection 2, paragraph a, subparagraphs (1) – (4), and paragraph b

**321.218A Civil penalty — disposition — reinstatement.**

When the department suspends, revokes, or bars a person's driver's license or nonresident operating privilege for a conviction under this chapter, the department shall assess the person a civil penalty of two hundred dollars. However, for persons age nineteen or under, the civil penalty assessed shall be fifty dollars. The civil penalty does not apply to a suspension issued for a violation of section 321.180B. The money collected by the department under this section shall be transmitted to the treasurer of state who shall deposit the money in the juvenile detention home fund created in

section 232.142. Except as provided in section 321.210B, a temporary restricted license shall not be issued or a driver's license or nonresident operating privilege reinstated until the civil penalty has been paid. A person assessed a penalty under this section may remit the civil penalty along with a processing fee of five dollars to a county treasurer authorized to issue driver's licenses under chapter 321M, or the civil penalty may be paid directly to the department.

2005 Acts, ch 54, §2, 12; 2007 Acts, ch 196, §5  
 2005 amendment to this section takes effect July 1, 2007; 2005 Acts, ch 54, §12  
 See Code editor's note to §29A.28  
 Section amended

**321.234A All-terrain vehicles — highway use.**

1. All-terrain vehicles shall not be operated on a highway unless one or more of the following conditions apply:

*a.* The operation is between sunrise and sunset and is incidental to the vehicle's use for agricultural purposes.

*b.* The operation is incidental to the vehicle's use for the purpose of surveying by a licensed engineer or land surveyor.

*c.* The all-terrain vehicle is operated by an employee or agent of a political subdivision or public utility for the purpose of construction or maintenance on or adjacent to the highway.

*d.* The all-terrain vehicle is operated by an employee or agent of a public agency as defined in section 34.1 for the purpose of providing emergency services or rescue.

*e.* The all-terrain vehicle is operated for the purpose of mowing, installing approved trail signs, or providing maintenance on a snowmobile or all-terrain vehicle trail designated by the department of natural resources.

2. A person operating an all-terrain vehicle on a highway shall have a valid driver's license and the vehicle shall be operated at speeds of thirty-five miles per hour or less.

3. An all-terrain vehicle that is owned by the owner of land adjacent to a highway, other than an interstate road, may be operated by the owner of the all-terrain vehicle, or by a member of the owner's family, on the portion of the highway right-of-way that is between the shoulder of the roadway, or at least five feet from the edge of the roadway, and the owner's property line. A person operating an all-terrain vehicle within the highway right-of-way under this subsection shall comply with the registration, safety, and age requirements under chapter 321I.

4. A person convicted of a violation of this section is guilty of a simple misdemeanor punishable as a scheduled violation under section 805.8A, subsection 3, paragraph "f".

2007 Acts, ch 141, §1  
 Subsection 3 amended

### 321.236 Powers of local authorities.

Local authorities shall have no power to enact, enforce, or maintain any ordinance, rule or regulation in any way in conflict with, contrary to or inconsistent with the provisions of this chapter, and no such ordinance, rule or regulation of said local authorities heretofore or hereafter enacted shall have any force or effect, however the provisions of this chapter shall not be deemed to prevent local authorities with respect to streets and highways under their jurisdiction and within the reasonable exercise of the police power from:

1. Regulating the standing or parking of vehicles.

Parking meter, snow route, and overtime parking violations which are denied shall be charged and proceed before a court the same as other traffic violations. Filing fees and court costs shall be assessed as provided in section 602.8106, subsection 1 and section 805.6, subsection 1, paragraph "a" for parking violation cases. Parking violations which are admitted:

a. May be charged and collected upon a simple notice of a fine payable to the city clerk, if authorized by ordinance. The fine for each violation charged under a simple notice of a fine shall be established by ordinance. The fine may be increased by five dollars if the parking violation is not paid within thirty days of the date upon which the violation occurred, if authorized by ordinance. Violations of section 321L.4, subsection 2, may be charged and collected upon a simple notice of a one hundred dollar fine payable to the city clerk, if authorized by ordinance. No costs or other charges shall be assessed. All fines collected by a city pursuant to this paragraph shall be retained by the city and all fines collected by a county pursuant to this paragraph shall be retained by the county, except as provided by an agreement between a city and a county treasurer for the collection of fines pursuant to section 331.553, subsection 8.

b. Notwithstanding any such ordinance, may be prosecuted under the provisions of sections 805.7 to 805.13 or as any other traffic violation.

c. If the local authority regulating the standing or parking of vehicles under this subsection is located in a county where the renewal of registration of a vehicle shall be refused for unpaid restitution under section 321.40, the simple notice of fine under paragraph "a" shall contain the following statement:

"FAILURE TO PAY RESTITUTION OWED BY YOU CAN BE GROUNDS FOR REFUSING TO RENEW YOUR MOTOR VEHICLE'S REGISTRATION."

This paragraph does not invalidate forms for notice of parking violations in existence prior to July 1, 1980. Existing forms may be used until supplies are exhausted.

d. If the local authority regulating the standing or parking of vehicles under this subsection is

a county or is a city which has an agreement with a county treasurer by which the renewal of registration of a vehicle shall be refused for uncontested and unpaid parking fines under section 321.40, the simple notice of a fine under paragraph "a" shall contain the following statement:

"FAILURE TO PAY PARKING FINES OWED BY YOU CAN BE GROUNDS FOR REFUSING TO RENEW YOUR MOTOR VEHICLE'S REGISTRATION."

This paragraph "d" does not invalidate forms for notice of parking violations in existence prior to July 1, 2007. Existing forms may be used until supplies are exhausted.

e. Cities that enter into chapter 28E agreements for the collection of delinquent parking fines in conjunction with renewal of motor vehicle registrations pursuant to section 321.40 shall be responsible for computer programming costs incurred by the department to accommodate the collection and dissemination of delinquent parking ticket information to county treasurers, with each such city paying a per capita share of the costs as provided in this paragraph. The department's programming costs shall be paid by the first city to enter into such an agreement. Thereafter, cities that enter into such agreements on or before June 30, 2010, shall pay a pro rata share of the department's programming costs on or before September 30, 2010, to the city which first paid the costs, based on the respective populations of each city as of the last decennial census.

2. Regulating traffic by means of police officers or traffic-control signals.

3. Regulating or prohibiting processions or assemblages on the highways.

4. Designating particular highways as one-way highways and requiring that all vehicles thereon be moved in one specific direction.

5. Regulating the speed of vehicles in public parks.

6. Designating any highway as a through highway and requiring that all vehicles stop or yield the right-of-way before entering or crossing the same or designating any intersection as a stop intersection and requiring all vehicles to stop at one or more entrances to such intersections.

7. Licensing and regulating the operation of vehicles offered to the public for hire and used principally in intracity operation.

8. Restricting the use of highways as authorized in sections 321.471 to 321.473.

9. Regulating or prohibiting the turning of vehicles at and between intersections.

10. Regulating the operation of bicycles and requiring the registration and licensing of the same, including the requirement of a registration fee. However, the regulations shall not conflict with the provisions of section 321.234.

11. Establishing speed limits in public alleys and providing the penalty for violation thereof.

12. Designating highways or portions of highways as snow routes. When conditions of snow or ice exist on the traffic surface of a designated snow route, it is unlawful for the driver of a vehicle to impede or block traffic if the driving wheels of the vehicle are not equipped with snow tires, tire chains, or a nonslip differential.

A person charged with impeding or blocking traffic for lack of snow tires, chains, or nonslip differential shall have the charge dismissed upon a showing to the court that the person's motor vehicle was equipped with snow tires, chains, or a nonslip differential.

13. Establishing a rural residence district. The board of supervisors of a county with respect to highways under its jurisdiction may establish, by ordinance or resolution, rural residence districts and may, by ordinance or resolution, regulate the speed and parking of vehicles within the rural residence district consistent with sections 321.239, 321.285, and 321.293. Before establishing a rural residence district, the board of supervisors shall hold a public hearing on the proposal, notice of which shall be published in a newspaper having a general circulation in the area where the proposed district is located at least twenty days before the date of hearing. The notice shall state the time and place of the hearing, the proposed location of the district, and other data considered pertinent by the board of supervisors.

14. Regulating or prohibiting the operation of electric personal assistive mobility devices authorized pursuant to section 321.235A.

2005 Acts, ch 54, §3, 4, 12  
For fines applicable to offenses charged as scheduled violations, see §805.8A

2005 amendments to paragraph a and adding new paragraphs d and e are effective July 1, 2007; 2005 Acts, ch 54, §12  
Subsection 1, paragraph a amended and NEW paragraphs d and e

### 321.285 Speed restrictions.

Any person driving a motor vehicle on a highway shall drive the same at a careful and prudent speed not greater than nor less than is reasonable and proper, having due regard to the traffic, surface, and width of the highway and of any other conditions then existing, and no person shall drive any vehicle upon a highway at a speed greater than will permit the person to bring it to a stop within the assured clear distance ahead, such driver having the right to assume, however, that all persons using said highway will observe the law.

The following shall be the lawful speed except as provided by this section, or except as posted pursuant to sections 262.68, 321.236, subsection 5, section 321.288, subsection 6, sections 321.289, 321.290, 321.293, 321.295, and 461A.36, and any speed in excess thereof shall be unlawful:

1. Twenty miles per hour in any business district.
2. Twenty-five miles per hour in any residence or school district.

3. Forty-five miles per hour in any suburban district. Each school district as defined in subsection 70 of section 321.1 shall be marked by distinctive signs as provided by the current manual of uniform traffic control devices adopted by the department and placed on the highway at the limits of such school district.

4. Notwithstanding any other speed restrictions, the speed limit for all vehicular traffic shall be fifty-five miles per hour.

5. Reasonable and proper, but not greater than fifty-five miles per hour at any time between sunrise and sunset, and not greater than fifty miles per hour at any time between sunset and sunrise, on secondary roads unless such roads are surfaced with concrete or asphalt or a combination of both, in which case the speed limits shall be the same as provided in subsection 4 of this section. When the board of supervisors of any county shall determine upon the basis of an engineering and traffic investigation that the speed limit on any secondary road is greater than is reasonable and proper under the conditions found to exist at any intersection or other place or upon any part of a secondary road, the board shall determine and declare a reasonable and proper speed limit at the intersection or other part of the secondary road. The speed limits as determined by the board of supervisors shall be effective when appropriate signs giving notice of the speed limits are erected by the board of supervisors at the intersection or other place or part of the highway.

6. *a.* Notwithstanding any other speed restrictions, the speed limit for all vehicular traffic on fully controlled-access, divided, multilaned highways is sixty-five miles per hour. However, the speed limit for all vehicular traffic on highways that are part of the interstate road system, as defined in section 306.3, is seventy miles per hour. The department may establish a speed limit of sixty-five miles per hour on certain divided, multilaned highways not otherwise described in this paragraph.

*b.* The department, on its own motion or in response to a recommendation of a metropolitan or regional planning commission or council of governments, may establish a lower speed limit on a highway described in this subsection.

*c.* For the purposes of this subsection, "fully controlled-access highway" means a highway that gives preference to through traffic by providing access connections with selected public roads only and by prohibiting crossings at grade or direct private driveway connections.

*d.* A minimum speed may be established by the department on the highways referred to in this subsection if warranted by engineering and traffic investigations.

*e.* Any kind of vehicle, implement, or conveyance incapable of attaining and maintaining a speed of forty miles per hour shall be prohibited from using the interstate road system.



7. Notwithstanding any other speed restrictions, a self-propelled implement of husbandry equipped with flotation tires that is designed to be loaded and operated in the field and used exclusively for the application of organic or inorganic plant food materials, agricultural limestone, or agricultural chemicals shall not be operated on a highway at a speed in excess of thirty-five miles per hour.

2007 Acts, ch 143, §15  
 Speed limits at regents institutions, see §262.68  
 For applicable scheduled fines, see §805.8A, subsections 5 and 10  
 NEW subsection 7

### 321.457 Maximum length.

1. A combination of four vehicles is not allowed on the highways of this state, except for power units saddle mounted on other power units which shall be restricted to a maximum overall length of ninety-seven feet.

2. The maximum length of any motor vehicle or combination of vehicles operated on the highways of this state is as follows:

*a.* A single truck, unladen or with load, shall not have an overall length, inclusive of front and rear bumpers, in excess of forty-one feet. When determining the overall length of a single truck, the following shall be excluded:

(1) Cargo extending not more than three feet beyond the front bumper and not more than four feet beyond the rear bumper when transporting motor vehicles, boats, and chassis.

(2) An unladen cargo carrying device extending no greater than twenty-four inches from the rear of the bed of the truck.

(3) A cargo carrying device with load.

*b.* A single bus shall not have an overall length, inclusive of front and rear bumpers, in excess of forty-five feet, except that buses constructed so as to contain a flexible part allowing articulation shall not exceed sixty-one feet.

*c.* A manufactured or mobile home not in excess of forty-eight feet in length may be drawn by any motor vehicle, except a motor truck, provided that the manufactured or mobile home and its towing unit are not in excess of an overall length of sixty feet. For the purposes of this subsection, a light delivery truck, panel delivery truck, or "pickup" is not a motor truck. A portable livestock loading chute not in excess of a length of thirteen feet including its hitch or tongue may be drawn by any vehicle or combination of vehicles, provided that the vehicle or combination of vehicles drawing the loading chute is not in excess of the legal length provided for such vehicles or combinations.

*d.* A combination of three vehicles coupled together one of which is a motor vehicle, unladen or with load, other than a truck tractor, shall not have an overall length, inclusive of front and rear bumpers, in excess of seventy feet.

*e.* A motor vehicle or combination of vehicles may be operated upon the highways of this state,

irrespective of the length and weight limitations imposed by the laws of this state, if the motor vehicle or combination of vehicles is operated within the corporate limits of a city abutting a border of this state and such operations have been approved by ordinance of the city council and if the length and weight of the motor vehicle or combination of vehicles is in conformity with the laws relating to length and weight of the abutting state. If a city council has authorized such operation upon highways within the corporate limits, then the limit of travel for such motor vehicles or combination of vehicles within the state is extended to the commercial zones as described by federal regulations concerning interstate commerce, 49 C.F.R. § 1048.101, and to the interstate system as provided in 23 U.S.C. § 127 and 49 U.S.C. § 31112(c), as amended by Pub. L. No. 104-59.

*f.* A trailer or semitrailer, laden or unladen, shall not have an overall length in excess of fifty-three feet when operating in a truck tractor-semi-trailer combination exclusive of retractable extensions used to support the load. However, when a trailer or semitrailer is used exclusively for the transportation of passenger vehicles, light delivery trucks, panel delivery trucks, pickup trucks, recreational vehicle chassis, or boats, the load carried on the trailer or semitrailer may extend up to three feet beyond the front bumper and up to four feet beyond the rear bumper of the trailer or semitrailer. A lowboy semitrailer, laden or unladen, which is designed and exclusively used for the transportation of construction equipment shall not have an overall length in excess of fifty-seven feet when used in a truck tractor-semitrailer combination.

*g.* A trailer or semitrailer, laden or unladen, shall not have an overall length in excess of twenty-eight feet six inches when operating in a truck tractor-semitrailer-trailer combination or truck tractor-semitrailer-semi-trailer combination. When the semitrailers in a truck tractor-semitrailer-semi-trailer combination are connected by a rigid frame extension including a fifth-wheel connection point attached to the rear frame of the first semitrailer, the length of the frame extension shall not be included when determining the overall length of the first semitrailer.

*h.* Power units designed to carry cargo, when used in combination with a trailer or semitrailer shall not exceed sixty-five feet in overall length for the combination exclusive of retractable extensions used to support the load. However, if a combination of vehicles is used exclusively for the transportation of passenger vehicles, light delivery trucks, panel delivery trucks, pickup trucks, recreational vehicle chassis, or boats, the load may extend up to three feet beyond the front bumper of the power unit and up to four feet beyond the rear bumper of the trailer or semitrailer.

*i.* A stinger-steered automobile transporter shall not have an overall length exceeding sev-

enty-five feet, exclusive of retractable extensions used to support the load and all other devices or appurtenances related to the safe and efficient operation of the vehicle, except that the load may extend up to three feet beyond the front bumper and up to four feet beyond the rear bumper.

*j.* A motor home shall not have an overall length, excluding front and rear bumpers and safety equipment, in excess of forty-five feet.

*k.* A combination of two vehicles coupled together, one of which is a motor home, shall not have an overall length in excess of sixty-five feet.

*l.* A combination of two vehicles coupled together, one of which is a travel trailer or fifth-wheel travel trailer, shall not have an overall length in excess of sixty-five feet.

*m.* Notwithstanding any other provision of this chapter, and to the extent allowed under federal law, the maximum length of a towaway trailer transporter combination operated on the highways of this state is eighty-five feet. For purposes of this paragraph, “*towaway trailer transporter combination*” means a combination of vehicles consisting of a towing vehicle and two unladen trailers or unladen semitrailers in which the trailers or semitrailers constitute inventory property of the manufacturer intended for sale and which are being transported from a trailer manufacturer to a trailer distributor or authorized trailer dealer.

3. Fire fighting apparatus and vehicles operated during daylight hours when transporting poles, pipe, machinery, or other objects of a structural nature which cannot be readily disassembled when required for emergency repair of public service facilities or properties are not subject to the limitations on overall length of vehicles and combinations of vehicles imposed under this section. However, for operation during nighttime hours, these vehicles and the load being transported shall be equipped with a sufficient number of clearance lamps on both sides and marker lamps at the extreme ends of the projecting load to clearly mark the dimensions of the load. A member of the state patrol shall also be notified prior to the operation of the vehicle.

2007 Acts, ch 143, §16, 35

For applicable scheduled fines, see §805.8A, subsection 12, paragraph c Subsection 2, paragraph a, unnumbered paragraph 1 amended and unnumbered paragraphs 1 and 2 combined

### **321.463 Maximum gross weight — exceptions — penalties.**

1. An axle may be divided into two or more parts, except that all parts in the same vertical transverse plane shall be considered as one axle.

2. The gross weight on any one axle of a vehicle, or of a combination of vehicles, operated on the highways of this state, shall not exceed twenty thousand pounds on an axle equipped with pneumatic tires, and shall not exceed fourteen thousand pounds on an axle equipped with solid rubber tires. The gross weight on any tandem axle of a ve-

hicle, or any combination of vehicles, shall not exceed thirty-four thousand pounds on an axle equipped with pneumatic tires. This subsection does not apply to implements of husbandry.

3. Notwithstanding other provisions of this chapter to the contrary, indivisible loads operating under the permit requirements of sections 321E.7, 321E.8, 321E.9, and 321E.29A shall be allowed a maximum of twenty thousand pounds per axle.

4. *a.* Self-propelled implements of husbandry used exclusively for the application of organic or inorganic plant food materials, agricultural limestone, or agricultural chemicals, unless traveling under a permit issued pursuant to section 321E.8A, shall be operated in compliance with this section.

*b.* (1) Notwithstanding any provision of this section to the contrary, the weight on any one axle of a fence-line feeder, grain cart, or tank wagon operated on the highways of this state shall not exceed twenty-four thousand pounds from February 1 through May 31 or twenty-eight thousand pounds from June 1 through January 31, provided, however, that the maximum gross vehicle weight of the fence-line feeder, grain cart, or tank wagon shall not exceed ninety-six thousand pounds.

Notwithstanding any provision of this section to the contrary, a tracked implement of husbandry operated on the highways of this state shall not have a maximum gross weight in excess of ninety-six thousand pounds.

A fence-line feeder, grain cart, tank wagon, or tracked implement of husbandry shall comply with the other provisions of this section and chapter when operated over a bridge in this state. A local authority may issue a special permit, based on a statewide standard developed by the department, allowing the operation over a bridge within its jurisdiction of a fence-line feeder, grain cart, tank wagon, or tracked implement of husbandry with a weight in excess of the weights allowed under this chapter.

(2) For purposes of this paragraph “*b*”, “*highway*” does not include a bridge.

For purposes of this paragraph “*b*”, “*fence-line feeder, grain cart, or tank wagon*” means all of the following:

(a) A fence-line feeder, grain cart, or tank wagon manufactured on or after July 1, 2001.

(b) After July 1, 2005, any fence-line feeder, grain cart, or tank wagon.

The year of manufacture of a fence-line feeder, grain cart, or tank wagon manufactured on or after July 1, 2001, shall be permanently made a part of the identification plate on the vehicle. Fraudulently altering or defacing or attempting to fraudulently alter or deface the year of manufacture or other product identification number on a fence-line feeder, grain cart, or tank wagon is a violation of section 321.92.

5. a. The maximum gross weight allowed to be carried on a vehicle or combination of vehicles on highways which are part of the primary system is as follows:

MAXIMUM GROSS WEIGHT TABLE — PRIMARY HIGHWAYS						
Distance in feet	2 Axles	3 Axles	4 Axles	5 Axles	6 Axles	7 Axles
4	34,000					
5	34,000					
6	34,000					
7	34,000	34,000				
8	34,000	34,000				
8'1"	38,000	42,000				
9	39,000	42,500				
10	40,000	43,500	48,500			
11		44,000	49,500			
12		45,000	50,000			
13		45,500	50,500	56,000		
14		46,500	51,500	57,000		
15		47,000	52,000	57,500		
16		48,000	52,500	58,000		
17		48,500	53,500	58,500	64,000	
18		49,500	54,000	59,000	65,000	
19		50,000	54,500	60,000	65,500	
20		51,000	55,500	60,500	66,000	71,500
21		51,500	56,000	61,000	66,500	72,500
22		52,500	56,500	61,500	67,000	73,000
23		53,000	57,500	62,500	68,000	73,500
24		54,000	58,000	63,000	68,500	74,000
25		54,500	58,500	63,500	69,000	74,500
26		55,500	59,500	64,000	69,500	75,000
27		56,000	60,000	65,000	70,000	76,000
28		57,000	60,500	65,500	71,000	76,500
29		57,500	61,500	66,000	71,500	77,000
30		58,500	62,000	66,500	72,000	77,500
31		59,000	62,500	67,500	72,500	78,000
32		60,000	63,500	68,000	73,000	78,500
33			64,000	68,500	74,000	79,500
34			64,500	69,500	74,500	80,000
35			65,500	70,000	75,000	
36			68,000	70,500	75,500	
37			68,000	71,000	76,000	
38			68,000	72,000	77,000	
39			68,000	72,500	77,500	
40			68,500	73,000	78,000	
41			69,500	73,500	78,500	
42			70,000	74,000	79,000	
43			70,500	75,000	80,000	
44			71,500	75,500		
45			72,000	76,000		
46			72,500	76,500		
47			73,500	77,500		
48			74,000	78,000		
49			74,500	78,500		
50			75,500	79,000		
51			76,000	80,000		
52			76,500			
53			77,500			
54			78,000			
55			78,500			
56			79,500			
57			80,000			

b. The maximum gross weight allowed to be carried on a vehicle or combination of vehicles on nonprimary highways is as follows:

**NONPRIMARY HIGHWAYS — MAXIMUM GROSS WEIGHT TABLE**

Distance in feet	2 Axles	3 Axles	4 Axles	5 Axles	6 Axles	7 Axles
4	34,000					
5	34,000					
6	34,000					
7	34,000	34,000				
8	34,000	34,000				
8'1"	38,000	42,000				
9	39,000	42,500				
10	40,000	43,500	45,000			
11		44,000	46,000			
12		45,000	47,000			
13		45,500	48,000	48,500		
14		46,500	49,000	49,500		
15		47,000	50,000	50,500		
16		48,000	51,000	51,500		
17		48,500	52,000	52,500	54,000	
18		49,500	53,000	53,500	55,000	
19		50,000	54,500	54,500	56,000	
20		51,000	55,500	55,500	57,000	
21		51,500	56,000	56,500	58,000	
22		52,500	56,500	57,500	59,000	
23		53,000	57,500	58,500	60,000	
24		54,000	58,000	59,500	61,000	
25		54,500	58,500	60,500	62,000	
26		55,500	59,500	61,500	63,000	
27		56,000	60,000	62,500	64,000	
28		57,000	60,500	63,500	65,000	
29		57,500	61,500	64,500	66,000	
30		58,500	62,000	65,500	67,000	
31		59,000	62,500	66,500	68,000	
32		60,000	63,500	67,500	69,000	
33			64,000	68,500	70,000	
34			64,500	69,500	71,000	
35			65,500	70,000	72,000	
36			68,000	70,500	73,000	
37			68,000	71,000	74,000	
38			68,000	72,000	75,000	
39			68,000	72,500	76,000	
40			68,500	73,000	77,000	
41			69,500	73,500	78,000	78,000
42			70,000	74,000	79,000	79,000
43			70,500	75,000	80,000	80,000
44			71,500	75,500		
45			72,000	76,000		
46			72,500	76,500		
47			73,500	77,500		
48			74,000	78,000		
49			74,500	78,500		
50			75,500	79,000		
51			76,000	80,000		
52			76,500			
53			77,500			
54			78,000			
55			78,500			
56			79,500			
57			80,000			

c. The maximum gross weight allowed to be carried on a livestock or construction vehicle on noninterstate highways is as follows:

NONINTERSTATE HIGHWAYS  
MAXIMUM GROSS WEIGHT TABLE  
LIVESTOCK OR CONSTRUCTION VEHICLE

Distance in feet	6 Axles	7 Axles
44	80,500	80,500
45	81,000	81,500
46	81,500	82,500
47	82,000	83,500
48	83,000	84,000
49	83,500	85,000
50	84,000	86,000
51	84,500	87,000
52	85,000	88,000
53	86,000	88,500
54	86,500	89,500
55	87,000	90,500
56	87,500	91,500
57	88,000	92,000
58	89,000	93,000
59	89,500	94,000
60	90,000	95,000
61		95,500
62		96,000

Notwithstanding any provision of this section to the contrary, the maximum gross weight allowed to be carried on a noninterstate highway by a livestock vehicle with five axles, a minimum distance in feet between the centers of the first and fifth axles of sixty-one feet, and a minimum distance between the two rear axles of at least eight feet and one inch is eighty-six thousand pounds.

d. For the purposes of the maximum gross weight tables in paragraphs "a", "b", and "c", distance in feet is the measured distance in feet between the centers of the extreme axles of any group of axles, rounded to the nearest whole foot.

e. The maximum gross weight allowed to be carried on a tracked implement of husbandry when operated on a noninterstate highway bridge is as follows:

NONINTERSTATE HIGHWAY BRIDGES  
MAXIMUM GROSS WEIGHT TABLE  
TRACKED IMPLEMENTS OF HUSBANDRY

Length of Track in Feet	Weight in Pounds
4	34,000
5	34,000
6	34,000
7	34,000
8	42,000
9	42,500
10	45,000
11	46,000
12	47,000
13	48,500
14	49,500
15	50,500
16	51,500
17	54,000
18	55,000
19	56,000
20	57,000
21	58,000
22	59,000
23	60,000
24	61,000
25	62,000
26	63,000
27	64,000
28	65,000
29	66,000
30	67,000
31	68,000
32	69,000
33	70,000
34	71,000
35	72,000
36	73,000
37	74,000
38	75,000
39	76,000
40	77,000
41	78,000
42	79,000
43	80,000

“Length of track in feet” means the length of track on one side of the tracked implement of husbandry which is in contact with the ground or roadway surface.

6. The weight on any one axle, including a tandem axle, of a vehicle which is transporting livestock on highways not part of the interstate system may exceed the legal maximum weight given in this chapter providing that the gross weight on any particular group of axles on such vehicle does not exceed the gross weight allowable under this chapter for such groups of axles.

7. The weight on any one axle, including a tandem axle, of a vehicle which is transporting raw materials from a designated borrow site to a construction project or transporting raw materials from a construction project, and which is operating on a highway that is not part of the interstate system and along a route of travel approved by the department or the appropriate local authority, may exceed the legal maximum weight otherwise allowed under this chapter by ten percent if the gross weight on any particular group of axles on the vehicle does not exceed the gross weight allowed under this chapter for that group of axles. If the vehicle exceeds the ten percent tolerance allowed under this subsection, the fine shall be computed on the difference between the actual weight and the ten percent tolerance weight allowed for the axle or tandem axle.

8. A vehicle or combination of vehicles transporting materials or equipment on nonprimary highways to or from a construction project or commercial plant site may operate under the maximum gross weight table for primary highways in subsection 5, paragraph “a”, if the route is approved by the appropriate local authority. Route approval is not required if the vehicle or combination of vehicles transporting materials or equipment to or from a construction project or commercial plant site complies with the maximum gross weight table for noninterstate highways in subsection 5, paragraph “c”.

9. A vehicle designed to tow wrecked or disabled vehicles shall be exempt from the weight limitations in this section while the vehicle is towing a wrecked or disabled vehicle.

10. a. A person who operates a vehicle in violation of this section, and an owner, or any other person, employing or otherwise directing the operator of a vehicle, who requires or knowingly permits the operation of a vehicle in violation of this section shall be fined according to the following schedule:

AXLE, TANDEM AXLE, AND GROUP OF AXLES WEIGHT VIOLATIONS	
Pounds Overloaded	Amount of Fine
Up to and including 1,000 pounds	\$12
Over 1,000 pounds up to and including 2,000 pounds	\$22
Over 2,000 pounds up to and including 3,000 pounds	\$155
Over 3,000 pounds up to and including 4,000 pounds	\$240
Over 4,000 pounds up to and including 5,000 pounds	\$375
Over 5,000 pounds up to and including 6,000 pounds	\$585
Over 6,000 pounds up to and including 7,000 pounds	\$850
Over 7,000 pounds up to and including 8,000 pounds	\$950
Over 8,000 pounds up to and including 9,000 pounds	\$1,050
Over 9,000 pounds up to and including 10,000 pounds	\$1,150
Over 10,000 pounds up to and including 11,000 pounds	\$1,300
Over 11,000 pounds up to and including 12,000 pounds	\$1,400
Over 12,000 pounds up to and including 13,000 pounds	\$1,500
Over 13,000 pounds up to and including 14,000 pounds	\$1,600
Over 14,000 pounds up to and including 15,000 pounds	\$1,700
Over 15,000 pounds up to and including 16,000 pounds	\$1,800
Over 16,000 pounds up to and including 17,000 pounds	\$1,900
Over 17,000 pounds up to and including 18,000 pounds	\$2,000
Over 18,000 pounds up to and including 19,000 pounds	\$2,100
Over 19,000 pounds up to and including 20,000 pounds	\$2,200
Over 20,000 pounds	\$2,200 plus ten cents per pound in excess of 20,000 pounds

b. Fines for gross weight violations for vehicles or combinations of vehicles shall be assessed at one-half of the fine rate schedule for axle, tandem

axle, and groups of axles weight violations.

c. Except as otherwise provided, the amount of the fine to be assessed shall be computed on the difference between the actual weight and the maximum legal weight specified in this section.

d. The schedule of fines may be assessed in addition to any other penalties provided for in this chapter.

11. Overloads on axles and tandem axles and overloads on groups of axles or on an entire vehicle or combination of vehicles shall be considered as separate violations of the provisions of this section.

12. A person who issues or executes, or causes to be issued or executed, a bill of lading, manifest, or shipping document of any kind which states a false weight of the cargo set forth on such bill, manifest, or document, which is less than the actual weight of the cargo, shall, upon conviction, be guilty of a simple misdemeanor.

2007 Acts, ch 143, §17

For applicable scheduled fines, see §805.8A, subsection 12, paragraph e Subsection 4, paragraph a, unnumbered paragraph 1 amended

#### **321.484 Offenses by owners.**

It is unlawful for the owner, or any other person, employing or otherwise directing the driver of any vehicle to require or knowingly to permit the operation of such vehicle upon a highway in any manner contrary to law.

1. The owner of a vehicle shall not be held responsible for a violation of a provision regulating the stopping, standing, or parking of a vehicle, whether the provision is contained in this chapter, or chapter 321L, or an ordinance or other regula-

tion or rule, if the owner establishes that at the time of the violation the vehicle was in the custody of an identified person other than the owner pursuant to a lease as defined in chapter 321F or pursuant to a rental agreement as defined in section 516D.3. The furnishing to the county attorney where the charge is pending of a copy of the lease prescribed by section 321F.6 or rental agreement that was in effect for the vehicle at the time of the alleged violation shall be prima facie evidence that the vehicle was in the custody of an identified person other than the owner within the meaning of this subsection. Upon receipt of such evidence, the appropriate authority shall dismiss as against the owner of the vehicle any citation issued for a violation within the meaning of this subsection that occurred while the vehicle was in the custody of the identified person.

2. If a peace officer as defined in section 801.4 has reasonable cause to believe the driver of a motor vehicle has violated section 321.261, 321.262, 321.264, 321.341, 321.342, 321.343, 321.344, or 321.372, the officer may request any owner of the motor vehicle to supply information identifying the driver. When requested, the owner of the vehicle shall identify the driver to the best of the owner's ability. However, the owner of the vehicle is not required to supply identification information to the officer if the owner believes the information is self-incriminating.

2005 Acts, ch 54, §5, 12

2005 amendment to subsection 1 takes effect July 1, 2007; 2005 Acts, ch 54, §12

Unnumbered paragraph 2 amended and editorially designated as subsection 1

Unnumbered paragraph 3 editorially designated as subsection 2

## CHAPTER 321A

### MOTOR VEHICLE FINANCIAL RESPONSIBILITY

#### **321A.3 Abstract of operating record — fees to be charged and disposition of fees.**

1. The department shall upon request furnish any person a certified abstract of the operating record of a person subject to chapter 321, 321J, or this chapter. The abstract shall also fully designate the motor vehicles, if any, registered in the name of the person. If there is no record of a conviction of the person having violated any law relating to the operation of a motor vehicle or of any injury or damage caused by the person, the department shall so certify. A fee of five dollars and fifty cents shall be paid for each abstract except for state, county, or city officials, court officials, public transit officials, or other officials of a political subdivision of the state. The department shall transfer the moneys collected under this section to the treasurer of state who shall credit to the general fund all moneys collected.

2. A sheriff may provide an abstract of the op-

erating record of a person to the person or an individual authorized by the person. The sheriff shall charge a fee of five dollars and fifty cents for each abstract which the sheriff shall transfer to the department quarterly. The sheriff may charge an additional fee sufficient to cover costs incurred by the sheriff in producing the abstract.

3. The abstracts are not admissible as evidence in an action for damages or criminal proceedings arising out of a motor vehicle accident.

4. The abstract of operating record provided under this section shall designate which speeding violations occurring on or after July 1, 1986, but before May 12, 1987, are for violations of ten miles per hour or less over the legal speed limit in speed zones that have a legal speed limit greater than thirty-five miles per hour. For speeding violations occurring on or after May 12, 1987, the abstract provided under this section shall designate which speeding violations are for ten miles per hour or

less over the legal speed limit in speed zones that have a legal speed limit equal to or greater than thirty-five miles per hour but not greater than fifty-five miles per hour.

5. The department may permit any person to view the operating record of a person subject to chapter 321 or this chapter through one of the department's computer terminals or through a computer printout generated by the department. The department shall not require a fee for a person to view their own operating record, but the department shall impose a fee of one dollar for each of the first five operating records viewed within a calendar day and two dollars for each additional operating record viewed within the calendar day.

6. Fees under subsections 1 and 5 may be paid by credit cards, as defined in section 537.1301, subsection 17, approved for that purpose by the department of transportation. The department shall enter into agreements with financial institutions extending credit through the use of credit cards to ensure payment of the fees. The department shall adopt rules pursuant to chapter 17A to implement the provisions of this subsection.

7. Notwithstanding chapter 22 or any other law of this state, except as provided in subsection 5, the department shall not make available a certified operating record in a manner which would result in a fee of less than that provided under subsection 1. Should the department make available certified copies of abstracts of operating records on magnetic tape or on disk or through electronic data transfer, the five dollar and fifty cent fee under subsection 1 applies to each abstract supplied, and an additional access fee may be charged for each abstract supplied through electronic data transfer.

For the fiscal year beginning July 1, 2007, a portion of the fees collected for furnishing a certified abstract of a vehicle operating record to be transferred to the lowAccess revolving fund; 2007 Acts, ch 217, §3

Section not amended; footnote revised

### **321A.32A Civil penalty — disposition — reinstatement.**

When the department suspends, revokes, or bars a person's driver's license or nonresident operating privilege under this chapter, the department shall assess the person a civil penalty of two hundred dollars. However, for persons age nineteen or under, the civil penalty assessed shall be fifty dollars. The money collected by the department under this section shall be transmitted to the treasurer of state who shall deposit the money in the juvenile detention home fund created in section 232.142. A temporary restricted license shall not be issued or a driver's license or nonresident operating privilege reinstated until the civil penalty has been paid. A person assessed a penalty under this section may remit the civil penalty along with a processing fee of five dollars to a coun-

ty treasurer authorized to issue driver's licenses under chapter 321M, or the civil penalty may be paid directly to the department.

2005 Acts, ch 54, §6, 12  
2005 amendment to this section takes effect July 1, 2007; 2007 Acts, ch 54, §12

Section amended

### **321A.34 Self-insurers.**

1. *a.* Any person in whose name more than twenty-five motor vehicles are registered may qualify as a self-insurer by obtaining a certificate of self-insurance issued by the department as provided in paragraph "b".

*b.* The department may, upon the application of such a person, issue a certificate of self-insurance if the department is satisfied that the person has and will continue to have the ability to pay judgments obtained against the person for damages arising out of the ownership, maintenance, or use of any vehicle owned by the person. A person issued a certificate of self-insurance pursuant to this subsection shall maintain a financial liability coverage card as provided in section 321.20B, subsection 2, paragraph "b", subparagraph (1).

2. *a.* Any association of individual members that is a legal entity with the power to sue and be sued in its own name and which is composed of individual members in whose names a total of more than twenty-five motor vehicles are registered, may qualify as a self-insurer by obtaining a certificate of insurance issued by the department as provided in paragraph "b".

*b.* The department may, upon the application of such an association, issue a certificate of self-insurance if the department is satisfied that the association has and will continue to have the ability to pay judgments obtained against the association or against an individual member of the association for damages arising out of the ownership, maintenance, or use of any vehicle owned by an individual member of the association. An association issued a certificate of self-insurance pursuant to this paragraph shall maintain a financial liability coverage card as provided in section 321.20B, subsection 2, paragraph "b", subparagraph (2).

3. Upon not less than five days' notice and a hearing pursuant to the notice, the department may upon reasonable grounds cancel a certificate of self-insurance. Failure to pay a judgment for damages arising out of the ownership, maintenance, or use of any vehicle owned by the self-insurer within thirty days after the judgment becomes final constitutes a reasonable ground for the cancellation of a certificate of self-insurance. Upon the cancellation of a certificate of self-insurance, the person who was issued the certificate shall surrender to the director all self-insurance cards issued to the person.

2007 Acts, ch 215, §108

Subsections 1 and 2 amended



## CHAPTER 321E

### VEHICLES OF EXCESSIVE SIZE AND WEIGHT

#### 321E.2 Permit-issuing authorities.

1. Annual, multi-trip, and single-trip permits shall be issued by the authority responsible for the maintenance of the system of highways or streets. However, the department may issue permits on primary road extensions in cities in conjunction with movements on the rural primary road system. The department may issue an all-system permit under section 321E.8 which is valid for movements on all highways or streets under the jurisdiction of either the state or those local authorities which have indicated in writing to the department those streets or highways for which an all-system permit is not valid. The department may issue annual permits pursuant to section 321E.8A valid only for operation on noninterstate highways in counties stipulated in the permit.

2. At the request of a local authority, the department shall issue annual, multi-trip, and single-trip permits that are under the jurisdiction of the local authority.

2007 Acts, ch 143, §18

Unnumbered paragraph 1 amended and unnumbered paragraphs 1 and 2 editorially designated as subsections 1 and 2

#### 321E.7 Load limits per axle.

1. The gross weight on any axle of any vehicle or combination of vehicles traveling under a permit issued in accordance with the provisions of this chapter shall not exceed the maximum axle load prescribed in section 321.463; except that cranes being temporarily moved on streets, roads, or highways may have a gross weight of twenty-four thousand pounds on any single axle; and construction machinery being temporarily moved on streets, roads, or highways may have a gross weight of thirty-six thousand pounds on any single axle equipped with a minimum size twenty-six point five-inch by twenty-five-inch flotation pneumatic tires and a maximum gross weight of twenty thousand pounds on any single axle equipped with minimum size eighteen-inch by twenty-five-inch flotation pneumatic tires, with the department authorized to adopt rules to permit the use of tire sizes and weights within the minimum and maximum specifications provided in this section, provided that the total gross weight of the vehicle or a combination of vehicles does not exceed a maximum of one hundred twenty-six thousand pounds; and except that a manufacturer of machinery or equipment manufactured or assembled in Iowa may be granted a permit for the movement of such machinery or equipment mounted on pneumatic tires with axle loads exceeding the maximum axle load prescribed in section 321.463 for distances not to exceed twenty-five miles at a speed not greater than twenty miles per hour. The move-

ment of such machinery or equipment shall be over a specified route between the place of assembly or manufacture and a storage area, shipping point, proving ground, experimental area, weighing station, or another manufacturing plant.

2. The gross weight on any one axle of any vehicle or combination of vehicles traveling under a permit issued in accordance with this chapter shall not exceed the maximum axle load prescribed in section 321.463; except that any one axle on a vehicle or combination of vehicles transporting construction machinery shall be allowed a one thousand pound weight tolerance, provided the total gross weight of the vehicle or combination of vehicles does not exceed the gross weight allowed by the permit.

3. Special mobile equipment, as defined in section 321.1, subsection 75, is not subject to the requirements for distance in feet between the extremes of any group of axles or the extreme axles of the vehicle or combination of vehicles as required by this chapter when being moved upon the highways if the operator has a permit issued under this chapter.

4. Notwithstanding subsections 1 and 2, a self-propelled implement of husbandry traveling under a permit issued pursuant to section 321E.8A may exceed the maximum axle loads prescribed under section 321.463 only when operated on a noninterstate highway in a county covered under the permit, provided the weight on any one axle does not exceed twenty-five thousand pounds, and provided the current and valid permit is carried in the vehicle. For purposes of this subsection, "*noninterstate highway*" does not include a bridge.

2007 Acts, ch 143, §19

NEW subsection 4

#### 321E.8A Self-propelled implement of husbandry — annual permit.

1. A self-propelled implement of husbandry equipped with flotation tires that is designed to be loaded and operated in the field and used exclusively for the application of organic or inorganic plant food materials, agricultural limestone, or agricultural chemicals, and that, as newly manufactured, exceeds the axle weight limits under section 321.463 when unloaded, may be operated on noninterstate highways, excluding bridges, in a county pursuant to a permit issued by the department for travel within the county. Prior to issuing a permit, the department shall collect a fee of six hundred dollars for each county in which the vehicle will be operated during the period of the permit beginning July 1 and ending June 30, provided that a permit shall not be issued for a vehicle for operation in more than ten counties and the total

amount of fees collected for a vehicle for the period of the permit shall not exceed three thousand five hundred dollars. Moneys collected by the department on behalf of the counties in which the vehicle will be operated shall be allotted equally to those counties and deposited in the secondary road funds of those counties. A vehicle for which a permit is issued under this section shall be assigned a permit number that shall be displayed on the door of the vehicle in numbers that contrast sharply in color with the background on which the number is placed, be readily legible during daylight hours from a distance of fifty feet when the vehicle is stationary, and be maintained in a manner that retains the legibility. Only vehicles originally purchased or ordered prior to February 1, 2007, are el-

igible for a permit. New permits shall not be issued on or after July 1, 2007; however, a permit issued for a vehicle under this section prior to July 1, 2007, may be renewed for that vehicle annually upon payment of the appropriate county fees.

2. A vehicle described in subsection 1 shall not be operated on a highway without a permit issued under this section. The owner of a vehicle that is operated in violation of section 321E.7, subsection 4, or this section is subject to a civil penalty of ten thousand dollars, in addition to any other penalties that may apply.

2007 Acts, ch 143, §20  
Implementation of permitting process for certain self-propelled implements of husbandry; 2007 Acts, ch 143, §32, 35  
NEW section

## CHAPTER 321G

### SNOWMOBILES

#### 321G.1 Definitions.

As used in this chapter, unless the context otherwise requires:

1. *All-terrain vehicle* means the same as defined in section 321I.1.
2. *"A' scale"* means the physical scale marked "A" graduated in decibels on a sound level meter which meets the requirements of the American national standards institute, incorporated, publication S1.4-1961, general purpose sound level meters.
3. *Commission* means the natural resource commission of the department.
4. *Dealer* means a person engaged in the business of buying, selling, or exchanging snowmobiles required to be registered under this chapter and who has an established place of business for that purpose in this state.
5. *Department* means the department of natural resources.
6. *Director* means the director of the department.
7. *Distributor* means a person, resident or nonresident, who sells or distributes snowmobiles to snowmobile dealers in this state or who maintains distributor representatives.
8. *Established place of business* means the place actually occupied either continuously or at regular periods by a dealer or manufacturer where the books and records are kept and the dealer's or manufacturer's business is primarily transacted.
9. *Manufacturer* means a person engaged in the business of constructing or assembling snowmobiles required to be registered under this chapter and who has an established place of business for that purpose in this state.
10. *Measurable snow* means one-tenth of one

inch of snow.

11. *Nonambulatory person* means an individual with paralysis of the lower half of the body with the involvement of both legs, usually caused by disease of or injury to the spinal cord, or caused by the loss of both legs or the loss of a part of both legs.

12. *Operate* means to ride in or on, other than as a passenger, use, or control the operation of a snowmobile in any manner, whether or not the snowmobile is moving.

13. *Operator* means a person who operates or is in actual physical control of a snowmobile.

14. *Owner* means a person, other than a lienholder, having the property right in or title to a snowmobile. The term includes a person entitled to the use or possession of a snowmobile subject to an interest in another person, reserved or created by agreement and securing payment or performance of an obligation, but the term excludes a lessee under a lease not intended as security.

15. *Person* means an individual, partnership, firm, corporation, association, and the state, its agencies, and political subdivisions.

16. *Public land* means land owned by the federal government, the state, or political subdivisions of the state and land acquired or developed for public recreation pursuant to section 321G.7.

17. *Railroad right-of-way* means the full width of property owned, leased, or subject to easement for railroad purposes and is not limited to those areas on which tracks are located.

18. *Roadway* means that portion of a highway improved, designed, or ordinarily used for vehicular travel.

19. *Safety certificate* means a snowmobile safety certificate, approved by the commission, is-

sued to a qualified applicant who is twelve years of age or older.

20. “*Snowmobile*” means a motorized vehicle weighing less than one thousand pounds which uses sled-type runners or skis, endless belt-type tread with a width of forty-eight inches or less, or any combination of runners, skis, or tread, and is designed for travel on snow or ice. “*Snowmobile*” does not include an all-terrain vehicle, as defined in section 321I.1, which has been altered or equipped with runners, skis, belt-type tracks, or treads.

21. “*Special event*” means an organized race, exhibition, or demonstration of limited duration which is conducted on public land or ice under the jurisdiction of the commission according to a pre-arranged schedule and in which general public interest is manifested.

22. “*Street*” or “*highway*” means the entire width between property lines of every way or place of whatever nature when any part thereof is open to the use of the public, as a matter of right, for purposes of vehicular travel, except in public areas in which the boundary shall be thirty-three feet each side of the center line of the roadway.

2007 Acts, ch 141, §2  
NEW subsections 6 and 7 and former subsections 6 – 20 renumbered as 8 – 22

### 321G.2 Rules.

1. The commission may adopt rules for the following purposes:

- a. Registration and titling of snowmobiles.
- b. Use of snowmobiles as far as game and fish resources or habitats are affected.
- c. Use of snowmobiles on public lands under the jurisdiction of the commission.
- d. Use of snowmobiles on any waters of the state under the jurisdiction of the commission, while the waters are frozen.
- e. Establishment of a program of grants, subgrants, and contracts to be administered by the department for the development and delivery of certified courses of instruction for the safe use and operation of snowmobiles by political subdivisions and incorporated private organizations.
- f. Issuance of safety certificates.
- g. Issuance of competition registrations and the participation of snowmobiles so registered in special events.
- h. Issuance of annual user permits for nonresidents and establishment of administrative fees for issuance of the permits.

2. The director of transportation may adopt rules not inconsistent with this chapter regulating the use of snowmobiles on streets and highways. Cities may designate streets under the jurisdiction of cities within their respective corporate limits which may be used for snowmobiling.

3. In adopting the rules, consideration shall be given to the need to protect the environment and the public health, safety, and welfare; to protect

private property, public parks, and other public lands; to protect wildlife and wildlife habitat; and to promote uniformity of rules relating to the use, operation, and equipment of snowmobiles. The rules shall be in conformance with chapter 17A.

2007 Acts, ch 141, §3  
Unnumbered paragraph 1 and subsections 1 – 7 editorially redesignated as subsection 1, unnumbered paragraph 1 and paragraphs a – g  
Subsection 1, NEW paragraph h  
Former unnumbered paragraphs 2 and 3 editorially redesignated as subsections 2 and 3

### 321G.3 Registration required — penalties.

1. Each snowmobile used on public land or ice of this state shall be currently registered. A person shall not operate, maintain, or give permission for the operation or maintenance of a snowmobile on public land or ice unless the snowmobile is registered in accordance with this chapter or applicable federal laws or the snowmobile displays a current annual user permit decal issued for the snowmobile as provided in section 321G.4A.

2. A registration certificate and registration decal shall be assigned, without payment of fee, to snowmobiles owned by the state of Iowa or its political subdivisions. The registration decal shall be displayed on the snowmobile as required under section 321G.5. A registration certificate shall be assigned, without payment of a registration fee, for a snowmobile which is exempt from registration but is being titled, upon payment of a writing fee as provided in section 321G.27 and an administrative fee. A registration decal shall not be issued and the registration shall not expire while the snowmobile is exempt. The application for registration and the registration certificate shall indicate the reason for exemption from the registration fee.

3. A violation of subsection 1 or 2 is punishable as a scheduled violation under section 805.8B, subsection 2, paragraph “a”. When the scheduled fine is paid, the violator shall submit proof to the department that a valid registration or user permit has been obtained by providing a copy of the registration or user permit to the department within thirty days of the date the fine is paid. A person who violates this subsection is guilty of a simple misdemeanor.

2007 Acts, ch 141, §4  
Section amended

### 321G.4 Registration — fee.

1. The owner of each snowmobile required to be registered shall register it annually with the department through a county recorder. The department shall develop and maintain an electronic system for the registration of snowmobiles pursuant to this chapter. The department shall establish forms and procedures as necessary for the registration of snowmobiles.

2. The owner of the snowmobile shall file an application for registration with the department through a county recorder in the manner estab-

lished by the commission. The application shall be completed by the owner and shall be accompanied by a fee of fifteen dollars and a writing fee as provided in section 321G.27. A snowmobile shall not be registered by the county recorder until the county recorder is presented with receipts, bills of sale, or other satisfactory evidence that the sales or use tax has been paid for the purchase of the snowmobile or that the owner is exempt from paying the tax. A snowmobile that has an expired registration certificate from another state may be registered in this state upon proper application, payment of all applicable registration and writing fees, and payment of a penalty of five dollars.

3. Upon receipt of the application in approved form accompanied by the required fees, the county recorder shall issue to the applicant a registration certificate and registration decal. The registration decal shall be displayed on the snowmobile as provided in section 321G.5. The registration certificate shall be carried either in the snowmobile or on the person of the operator of the snowmobile when in use. The operator of a snowmobile shall exhibit the registration certificate to a peace officer upon request, to a person injured in an accident involving a snowmobile, to the owner or operator of another snowmobile or the owner of personal or real property when the snowmobile is involved in a collision or accident of any nature with another snowmobile or the property of another person, or to the property owner or tenant when the snowmobile is being operated on private property without permission from the property owner or tenant.

4. Notwithstanding subsections 1 and 2, a snowmobile that is more than thirty years old may be registered for a one-time fee of twenty-five dollars, which shall exempt the owner from annual registration and fee requirements for that snowmobile. However, if ownership of such a snowmobile is transferred, the new owner shall register the snowmobile and pay the one-time fee as required under this subsection.

2007 Acts, ch 141, §5  
Section amended

#### **321G.4A Nonresident user permits.**

1. A nonresident wishing to operate a snowmobile, other than a snowmobile registered pursuant to this chapter, on public land or ice of this state shall first obtain a user permit from the department. A user permit shall be issued for the snowmobile specified at the time of application and is not transferable. A user permit shall be valid for the calendar year or time period specified in the permit.

2. A county recorder or a license agent designated by the director pursuant to section 483A.11 may issue user permits. The fee for a user permit shall be fifteen dollars plus an administrative fee established by the commission. A county recorder or a license agent shall retain a writing fee from

the sale of each user permit as provided in section 321G.27.

2007 Acts, ch 141, §6  
Section amended

#### **321G.5 Display of registration and user permit decals.**

The owner shall display the registration decal or nonresident user permit decal on a snowmobile in the manner prescribed by the rules of the commission.

2007 Acts, ch 141, §7  
For applicable scheduled fine, see §805.8B, subsection 2, paragraph e  
Section amended

#### **321G.6 Registration — renewal.**

1. Every snowmobile registration certificate and registration decal issued expires at midnight December 31 unless sooner terminated or discontinued in accordance with this chapter or rules of the commission. After the first day of September each year, an unregistered snowmobile may be registered and a registration may be renewed in one transaction. The fee is five dollars for the remainder of the current year, in addition to the registration fee of fifteen dollars for the subsequent year beginning January 1, and a writing fee as provided in section 321G.27.

2. An expired registration may be renewed for the same fee as if the owner is securing the original registration plus a penalty of five dollars and a writing fee as provided in section 321G.27.

3. Duplicate registrations may be issued upon application to the county recorder and the payment of a five dollar fee plus a writing fee as provided in section 321G.27.

4. A county recorder or a license agent designated by the director pursuant to section 483A.11 may issue snowmobile registration renewals electronically pursuant to rules adopted by the commission. The fee for a registration renewal issued using an electronic system is fifteen dollars plus an administrative fee established by the commission and a writing fee as provided in section 321G.27.

2007 Acts, ch 141, §8  
Section amended

#### **321G.7 Fees remitted to commission — appropriation.**

1. A county recorder shall remit to the commission the snowmobile fees collected by the recorder in the manner and time prescribed by the department.

2. The department shall remit the fees, including user permit fees collected pursuant to section 321G.4A, to the treasurer of state, who shall place the money in a special snowmobile fund. The money is appropriated to the department for the snowmobile programs of the state. The programs shall include grants, subgrants, contracts, or cost-sharing of snowmobile programs with political subdivisions or incorporated private organizations or

both in accordance with rules adopted by the commission. Snowmobile fees may be used to support snowmobile programs on a usage basis. At least fifty percent of the special fund shall be available for political subdivisions or incorporated private organizations or both. Moneys from the special fund not used by the political subdivisions or incorporated private organizations or both shall remain in the fund and may be used by the department for the administration of the snowmobile programs. Notwithstanding section 8.33, moneys in the special fund shall not revert to the general fund of the state at the end of a fiscal year. Notwithstanding section 12C.7, subsection 2, interest or earnings on moneys in the special fund shall remain in the fund.

2007 Acts, ch 141, §9  
Former unnumbered paragraph 1 amended and designated as subsection 1

Former unnumbered paragraph 2 designated as subsection 2

### **321G.8 Exempt vehicles.**

Registration shall not be required for the following described snowmobiles:

1. Snowmobiles owned and used by the United States, another state, or a political subdivision of another state.
2. Snowmobiles used exclusively as farm implements.

2007 Acts, ch 141, §10

Subsections 2 and 3 stricken and former subsection 4 renumbered as 2

### **321G.13 Unlawful operation.**

1. A person shall not drive or operate a snowmobile:

- a. At a rate of speed greater than reasonable or proper under all existing circumstances.
- b. In a careless, reckless, or negligent manner so as to endanger the person or property of another or to cause injury or damage thereto.
- c. While under the influence of intoxicating liquor or narcotics or habit-forming drugs.
- d. Without a lighted headlight and taillight from sunset to sunrise and at such other times when conditions provide insufficient lighting to render clearly discernible persons and vehicles at a distance of five hundred feet ahead.
- e. In any tree nursery or planting in a manner which damages or destroys growing stock.
- f. On any public land, ice, or snow, in violation of official signs of the commission prohibiting such operation in the interest of safety for persons, property, or the environment. Any officer appointed by the commission may post an official sign in an emergency for the protection of persons, property, or the environment.

g. In any park, wildlife area, preserve, refuge, game management area, or any portion of a meandered stream, or any portion of the bed of a non-meandered stream which has been identified as a navigable stream or river by rule adopted by the department and which is covered by water, except on designated snowmobile trails.

This paragraph “g” does not prohibit the use of ford crossings of public or private roads or any other ford crossing when used for agricultural purposes; the operation of construction vehicles engaged in lawful construction, repair, or maintenance in a streambed; or the operation of snowmobiles on ice.

h. Upon an operating railroad right-of-way. A snowmobile may be driven directly across a railroad right-of-way only at an established crossing and, notwithstanding any other provisions of law, may, if necessary, use the improved portion of the established crossing after yielding to all oncoming traffic. This paragraph does not apply to a law enforcement officer or railroad employee in the lawful discharge of the officer’s or employee’s duties or to an employee of a utility with authority to enter upon the railroad right-of-way in the lawful performance of the employee’s duties.

2. A person shall not operate or ride a snowmobile with a firearm in the person’s possession unless it is unloaded and enclosed in a carrying case. However, a nonambulatory person may carry an uncased and unloaded firearm while operating or riding a snowmobile.

3. A person shall not drive or operate a snowmobile on public land without a measurable snow cover.

2007 Acts, ch 22, §69

For applicable scheduled fines, see §805.8B, subsection 2, paragraph b  
Subsection 1, paragraph g, unnumbered paragraph 2 amended

### **321G.15 Operation pending registration.**

The commission shall furnish snowmobile dealers with pasteboard cards bearing the words “registration applied for” and space for the date of purchase. An unregistered snowmobile sold by a dealer shall bear one of these cards which entitles the purchaser to operate it for forty-five days immediately following the purchase. The purchaser of a registered snowmobile may operate it for forty-five days immediately following the purchase, without having completed a transfer of registration. A snowmobile dealer shall make application and pay all registration and title fees if applicable on behalf of the purchaser of a snowmobile.

2007 Acts, ch 141, §11

Section amended

### **321G.17 Violation of stop signal.**

A person, after having received a visual or audible signal from a peace officer to come to a stop, shall not operate a snowmobile in willful or wanton disregard of the signal or interfere with or endanger the officer or any other person or vehicle, or increase speed or attempt to flee or elude the officer.

For applicable scheduled fine, see §805.8B, subsection 2, paragraph f  
Section not amended; footnote added

### **321G.19 Rented snowmobiles.**

1. The owner of a rented snowmobile shall keep a record of the name and address of each person renting the snowmobile, its registration certifi-

icate, the departure date and time, and the expected time of return. The records shall be preserved for six months.

2. The owner of a snowmobile operated for hire shall not permit the use or operation of a rented snowmobile unless it has been provided with all equipment required by this chapter or rules of the commission or the director of transportation, properly installed and in good working order.

2007 Acts, ch 141, §12

For applicable scheduled fines, see §805.8B, subsection 2, paragraph d  
Subsection 1 amended

### 321G.20 Minors under twelve.

An owner or operator of a snowmobile shall not permit a person under twelve years of age to operate and a person less than twelve years of age shall not operate, a snowmobile except when accompanied on the same snowmobile by a responsible person of at least eighteen years of age who is experienced in snowmobile operation and who possesses a valid driver's license, as defined in section 321.1, or a safety certificate issued under this chapter.

For applicable scheduled fine, see §805.8B, subsection 2, paragraph g  
Section not amended; footnote added

### 321G.21 Manufacturer, distributor, or dealer — special registration.

1. A manufacturer, distributor, or dealer owning a snowmobile required to be registered under this chapter may operate the snowmobile for purposes of transporting, testing, demonstrating, or selling it without the snowmobile being registered, except that a special identification number issued to the owner as provided in this chapter shall be displayed on the snowmobile. The special identification number shall not be used on a snowmobile offered for hire or for any work or service performed by a manufacturer, distributor, or dealer.

2. Every manufacturer, distributor, or dealer shall register with the department by making application to the commission, upon forms prescribed by the commission, for a special registration certificate containing a general identification number and for one or more duplicate special registration certificates. The applicant shall pay a registration fee of fifteen dollars and submit reasonable proof of the applicant's status as a bona fide manufacturer, distributor, or dealer as may be required by the commission.

3. The commission, upon granting an application, shall issue to the applicant a special registration certificate containing the applicant's name and address, the general identification number assigned to the applicant, the word "manufacturer", "dealer", or "distributor", and other information the commission prescribes. The manufacturer, distributor, or dealer shall have the assigned number printed upon or attached to a removable sign or signs which may be temporarily but firmly mounted or attached to the snowmobile being

used. The display shall meet the requirements of this chapter and the rules of the commission.

4. The commission shall also issue duplicate special registration certificates which shall have displayed thereon the general identification number assigned to the applicant. Each duplicate registration certificate so issued shall contain a number or symbol identifying it from every other duplicate special registration certificate bearing the same general identification number. The fee for each additional duplicate special registration certificate shall be two dollars.

5. Each special registration certificate issued hereunder shall expire on December 31 of each year, and a new special registration certificate for the ensuing twelve months may be obtained upon application to the commission and payment of the fee provided by law.

6. If a manufacturer, distributor, or dealer has an established place of business in more than one location, the manufacturer, distributor, or dealer shall secure a separate and distinct special registration certificate and general identification number for each place of business.

7. A dealer shall make application and pay all registration and title fees if applicable on behalf of the purchaser of a snowmobile. If the registration has expired while in the dealer's possession, the purchaser may renew the registration for the same fee and writing fee as if the purchaser is securing the original registration.

8. Nothing in this section shall prohibit a dealer from obtaining a new registration and transfer of registration in the same manner as other purchasers.

9. The department may adopt rules consistent with this chapter establishing minimum requirements for dealers. In adopting such rules, the department shall consider the need to protect persons, property, and the environment and to promote uniformity of practices relating to the sale and use of snowmobiles.

2007 Acts, ch 141, §13 – 17

For applicable scheduled fine, see §805.8B, subsection 2, paragraph h  
Subsection 2 amended

Subsection 6 stricken and former subsection 7 renumbered as 6

Subsection 8 stricken and former subsection 9 amended and renumbered as 7

Subsection 10 stricken and former subsection 11 renumbered as 8

NEW subsection 9

### 321G.23 Course of instruction.

1. The commission shall provide, by rules adopted pursuant to section 321G.2, for the establishment of certified courses of instruction to be conducted throughout the state for the safe use and operation of snowmobiles. The curriculum shall include instruction in the lawful and safe use, operation, and equipping of snowmobiles consistent with this chapter and rules adopted by the commission and the director of transportation and other matters the commission deems pertinent for a qualified snowmobile operator. The commission may establish a fee for the course which shall not

exceed the actual cost of instruction minus monies received by the department from safety certificate fees under section 321G.24.

2. The commission may certify any experienced, qualified operator to be an instructor of a class established under subsection 1. Each instructor shall be at least eighteen years of age.

3. Upon completion of the course of instruction, the commission shall provide for the administration of a written test to any student who wishes to qualify for a safety certificate.

4. The commission shall provide safety material relating to the operation of snowmobiles for the use of nonpublic or public elementary and secondary schools in this state.

2007 Acts, ch 141, §18  
Subsection 1 amended

#### **321G.24 Safety certificate — fee.**

1. A person under eighteen years of age shall not operate a snowmobile on public land or ice or land purchased with snowmobile registration funds in this state without obtaining a valid safety certificate issued by the department and having the certificate in the person's possession, unless the person is accompanied on the same snowmobile by a responsible person of at least eighteen years of age who is experienced in snowmobile operation and possesses a valid driver's license, as defined in section 321.1, or a safety certificate issued under this chapter.

2. Upon application and payment of a fee of five dollars, a qualified applicant shall be issued a safety certificate which is valid until the certificate is suspended or revoked by the director for a violation of a provision of this chapter or a rule adopted pursuant to this chapter. The application shall be made on forms issued by the commission and shall contain information as the commission may reasonably require.

3. Any person who is required to have a safety certificate under this chapter and who has completed a course of instruction established under section 321G.2, subsection 1, paragraph "e", including the successful passage of an examination which includes a written test relating to such course of instruction, shall be considered qualified to apply for a safety certificate. The commission may waive the requirement of completing such course of instruction if such person successfully passes a written test based on such course of instruction.

4. The permit fees collected under this section shall be credited to the special snowmobile fund created under section 321G.7 and shall be used for safety and educational programs.

5. A valid snowmobile safety certificate or license issued to a nonresident by a governmental authority of another state shall be considered a valid certificate or license in this state if the permit or license requirements of the governmental authority, excluding fees, are substantially the

same as the requirements of this chapter as determined by the commission.

2007 Acts, ch 141, §19  
For applicable scheduled fine, see §805.8B, subsection 2, paragraph g  
Internal reference change applied  
Subsection 2 amended

#### **321G.27 Writing fees.**

1. *a.* The county recorder shall collect a writing fee of one dollar and twenty-five cents for a snowmobile registration or for renewal of a registration by the county recorder's office.

*b.* The county recorder shall retain a writing fee of one dollar and twenty-five cents from the sale of each user permit issued by the county recorder's office.

*c.* Writing fees collected or retained by the county recorder under this chapter shall be deposited in the general fund of the county.

2. *a.* A license agent shall collect a writing fee of one dollar for a snowmobile registration or for renewal of a registration by the license agent.

*b.* A license agent shall retain a writing fee of one dollar from the sale of each user permit issued by the license agent.

2007 Acts, ch 141, §20  
Section amended

#### **321G.29 Owner's certificate of title — in general.**

1. The owner of a snowmobile acquired on or after January 1, 1998, other than a snowmobile used exclusively as a farm implement or a snowmobile more than thirty years old registered as provided in section 321G.4, subsection 5, shall apply to the county recorder of the county in which the owner resides for a certificate of title for the snowmobile. The owner of a snowmobile used exclusively as a farm implement may obtain a certificate of title. A person who owns a snowmobile that is not required to have a certificate of title may apply for and receive a certificate of title for the snowmobile and, subsequently, the snowmobile shall be subject to the requirements of this chapter as if the snowmobile were required to be titled. All snowmobiles that are titled shall be registered.

2. A certificate of title shall contain the information and shall be issued on a form the department prescribes.

3. An owner of a snowmobile shall apply to the county recorder for issuance of a certificate of title within thirty days after acquisition. The application shall be on forms the department prescribes and accompanied by the required fee. The application shall be signed and sworn to before a notary public or other person who administers oaths, or shall include a certification signed in writing containing substantially the representation that statements made are true and correct to the best of the applicant's knowledge, information, and belief, under penalty of perjury. The application shall contain the date of sale and gross price of the snowmobile or the fair market value if no sale im-

mediately preceded the transfer and any additional information the department requires. If the application is made for a snowmobile last previously registered or titled in another state or foreign country, the application shall contain this information and any other information the department requires.

4. If a dealer buys or acquires a snowmobile for resale, the dealer may apply for and obtain a certificate of title as provided in this chapter. If a dealer buys or acquires a used snowmobile, the dealer may apply for a certificate of title in the dealer's name within thirty days. If a dealer buys or acquires a new snowmobile for resale, the dealer may apply for a certificate of title in the dealer's name.

5. A manufacturer or dealer shall not transfer ownership of a new snowmobile without supplying the transferee with the manufacturer's or importer's certificate of origin signed by the manufacturer's or importer's authorized agent. The certificate shall contain information the department requires. The department may adopt rules providing for the issuance of a certificate of origin for a snowmobile by the department upon good cause shown by the owner.

6. A dealer transferring ownership of a snowmobile under this chapter shall assign the title to the new owner, or in the case of a new snowmobile, assign the certificate of origin. Within fifteen days the dealer shall forward all moneys and applications to the county recorder.

7. The county recorder shall maintain a record of any certificate of title which the county recorder issues and shall keep each certificate of title on record until the certificate of title has been inactive for five years. When issuing a title for a new snowmobile, the county recorder shall obtain and keep on file a copy of the certificate of origin. When issuing a title and registration for a used snowmobile for which there is no title or registration, the county recorder shall obtain and keep on file the affidavit for the unregistered and untitled snowmobile.

8. Once titled, a person shall not sell or transfer ownership of a snowmobile without delivering to the purchaser or transferee a certificate of title with an assignment on it showing title in the purchaser or transferee. A person shall not purchase or otherwise acquire a snowmobile without obtaining a certificate of title for it in that person's name.

9. If the county recorder is not satisfied as to the ownership of the snowmobile or that there are no undisclosed security interests in the snowmobile, the county recorder may issue a certificate of title for the snowmobile but, as a condition of such issuance, may require the applicant to file with the department a bond in the form prescribed by the department and executed by the applicant, and also executed by a person authorized to conduct a

surety business in this state. The form and amount of the bond shall be established by rule of the department. The bond shall be conditioned to indemnify any prior owner and secured party and any subsequent purchaser of the snowmobile or person acquiring any security interest in the snowmobile, and their respective successors in interest, against any expense, loss, or damage, including reasonable attorney fees, by reason of the issuance of the certificate of title of the snowmobile on account of any defect in or undisclosed security interest upon the right, title, and interest of the applicant in and to the snowmobile. Any such interested person has a right of action to recover on the bond for any breach of its conditions, but the aggregate liability of the surety to all persons shall not exceed the amount of the bond. The bond shall be returned at the end of three years or prior thereto if the snowmobile is no longer registered in this state and the certificate of title is surrendered to the department, unless the department has been notified of the pendency of an action to recover on the bond.

2007 Acts, ch 141, §21, 22  
Subsections 1, 4, and 7 amended  
Subsection 10 stricken

### 321G.30 Fees — duplicates.

1. The county recorder shall charge a ten dollar fee to issue a certificate of title, a transfer of title, a duplicate, or a corrected certificate of title.

2. If a certificate of title is lost, stolen, mutilated, destroyed, or becomes illegible, the first lienholder or, if there is none, the owner named in the certificate, as shown by the county recorder's records, shall within thirty days obtain a duplicate by applying to the county recorder. The applicant shall furnish information the department requires concerning the original certificate and the circumstances of its loss, mutilation, or destruction.

3. The duplicate certificate of title shall be marked plainly "duplicate" across its face and mailed or delivered to the applicant.

4. If a lost or stolen original certificate of title for which a duplicate has been issued is recovered, the original shall be surrendered promptly to the county recorder for cancellation.

5. Five dollars of the certificate of title fees collected under this section shall be remitted by the county recorder to the treasurer of state for deposit in the special snowmobile fund created under section 321G.7. The remaining five dollars shall be retained by the county and deposited into the general fund of the county.

2007 Acts, ch 141, §23  
Subsections 2 and 4 amended

### 321G.32 Security interest — perfection and titles — fee.

1. A security interest created in this state in a snowmobile is not perfected until the security in-



terest is noted on the certificate of title.

*a.* To perfect the security interest, an application for security interest must be presented along with the original title. The county recorder shall note the security interest on the face of the title and on the copy in the recorder's office.

*b.* The application fee for a security interest is ten dollars. Five dollars of the fee shall be credited to the special snowmobile fund created under section 321G.7. The remaining five dollars shall be retained by the county and deposited into the general fund of the county.

2. The certificate of title shall be presented to the county recorder when the application for security interest or for assignment of the security interest is presented and a new or endorsed certificate of title shall be issued to the secured party with the name and address of the secured party upon it.

3. When a security interest is discharged, the secured party shall note the cancellation of the security interest on the face of the certificate of title and send the title by first class mail to the office of the county recorder where the title was issued. If the title has been lost or destroyed, the secured party may discharge the security interest by sending a signed, notarized statement to the office of the county recorder where the title was issued. The county recorder shall note the release of the security interest in the county records and attach the statement to the certificate of title as evidence of the release of the security interest.

2007 Acts, ch 141, §24

Subsection 3 stricken and rewritten

### **321G.34 Repeat offender — records, enforcement, and penalties.**

1. The commission shall establish by rule a recordkeeping system and other administrative procedures necessary to administer this section.

2. A person who pleads guilty to or is convicted of a violation of any provision of this chapter while the person's registration privilege is suspended or revoked under administrative procedures is guilty of a simple misdemeanor if the person had no other violations within the previous three years which occurred while the person's registration privilege was suspended or revoked.

3. A person who pleads guilty to or is convicted of a violation of any provision of this chapter while the person's registration privilege is suspended or revoked under administrative procedures is guilty of a serious misdemeanor if the person had one other violation within the previous three years which occurred while the person's registration privilege was suspended or revoked.

4. A person who pleads guilty to or is convicted of a violation of any provision of this chapter while the person's registration privilege is suspended or revoked under administrative procedures is guilty of an aggravated misdemeanor if the person had two or more convictions within the previous three years which occurred while the person's registration privilege was suspended or revoked.

5. *a.* Upon the conviction of a person of any violation of this chapter or a rule adopted under this chapter, the court, as a part of the judgment, may suspend or revoke one or more snowmobile registration or user permit privileges of the person for any definite period.

*b.* The court shall revoke all of the person's snowmobile registrations or user permits and suspend the privilege of procuring a registration or user permit for a period of one year for any person who has been convicted twice within one year of trespassing while operating a snowmobile. A person shall not be issued a registration or user permit during the period of suspension or revocation.

2007 Acts, ch 141, §25

NEW section

## CHAPTER 321I

### ALL-TERRAIN VEHICLES

#### **321I.1 Definitions.**

As used in this chapter, unless the context otherwise requires:

1. *a.* "*All-terrain vehicle*" means a motorized flotation-tire vehicle with not less than three and not more than six low-pressure tires that is limited in engine displacement to less than one thousand cubic centimeters and in total dry weight to less than one thousand pounds and that has a seat or saddle designed to be straddled by the operator and handlebars for steering control.

*b.* Off-road motorcycles shall be considered all-terrain vehicles for the purpose of registration. Off-road motorcycles shall also be considered all-terrain vehicles for the purpose of titling if a title

has not previously been issued pursuant to chapter 321. An operator of an off-road motorcycle is subject to provisions governing the operation of all-terrain vehicles in this chapter, but is exempt from the safety instruction and certification program requirements of sections 321I.25 and 321I.26.

*c.* Off-road utility vehicles shall be considered all-terrain vehicles for the purpose of registration, but are exempt from the dealer registration requirements and the titling requirements of this chapter. An operator of an off-road utility vehicle is subject to provisions governing the operation of all-terrain vehicles in section 321.234A and this chapter, but is exempt from the safety instruction

and certification program requirements of sections 321I.25 and 321I.26. A motorized vehicle that was previously titled or is currently titled under chapter 321 shall not be registered or operated as an off-road utility vehicle.

2. “*A’ scale*” means the physical scale marked “A” graduated in decibels on a sound level meter which meets the requirements of the American national standards institute, incorporated, publication S1.4-1961, general purpose sound level meters.

3. “*Commission*” means the natural resource commission of the department.

4. “*Dealer*” means a person engaged in the business of buying, selling, or exchanging all-terrain vehicles required to be registered under this chapter and who has an established place of business for that purpose in this state.

5. “*Department*” means the department of natural resources.

6. “*Designated riding area*” means an all-terrain vehicle riding area on any public land or ice under the jurisdiction of the department that has been designated by the department for all-terrain vehicle use.

7. “*Designated riding trail*” means an all-terrain vehicle riding trail on any public land or ice under the jurisdiction of the department that has been designated by the department for all-terrain vehicle use.

8. “*Director*” means the director of the department.

9. “*Direct supervision*” means to provide supervision of another person while maintaining visual and verbal contact at all times.

10. “*Distributor*” means a person, resident or nonresident, who sells or distributes all-terrain vehicles to all-terrain vehicle dealers in this state or who maintains distributor representatives.

11. “*Established place of business*” means the place actually occupied either continuously or at regular periods by a dealer or manufacturer where the books and records are kept and the dealer’s or manufacturer’s business is primarily transacted.

12. “*Manufacturer*” means a person engaged in the business of constructing or assembling all-terrain vehicles required to be registered under this chapter and who has an established place of business for that purpose in this state.

13. “*Nonambulatory person*” means an individual with paralysis of the lower half of the body with the involvement of both legs, usually caused by disease of or injury to the spinal cord, or caused by the loss of both legs or the loss of a part of both legs.

14. “*Nonresident*” means a person who is not a resident of this state.

15. “*Off-road motorcycle*” means a two-wheeled motor vehicle that has a seat or saddle designed to be straddled by the operator and handlebars for steering control and that is intended by the manufacturer for use on natural terrain. “*Off-*

*road motorcycle*” includes a motorcycle that was originally issued a certificate of title and registered for highway use under chapter 321, but which contains design features that enable operation over natural terrain.

16. “*Off-road utility vehicle*” means a motorized flotation-tire vehicle with not less than four and not more than six low-pressure tires that is limited in engine displacement to less than one thousand five hundred cubic centimeters and in total dry weight to not more than one thousand eight hundred pounds and that has a seat that is of bench design, not intended to be straddled by the operator, and a steering wheel for control.

17. “*Operate*” means to ride in or on, other than as a passenger, use, or control the operation of an all-terrain vehicle in any manner, whether or not the all-terrain vehicle is moving.

18. “*Operator*” means a person who operates or is in actual physical control of an all-terrain vehicle.

19. “*Owner*” means a person, other than a lienholder, having the property right in or title to an all-terrain vehicle. The term includes a person entitled to the use or possession of an all-terrain vehicle subject to an interest in another person, reserved or created by agreement and securing payment or performance of an obligation, but the term excludes a lessee under a lease not intended as security.

20. “*Person*” means an individual, partnership, firm, corporation, association, and the state, its agencies, and political subdivisions.

21. “*Public land*” means land owned by the federal government, the state, or political subdivisions of the state and land acquired or developed for public recreation pursuant to section 321I.8.

22. “*Railroad right-of-way*” means the full width of property owned, leased, or subject to easement for railroad purposes and is not limited to those areas on which tracks are located.

23. “*Resident*” means a person who meets the requirements for residency described in section 321I.1A.

24. “*Roadway*” means that portion of a highway improved, designed, or ordinarily used for vehicular travel.

25. “*Safety certificate*” means an all-terrain vehicle safety certificate, approved by the commission, issued to a qualified applicant who is twelve years of age or older.

26. “*Snowmobile*” means the same as defined in section 321G.1.

27. “*Special event*” means an organized race, exhibition, or demonstration of limited duration which is conducted on public land or ice under the jurisdiction of the commission according to a pre-arranged schedule and in which general public interest is manifested.

28. “*Street*” or “*highway*” means the entire width between property lines of every way or place of whatever nature when any part thereof is open

to the use of the public, as a matter of right, for purposes of vehicular travel, except in public areas in which the boundary shall be thirty-three feet each side of the center line of the roadway.

2007 Acts, ch 141, §26, 27  
 Subsection 1 amended  
 NEW subsections 6 – 10 and former subsections 6 – 9 renumbered as 11 – 14  
 NEW subsections 15 and 16 and former subsections 10 – 21 renumbered as 17 – 28

### 321I.3 Registration required — penalties.

1. Each all-terrain vehicle used on public land or ice of this state shall be currently registered. A person shall not operate, maintain, or give permission for the operation or maintenance of an all-terrain vehicle on public land or ice unless the all-terrain vehicle is registered in accordance with this chapter or applicable federal laws or the all-terrain vehicle displays a current annual user permit decal issued for the all-terrain vehicle as provided in section 321I.5.

2. A registration certificate and registration decal shall be assigned, without payment of fee, to all-terrain vehicles owned by the state of Iowa or its political subdivisions. The registration decal shall be displayed on the all-terrain vehicle as required under section 321I.6. A registration certificate shall be assigned, without payment of a registration fee, for an all-terrain vehicle which is exempt from registration but is being titled, upon payment of a writing fee as provided in section 321I.29 and an administrative fee. A registration decal shall not be issued and the registration shall not expire while the all-terrain vehicle is exempt. The application for registration and the registration certificate shall indicate the reason for exemption from the registration fee.

3. A violation of subsection 1 or 2 is punishable as a scheduled violation under section 805.8B, subsection 2A, paragraph “a”. When the scheduled fine is paid, the violator shall submit proof to the department that a valid registration or user permit has been obtained by providing a copy of the registration or user permit to the department within thirty days of the date the fine is paid. A person who violates this subsection is guilty of a simple misdemeanor.

2007 Acts, ch 141, §28  
 Section amended

### 321I.4 Registration — fee.

1. The owner of each all-terrain vehicle required to be registered shall register it annually with the department through a county recorder. The department shall develop and maintain an electronic system for the registration of all-terrain vehicles pursuant to this chapter. The department shall establish forms and procedures as necessary for the registration of all-terrain vehicles.

2. The owner of the all-terrain vehicle shall file an application for registration with the depart-

ment through a county recorder in the manner established by the commission. The application shall be completed by the owner and shall be accompanied by a fee of fifteen dollars and a writing fee as provided in section 321I.29. An all-terrain vehicle shall not be registered by the county recorder until the county recorder is presented with receipts, bills of sale, or other satisfactory evidence that the sales or use tax has been paid for the purchase of the all-terrain vehicle or that the owner is exempt from paying the tax. An all-terrain vehicle that has an expired registration certificate from another state may be registered in this state upon proper application, payment of all applicable registration and writing fees, and payment of a penalty of five dollars.

3. Upon receipt of the application in approved form accompanied by the required fees, the county recorder shall issue to the applicant a registration certificate and registration decal. The registration decal shall be displayed on the all-terrain vehicle as provided in section 321I.6. The registration certificate shall be carried either in the all-terrain vehicle or on the person of the operator of the all-terrain vehicle when in use. The operator of an all-terrain vehicle shall exhibit the registration certificate to a peace officer upon request, to a person injured in an accident involving an all-terrain vehicle, to the owner or operator of another all-terrain vehicle or the owner of personal or real property when the all-terrain vehicle is involved in a collision or accident of any nature with another all-terrain vehicle or the property of another person, or to the property owner or tenant when the all-terrain vehicle is being operated on private property without permission from the property owner or tenant.

2007 Acts, ch 141, §29  
 Section amended

### 321I.5 Nonresident user permits.

1. A nonresident wishing to operate an all-terrain vehicle, other than an all-terrain vehicle owned by a resident and registered pursuant to this chapter, on public land or ice of this state shall first obtain a user permit from the department. A user permit shall be issued for the all-terrain vehicle specified at the time of application and is not transferable. A user permit shall be valid for the calendar year or time period specified in the permit.

2. A county recorder or a license agent designated by the director pursuant to section 483A.11 may issue user permits. The fee for a user permit shall be fifteen dollars plus an administrative fee established by the commission. A county recorder or a license agent shall retain a writing fee from the sale of each user permit as provided in section 321I.29.

2007 Acts, ch 141, §30  
 Section amended

### 321I.6 Display of registration and user permit decals.

The owner shall display the registration decal or nonresident user permit decal on an all-terrain vehicle in the manner prescribed by rules of the commission.

2007 Acts, ch 141, §31

For applicable scheduled fines, see §805.8B, subsection 2A, paragraph e

Section amended

### 321I.7 Registration — renewal.

1. *a.* Every all-terrain vehicle registration certificate and registration decal issued expires at midnight December 31 unless sooner terminated or discontinued in accordance with this chapter or rules of the commission. After the first day of September each year, an unregistered all-terrain vehicle may be registered or a registration may be renewed for the subsequent year beginning January 1.

*b.* After the first day of September an unregistered all-terrain vehicle may be registered for the remainder of the current registration year and for the subsequent registration year in one transaction. The fee shall be five dollars for the remainder of the current year, in addition to the registration fee of fifteen dollars for the subsequent year beginning January 1, and a writing fee as provided in section 321I.29.

2. An expired all-terrain vehicle registration may be renewed for the same fee as if the owner is securing the original registration plus a penalty of five dollars and a writing fee as provided in section 321I.29.

3. Duplicate registrations may be issued upon application to the county recorder and the payment of a five dollar fee plus a writing fee as provided in section 321I.29.

4. A motorcycle, as defined in section 321.1, subsection 40, paragraph “a”, may be registered as an all-terrain vehicle as provided in this section. A motorcycle registered as an all-terrain vehicle may participate in all programs established for all-terrain vehicles under this chapter except for the safety instruction and certification program.

5. A county recorder or a license agent designated by the director pursuant to section 483A.11 may issue all-terrain vehicle registration renewals electronically pursuant to rules adopted by the commission. The fee for a registration renewal issued using an electronic system is fifteen dollars plus an administrative fee established by the commission and a writing fee as provided in section 321I.29.

2007 Acts, ch 141, §32

Section amended

### 321I.8 Fees remitted to commission — appropriation.

1. A county recorder shall remit to the commission the all-terrain vehicle fees collected by the re-

order in the manner and time prescribed by the department.

2. The department shall remit the fees, including user fees collected pursuant to section 321I.5, to the treasurer of state, who shall place the money in a special all-terrain vehicle fund. The money is appropriated to the department for the all-terrain vehicle programs of the state. The programs shall include grants, subgrants, contracts, or cost-sharing of all-terrain vehicle programs with political subdivisions or incorporated private organizations or both in accordance with rules adopted by the commission. All-terrain vehicle fees may be used for the establishment, maintenance, and operation of all-terrain vehicle recreational riding areas through the awarding of grants administered by the department. All-terrain vehicle recreational riding areas established, maintained, or operated by the use of such grants shall not be operated for profit. All programs using cost-sharing, grants, subgrants, or contracts shall establish and implement a safety instruction program either singly or in cooperation with other all-terrain vehicle programs. All-terrain vehicle fees may be used to support all-terrain vehicle programs on a usage basis. At least fifty percent of the special fund shall be available for political subdivisions or incorporated private organizations or both. Moneys from the special fund not used by the political subdivisions or incorporated private organizations or both shall remain in the fund and may be used by the department for the administration of the all-terrain vehicle programs. Notwithstanding section 8.33, moneys in the special fund shall not revert to the general fund of the state at the end of a fiscal year. Notwithstanding section 12C.7, subsection 2, interest or earnings on moneys in the special fund shall remain in the fund.

2007 Acts, ch 141, §33

Unnumbered paragraph 1 amended and designated as subsection 1

Former unnumbered paragraph 2 designated as subsection 2

### 321I.9 Exempt vehicles.

Registration shall not be required for the following described all-terrain vehicles:

1. All-terrain vehicles owned and used by the United States, another state, or a political subdivision of another state.

2. All-terrain vehicles used in accordance with section 321.234A, subsection 1, paragraph “a”.

3. All-terrain vehicles used exclusively as farm implements.

2007 Acts, ch 141, §34

Former subsections 2–4 stricken and former subsections 5 and 6 renumbered as 2 and 3

### 321I.10 Operation on roadways and highways — snowmobile trails.

1. A person shall not operate an all-terrain vehicle upon roadways or highways except as provided in section 321.234A and this section.

2. A registered all-terrain vehicle may be oper-

ated on the roadways of that portion of county highways designated by the county board of supervisors for such use during a specified period. The county board of supervisors shall evaluate the traffic conditions on all county highways and designate roadways on which all-terrain vehicles may be operated for the specified period without unduly interfering with or constituting an undue hazard to conventional motor vehicle traffic. Signs warning of the operation of all-terrain vehicles on the roadway shall be placed and maintained on the portions of highway thus designated during the period specified for the operation.

3. Cities may designate streets under the jurisdiction of cities within their respective corporate limits which may be used for the sport of driving all-terrain vehicles.

4. All-terrain vehicles shall not be operated on snowmobile trails except where designated by the controlling authority and the primary snowmobile trail sponsor.

5. The state department of transportation may issue a permit to a state agency, a county, or a city to allow an all-terrain vehicle trail to cross a primary highway. The trail crossing shall be part of an all-terrain vehicle trail designated by the state agency, county, or city. A permit shall be issued only if the crossing can be accomplished in a safe manner and allows for adequate sight distance for both motorists and all-terrain vehicle operators. The state department of transportation may adopt rules to administer this subsection.

For applicable scheduled fines, see §805.8B, subsection 2A, paragraph

b

Section not amended; footnote revised

### **321I.12 Mufflers required — inspections.**

1. An all-terrain vehicle shall not be operated without suitable and effective muffling devices. An all-terrain vehicle shall comply with the sound level standards and testing procedures established by the society of automotive engineers under SAE J1287.

2. The commission may adopt rules with respect to the inspection of all-terrain vehicles and testing of their mufflers.

2007 Acts, ch 141, §35

For applicable scheduled fines, see §805.8B, subsection 2A, paragraph

b

Subsection 1 amended

### **321I.13 Headlamp — tail lamp — brakes.**

Every all-terrain vehicle operated during the hours of darkness shall display a lighted headlamp and tail lamp. Every all-terrain vehicle shall be equipped with brakes.

For applicable scheduled fines, see §805.8B, subsection 2A, paragraph

c

Section not amended; footnote revised

### **321I.14 Unlawful operation.**

1. A person shall not drive or operate an all-terrain vehicle:

a. At a rate of speed greater than reasonable or

proper under all existing circumstances.

b. In a careless, reckless, or negligent manner so as to endanger the person or property of another or to cause injury or damage thereto.

c. While under the influence of intoxicating liquor or narcotics or habit-forming drugs.

d. Without a lighted headlight and taillight from sunset to sunrise and at such other times when conditions provide insufficient lighting to render clearly discernible persons and vehicles at a distance of five hundred feet ahead.

e. In any tree nursery or planting in a manner which damages or destroys growing stock.

f. On any public land, ice, or snow, in violation of official signs of the commission prohibiting such operation in the interest of safety for persons, property, or the environment. Any officer appointed by the commission may post an official sign in an emergency for the protection of persons, property, or the environment.

g. In any park, wildlife area, preserve, refuge, game management area, or any portion of a meandered stream, or any portion of the bed of a non-meandered stream which has been identified as a navigable stream or river by rule adopted by the department and which is covered by water, except on designated riding areas and designated riding trails. This paragraph does not prohibit the use of ford crossings of public roads or any other ford crossing when used for agricultural purposes; the operation of construction vehicles engaged in lawful construction, repair, or maintenance in a streambed; or the operation of all-terrain vehicles on ice.

h. Upon an operating railroad right-of-way. An all-terrain vehicle may be driven directly across a railroad right-of-way only at an established crossing and, notwithstanding any other provisions of law, may, if necessary, use the improved portion of the established crossing after yielding to all oncoming traffic. This paragraph does not apply to a law enforcement officer or railroad employee in the lawful discharge of the officer's or employee's duties or to an employee of a utility with authority to enter upon the railroad right-of-way in the lawful performance of the employee's duties.

2. A person shall not operate or ride an all-terrain vehicle with a firearm in the person's possession unless it is unloaded and enclosed in a carrying case. However, a nonambulatory person may carry an uncased and unloaded firearm while operating or riding an all-terrain vehicle.

3. A person shall not operate an all-terrain vehicle with more persons on the vehicle than it was designed to carry.

4. A person shall not operate an off-road utility vehicle on a designated riding area or designated riding trail unless the riding area or trail is signed by the department as open to off-road utility vehicle operation.

5. A person shall not operate a vehicle other

than an all-terrain vehicle on a designated riding area or designated riding trail unless the riding area or trail is signed by the department as open to such other use.

2007 Acts, ch 141, §36, 37

For applicable scheduled fines, see §805.8B, subsection 2A, paragraph

b

Subsection 1, paragraph g stricken and rewritten  
NEW subsections 4 and 5

### 321I.16 Operation pending registration.

The commission shall furnish all-terrain vehicle dealers with pasteboard cards bearing the words “registration applied for” and space for the date of purchase. An unregistered all-terrain vehicle sold by a dealer shall bear one of these cards which entitles the purchaser to operate it for forty-five days immediately following the purchase. The purchaser of a registered all-terrain vehicle may operate it for forty-five days immediately following the purchase without having completed a transfer of registration. An all-terrain vehicle dealer shall make application and pay all registration and title fees if applicable on behalf of the purchaser of an all-terrain vehicle.

2007 Acts, ch 141, §38

Section amended

### 321I.18 Violation of stop signal.

A person, after having received a visual or audible signal from a peace officer to come to a stop, shall not operate an all-terrain vehicle in willful or wanton disregard of the signal or interfere with or endanger the officer or any other person or vehicle, or increase speed or attempt to flee or elude the officer.

For applicable scheduled fines, see §805.8B, subsection 2A, paragraph

f

Section not amended; footnote added

### 321I.20 Rented all-terrain vehicles.

1. The owner of a rented all-terrain vehicle shall keep a record of the name and address of each person renting the all-terrain vehicle, its registration certificate, the departure date and time, and the expected time of return. The records shall be preserved for six months.

2. The owner of an all-terrain vehicle operated for hire shall not permit the use or operation of a rented all-terrain vehicle unless it has been provided with all equipment required by this chapter or rules of the commission or the director of transportation, properly installed and in good working order.

2007 Acts, ch 141, §39

For applicable scheduled fines, see §805.8B, subsection 2A, paragraph

d

Subsection 1 amended

### 321I.21 Minors under twelve — supervision.

A person under twelve years of age shall not operate an all-terrain vehicle, including an off-road

motorcycle, on a designated riding area or designated riding trail or on ice unless one of the following applies:

1. The person is taking a prescribed safety training course and the operation is under the direct supervision of a certified all-terrain vehicle safety instructor.

2. The operation is under the direct supervision of a responsible parent or guardian of at least eighteen years of age who is experienced in all-terrain vehicle operation or off-road motorcycle operation and who possesses a valid driver’s license as defined in section 321.1.

2007 Acts, ch 141, §40

For applicable scheduled fine, see §805.8B, subsection 2A, paragraph g  
Section amended

### 321I.22 Manufacturer, distributor, or dealer — special registration.

1. A manufacturer, distributor, or dealer owning an all-terrain vehicle required to be registered under this chapter may operate the all-terrain vehicle for purposes of transporting, testing, demonstrating, or selling it without the all-terrain vehicle being registered, except that a special identification number issued to the owner as provided in this chapter shall be displayed on the all-terrain vehicle. The special identification number shall not be used on an all-terrain vehicle offered for hire or for any work or service performed by a manufacturer, distributor, or dealer.

2. Every manufacturer, distributor, or dealer shall register with the department by making application to the commission, upon forms prescribed by the commission, for a special registration certificate containing a general identification number and for one or more duplicate special registration certificates. The applicant shall pay a registration fee of fifteen dollars and submit reasonable proof of the applicant’s status as a bona fide manufacturer, distributor, or dealer as may be required by the commission.

3. The commission, upon granting an application, shall issue to the applicant a special registration certificate containing the applicant’s name and address, the general identification number assigned to the applicant, the word “manufacturer”, “dealer”, or “distributor”, and other information the commission prescribes. The manufacturer, distributor, or dealer shall have the assigned number printed upon or attached to a removable sign or signs which may be temporarily but firmly mounted or attached to the all-terrain vehicle being used. The display shall meet the requirements of this chapter and the rules of the commission.

4. The commission shall also issue duplicate special registration certificates which shall have displayed thereon the general identification number assigned to the applicant. Each duplicate registration certificate so issued shall contain a number or symbol identifying it from every other duplicate special registration certificate bearing the

same general identification number. The fee for each additional duplicate special registration certificate shall be two dollars.

5. Each special registration certificate issued hereunder shall expire on December 31 of each year, and a new special registration certificate for the ensuing twelve months may be obtained upon application to the commission and payment of the fee provided by law.

6. If a manufacturer, distributor, or dealer has an established place of business in more than one location, the manufacturer, distributor, or dealer shall secure a separate and distinct special registration certificate and general identification number for each place of business.

7. A dealer shall make application and pay all registration and title fees if applicable on behalf of the purchaser of an all-terrain vehicle. If the registration has expired while in the dealer's possession, the purchaser may renew the registration for the same fee and writing fee as if the purchaser is securing the original registration.

8. Nothing in this section shall prohibit a dealer from obtaining a new registration and transfer of registration in the same manner as other purchasers.

9. The department may adopt rules consistent with this chapter establishing minimum requirements for dealers. In adopting such rules, the department shall consider the need to protect persons, property, and the environment and to promote uniformity of practices relating to the sale and use of all-terrain vehicles.

2007 Acts, ch 141, §41 – 45

For applicable scheduled fine, see §805.8B, subsection 2A, paragraph h  
Subsection 2 amended

Subsection 6 stricken and former subsection 7 renumbered as 6

Subsection 8 stricken and former subsection 9 amended and renumbered as 7

Subsection 10 stricken and former subsection 11 renumbered as 8

NEW subsection 9

### 321I.25 Course of instruction.

1. The commission shall provide, by rules adopted pursuant to section 321I.2, for the establishment of certified courses of instruction to be conducted throughout the state for the safe use and operation of all-terrain vehicles. The curriculum shall include instruction in the lawful and safe use, operation, and equipping of all-terrain vehicles consistent with this chapter and rules adopted by the commission and the director of transportation and other matters the commission deems pertinent for a qualified all-terrain vehicle operator. The commission may establish a fee for the course which shall not exceed the actual cost of instruction minus moneys received by the department from safety certificate fees under section 321I.26.

2. The commission may certify any experienced, qualified operator to be an instructor of a class established under subsection 1. Each instructor shall be at least eighteen years of age.

3. Upon completion of the course of instruction, the commission shall provide for the administration of a written test to any student who wishes to qualify for a safety certificate.

4. The commission shall provide safety material relating to the operation of all-terrain vehicles for the use of nonpublic or public elementary and secondary schools in this state.

2007 Acts, ch 141, §46

Subsection 1 amended

### 321I.26 Safety certificate — fee.

1. A person twelve years of age or older but less than eighteen years of age shall not operate an all-terrain vehicle on public land or ice or land purchased with all-terrain vehicle registration funds in this state without obtaining a valid safety certificate issued by the department and having the certificate in the person's possession.

2. Upon application and payment of a fee of five dollars, a qualified applicant shall be issued a safety certificate which is valid until the certificate is suspended or revoked by the director for a violation of a provision of this chapter or a rule adopted pursuant to this chapter. The application shall be made on forms issued by the commission and shall contain information as the commission may reasonably require.

3. Any person who is required to have a safety certificate under this chapter and who has completed a course of instruction established under section 321I.2, subsection 5, including the successful passage of an examination which includes a written test relating to such course of instruction, shall be considered qualified to apply for a safety certificate. The commission may waive the requirement of completing such course of instruction if such person successfully passes a written test based on such course of instruction.

4. The permit fees collected under this section shall be credited to the special all-terrain vehicle fund and shall be used for safety and educational programs.

5. A valid all-terrain vehicle safety certificate or license issued to a nonresident by a governmental authority of another state shall be considered a valid certificate or license in this state if the permit or license requirements of the governmental authority, excluding fees, are substantially the same as the requirements of this chapter as determined by the commission.

2007 Acts, ch 141, §47

For applicable scheduled fine, see §805.8B, subsection 2A, paragraph g  
Subsections 1 and 2 amended

### 321I.29 Writing fees.

1. *a.* The county recorder shall collect a writing fee of one dollar and twenty-five cents for an all-terrain vehicle registration or for renewal of a registration by the county recorder's office.

*b.* The county recorder shall retain a writing fee of one dollar and twenty-five cents from the

sale of each user permit issued by the county recorder's office.

c. Writing fees collected or retained by the county recorder under this chapter shall be deposited in the general fund of the county.

2. a. A license agent shall collect a writing fee of one dollar for an all-terrain vehicle registration or for renewal of a registration issued by the license agent.

b. A license agent shall retain a writing fee of one dollar from the sale of each user permit issued by the license agent.

2007 Acts, ch 141, §48  
Section amended

### **321I.31 Owner's certificate of title — in general.**

1. The owner of an all-terrain vehicle acquired on or after January 1, 2000, other than an all-terrain vehicle used exclusively as a farm implement or a motorcycle previously issued a title pursuant to chapter 321, shall apply to the county recorder of the county in which the owner resides for a certificate of title for the all-terrain vehicle. The owner of an all-terrain vehicle used exclusively as a farm implement may obtain a certificate of title. A person who owns an all-terrain vehicle that is not required to have a certificate of title may apply for and receive a certificate of title for the all-terrain vehicle and, subsequently, the all-terrain vehicle shall be subject to the requirements of this chapter as if the all-terrain vehicle were required to be titled. All all-terrain vehicles that are titled shall be registered.

2. A certificate of title shall contain the information and shall be issued on a form the department prescribes.

3. An owner of an all-terrain vehicle shall apply to the county recorder for issuance of a certificate of title within thirty days after acquisition. The application shall be on forms the department prescribes and accompanied by the required fee. The application shall be signed and sworn to before a notary public or other person who administers oaths, or shall include a certification signed in writing containing substantially the representation that statements made are true and correct to the best of the applicant's knowledge, information, and belief, under penalty of perjury. The application shall contain the date of sale and gross price of the all-terrain vehicle or the fair market value if no sale immediately preceded the transfer and any additional information the department requires. If the application is made for an all-terrain vehicle last previously registered or titled in another state or foreign country, the application shall contain this information and any other information the department requires.

4. If a dealer buys or acquires an all-terrain vehicle for resale, the dealer may apply for and obtain a certificate of title as provided in this chapter. If a dealer buys or acquires a used all-terrain

vehicle, the dealer may apply for a certificate of title in the dealer's name within thirty days. If a dealer buys or acquires a new all-terrain vehicle for resale, the dealer may apply for a certificate of title in the dealer's name.

5. A manufacturer or dealer shall not transfer ownership of a new all-terrain vehicle without supplying the transferee with the manufacturer's or importer's certificate of origin signed by the manufacturer's or importer's authorized agent. The certificate shall contain information the department requires. The department may adopt rules providing for the issuance of a certificate of origin for an all-terrain vehicle by the department upon good cause shown by the owner.

6. A dealer transferring ownership of an all-terrain vehicle under this chapter shall assign the title to the new owner, or in the case of a new all-terrain vehicle, assign the certificate of origin. Within fifteen days the dealer shall forward all moneys and applications to the county recorder.

7. The county recorder shall maintain a record of any certificate of title which the county recorder issues and shall keep each certificate of title on record until the certificate of title has been inactive for five years. When issuing a title for a new all-terrain vehicle, the county recorder shall obtain and keep on file a copy of the certificate of origin. When issuing a title and registration for a used all-terrain vehicle for which there is no title or registration, the county recorder shall obtain and keep on file the affidavit for the unregistered and untitled all-terrain vehicle.

8. Once titled, a person shall not sell or transfer ownership of an all-terrain vehicle without delivering to the purchaser or transferee a certificate of title with an assignment on it showing title in the purchaser or transferee. A person shall not purchase or otherwise acquire an all-terrain vehicle without obtaining a certificate of title for it in that person's name.

9. If the county recorder is not satisfied as to the ownership of the all-terrain vehicle or that there are no undisclosed security interests in the all-terrain vehicle, the county recorder may issue a certificate of title for the all-terrain vehicle but, as a condition of such issuance, may require the applicant to file with the department a bond in the form prescribed by the department and executed by the applicant, and also executed by a person authorized to conduct a surety business in this state. The form and amount of the bond shall be established by rule of the department. The bond shall be conditioned to indemnify any prior owner and secured party and any subsequent purchaser of the all-terrain vehicle or person acquiring any security interest in the all-terrain vehicle, and their respective successors in interest, against any expense, loss, or damage, including reasonable attorney fees, by reason of the issuance of the certificate of title of the all-terrain vehicle or on account of any defect in or undisclosed security interest



upon the right, title, and interest of the applicant in and to the all-terrain vehicle. Any such interested person has a right of action to recover on the bond for any breach of its conditions, but the aggregate liability of the surety to all persons shall not exceed the amount of the bond. The bond shall be returned at the end of three years or prior thereto if the all-terrain vehicle is no longer registered in this state and the certificate of title is surrendered to the department, unless the department has been notified of the pendency of an action to recover on the bond.

10. A motorcycle that has been issued a certificate of title pursuant to this section may be issued a title pursuant to chapter 321 upon proper application and surrender of the existing title. Upon issuance of a title pursuant to chapter 321, the certificate of title previously issued pursuant to this section shall be returned to the issuing county recorder.

2007 Acts, ch 141, §49, 50  
Subsections 4 and 7 amended  
Subsection 10 stricken and former subsection 11 renumbered as 10

### **321I.32 Fees — duplicates.**

1. The county recorder shall charge a ten dollar fee to issue a certificate of title, a transfer of title, a duplicate, or a corrected certificate of title.

2. If a certificate of title is lost, stolen, mutilated, destroyed, or becomes illegible, the first lienholder or, if there is none, the owner named in the certificate, as shown by the county recorder's records, shall within thirty days obtain a duplicate by applying to the county recorder. The applicant shall furnish information the department requires concerning the original certificate and the circumstances of its loss, mutilation, or destruction.

3. The duplicate certificate of title shall be marked plainly "duplicate" across its face and mailed or delivered to the applicant.

4. If a lost or stolen original certificate of title for which a duplicate has been issued is recovered, the original shall be surrendered promptly to the county recorder for cancellation.

5. Five dollars of the certificate of title fees collected under this section shall be remitted by the county recorder to the treasurer of state for deposit in the special all-terrain vehicle fund created under section 321I.8. The remaining five dollars shall be retained by the county and deposited into the general fund of the county.

2007 Acts, ch 141, §51  
Subsections 2 and 4 amended

### **321I.34 Security interest — perfection and titles — fee.**

1. A security interest created in this state in an all-terrain vehicle is not perfected until the security interest is noted on the certificate of title.

a. To perfect the security interest, an application for security interest must be presented along

with the original title. The county recorder shall note the security interest on the face of the title and on the copy in the recorder's office.

b. The application fee for a security interest is ten dollars. Five dollars of the fee shall be credited to the special all-terrain vehicle fund created under section 321I.8. The remaining five dollars shall be retained by the county and deposited into the general fund of the county.

2. The certificate of title shall be presented to the county recorder when the application for security interest or for assignment of the security interest is presented and a new or endorsed certificate of title shall be issued to the secured party with the name and address of the secured party upon it.

3. When a security interest is discharged, the secured party shall note the cancellation of the security interest on the face of the certificate of title and send the title by first class mail to the office of the county recorder where the title was issued. If the title has been lost or destroyed, the secured party may discharge the security interest by sending a signed, notarized statement to the office of the county recorder where the title was issued. The county recorder shall note the release of the security interest in the county records and attach the statement to the certificate of title as evidence of the release of the security interest.

2007 Acts, ch 141, §52  
Subsection 3 stricken and rewritten

### **321I.36 Repeat offender — records, enforcement, and penalties.**

1. The commission shall establish by rule a recordkeeping system and other administrative procedures necessary to administer this section.

2. A person who pleads guilty to or is convicted of a violation of any provision of this chapter while the person's registration privilege is suspended or revoked under administrative procedures is guilty of a simple misdemeanor if the person had no other violations within the previous three years which occurred while the person's registration privilege was suspended or revoked.

3. A person who pleads guilty to or is convicted of a violation of any provision of this chapter while the person's registration privilege is suspended or revoked under administrative procedures is guilty of a serious misdemeanor if the person had one other violation within the previous three years which occurred while the person's registration privilege was suspended or revoked.

4. A person who pleads guilty to or is convicted of a violation of any provision of this chapter while the person's registration privilege is suspended or revoked under administrative procedures is guilty of an aggravated misdemeanor if the person had two or more convictions within the previous three years which occurred while the person's registration privilege was suspended or revoked.

5. a. Upon the conviction of a person of any vi-

olation of this chapter or a rule adopted under this chapter, the court, as a part of the judgment, may suspend or revoke one or more all-terrain vehicle registration or user permit privileges of the person for any definite period.

*b.* The court shall revoke all of the person's all-terrain vehicle registrations or user permits and suspend the privilege of procuring a registration

or user permit for a period of one year for any person who has been convicted twice within one year of trespassing while operating an all-terrain vehicle. A person shall not be issued a registration or user permit during the period of suspension or revocation.

2007 Acts, ch 141, §53  
NEW section

## CHAPTER 321J

### OPERATING WHILE INTOXICATED

#### **321J.2 Operating while under the influence of alcohol or a drug or while having an alcohol concentration of .08 or more (OWI).**

1. A person commits the offense of operating while intoxicated if the person operates a motor vehicle in this state in any of the following conditions:

*a.* While under the influence of an alcoholic beverage or other drug or a combination of such substances.

*b.* While having an alcohol concentration of .08 or more.

*c.* While any amount of a controlled substance is present in the person, as measured in the person's blood or urine.

2. A person who violates subsection 1 commits:

*a.* A serious misdemeanor for the first offense, punishable by all of the following:

(1) Imprisonment in the county jail for not less than forty-eight hours, to be served as ordered by the court, less credit for any time the person was confined in a jail or detention facility following arrest or for any time the person spent in a court-ordered operating-while-intoxicated program that provides law enforcement security. However, the court, in ordering service of the sentence and in its discretion, may accommodate the defendant's work schedule.

(2) Assessment of a fine of one thousand two hundred fifty dollars. However, in the discretion of the court, if no personal or property injury has resulted from the defendant's actions, the court may waive up to six hundred twenty-five dollars of the fine when the defendant presents to the court at the end of the minimum period of ineligibility, a temporary restricted license issued pursuant to section 321J.20. As an alternative to a portion or all of the fine, the court may order the person to perform unpaid community service.

(3) Revocation of the person's driver's license pursuant to section 321J.4, subsection 1, section 321J.9, or section 321J.12, subsection 2, which includes a minimum revocation period of one hundred eighty days, and may involve a revocation period of one year. A revocation under section 321J.9

includes a minimum period of ineligibility for a temporary restricted license of ninety days.

(a) A defendant whose alcohol concentration is .08 or more but not more than .10 shall not be eligible for any temporary restricted license for at least thirty days if a test was obtained and an accident resulting in personal injury or property damage occurred. The defendant shall be ordered to install an ignition interlock device of a type approved by the commissioner of public safety on all vehicles owned or operated by the defendant if the defendant seeks a temporary restricted license. There shall be no such period of ineligibility if no such accident occurred, and the defendant shall not be ordered to install an ignition interlock device.

(b) A defendant whose alcohol concentration is more than .10 shall not be eligible for any temporary restricted license for at least thirty days if a test was obtained, and an accident resulting in personal injury or property damage occurred or the defendant's alcohol concentration exceeded .15. There shall be no such period of ineligibility if no such accident occurred and the defendant's alcohol concentration did not exceed .15. In either case, where a defendant's alcohol concentration is more than .10, the defendant shall be ordered to install an ignition interlock device of a type approved by the commissioner of public safety on all vehicles owned or operated by the defendant if the defendant seeks a temporary restricted license.

(4) Assignment to substance abuse evaluation and treatment, a course for drinking drivers, and, if available and appropriate, a reality education substance abuse prevention program pursuant to subsection 3.

*b.* An aggravated misdemeanor for a second offense, and shall be imprisoned in the county jail or community-based correctional facility not less than seven days, and assessed a fine of not less than one thousand eight hundred seventy-five dollars nor more than six thousand two hundred fifty dollars.

*c.* A class "D" felony for a third offense and each subsequent offense, and shall be committed to the custody of the director of the department of

corrections for an indeterminate term not to exceed five years, shall be confined for a mandatory minimum term of thirty days, and shall be assessed a fine of not less than three thousand one hundred twenty-five dollars nor more than nine thousand three hundred seventy-five dollars.

(1) If the court does not suspend a person's sentence of commitment to the custody of the director of the department of corrections under this paragraph "c", the person shall be assigned to a facility pursuant to section 904.513.

(2) If the court suspends a person's sentence of commitment to the custody of the director of the department of corrections under this paragraph "c", the court shall order the person to serve not less than thirty days nor more than one year in the county jail, and the person may be committed to treatment in the community under section 907.6.

3. *a.* Notwithstanding the provisions of sections 901.5 and 907.3, the court shall not defer judgment or sentencing, or suspend execution of any mandatory minimum sentence of incarceration applicable to the defendant under subsection 2, and shall not suspend execution of any other part of a sentence not involving incarceration imposed pursuant to subsection 2, if any of the following apply:

(1) If the defendant's alcohol concentration established by the results of an analysis of a specimen of the defendant's blood, breath, or urine withdrawn in accordance with this chapter exceeds .15, regardless of whether or not the alcohol concentration indicated by the chemical test minus the established margin of error inherent in the device or method used to conduct the test equals an alcohol concentration of .15 or more.

(2) If the defendant has previously been convicted of a violation of subsection 1 or a statute in another state substantially corresponding to subsection 1.

(3) If the defendant has previously received a deferred judgment or sentence for a violation of subsection 1 or for a violation of a statute in another state substantially corresponding to subsection 1.

(4) If the defendant refused to consent to testing requested in accordance with section 321J.6.

(5) If the offense under this chapter results in bodily injury to a person other than the defendant.

*b.* All persons convicted of an offense under subsection 2 shall be ordered, at the person's expense, to undergo, prior to sentencing, a substance abuse evaluation.

*c.* Where the program is available and is appropriate for the convicted person, a person convicted of an offense under subsection 2 shall be ordered to participate in a reality education substance abuse prevention program as provided in section 321J.24.

*d.* A minimum term of imprisonment in a county jail or community-based correctional facili-

ty imposed on a person convicted of a second or subsequent offense under subsection 2 shall be served on consecutive days. However, if the sentencing court finds that service of the full minimum term on consecutive days would work an undue hardship on the person, or finds that sufficient jail space is not available and is not reasonably expected to become available within four months after sentencing to incarcerate the person serving the minimum sentence on consecutive days, the court may order the person to serve the minimum term in segments of at least forty-eight hours and to perform a specified number of hours of unpaid community service as deemed appropriate by the sentencing court.

4. In determining if a violation charged is a second or subsequent offense for purposes of criminal sentencing or license revocation under this chapter:

*a.* Any conviction or revocation deleted from motor vehicle operating records pursuant to section 321.12 shall not be considered as a previous offense.

*b.* Deferred judgments entered pursuant to section 907.3 for violations of this section shall be counted as previous offenses.

*c.* Convictions or the equivalent of deferred judgments for violations in any other states under statutes substantially corresponding to this section shall be counted as previous offenses. The courts shall judicially notice the statutes of other states which define offenses substantially equivalent to the one defined in this section and can therefore be considered corresponding statutes. Each previous violation on which conviction or deferral of judgment was entered prior to the date of the violation charged shall be considered and counted as a separate previous offense.

5. A person shall not be convicted and sentenced for more than one violation of this section for actions arising out of the same event or occurrence, even if the event or occurrence involves more than one of the conditions specified in subsection 1.

6. The clerk of the district court shall immediately certify to the department a true copy of each order entered with respect to deferral of judgment, deferral of sentence, or pronouncement of judgment and sentence for a defendant under this section.

7. *a.* This section does not apply to a person operating a motor vehicle while under the influence of a drug if the substance was prescribed for the person and was taken under the prescription and in accordance with the directions of a medical practitioner as defined in chapter 155A or if the substance was dispensed by a pharmacist without a prescription pursuant to the rules of the board of pharmacy, if there is no evidence of the consumption of alcohol and the medical practitioner or pharmacist had not directed the person to refrain

from operating a motor vehicle.

b. When charged with a violation of subsection 1, paragraph “c”, a person may assert, as an affirmative defense, that the controlled substance present in the person’s blood or urine was prescribed or dispensed for the person and was taken in accordance with the directions of a practitioner and the labeling directions of the pharmacy, as that person and place of business are defined in section 155A.3.

8. In any prosecution under this section, evidence of the results of analysis of a specimen of the defendant’s blood, breath, or urine is admissible upon proof of a proper foundation.

a. The alcohol concentration established by the results of an analysis of a specimen of the defendant’s blood, breath, or urine withdrawn within two hours after the defendant was driving or in physical control of a motor vehicle is presumed to be the alcohol concentration at the time of driving or being in physical control of the motor vehicle.

b. The presence of a controlled substance or other drug established by the results of analysis of a specimen of the defendant’s blood or urine withdrawn within two hours after the defendant was driving or in physical control of a motor vehicle is presumed to show the presence of such controlled substance or other drug in the defendant at the time of driving or being in physical control of the motor vehicle.

c. The department of public safety shall adopt nationally accepted standards for determining detectable levels of controlled substances in the division of criminal investigation’s initial laboratory screening test for controlled substances.

9. a. In addition to any fine or penalty imposed under this chapter, the court shall order a defendant convicted of or receiving a deferred judgment for a violation of this section to make restitution for damages resulting directly from the violation, to the victim, pursuant to chapter 910. An amount paid pursuant to this restitution order shall be credited toward any adverse judgment in a subsequent civil proceeding arising from the same occurrence. However, other than establishing a credit, a restitution proceeding pursuant to this section shall not be given evidentiary or preclusive effect in a subsequent civil proceeding arising from the same occurrence.

b. The court may order restitution paid to any public agency for the costs of the emergency response resulting from the actions constituting a violation of this section, not exceeding five hundred dollars per public agency for each such response. For the purposes of this paragraph, “*emergency response*” means any incident requiring response by fire fighting, law enforcement, ambulance, medical, or other emergency services. A public agency seeking such restitution shall consult with the county attorney regarding the expenses incurred by the public agency, and the

county attorney may include the expenses in the statement of pecuniary damages pursuant to section 910.3.

10. In any prosecution under this section, the results of a chemical test shall not be used to prove a violation of subsection 1, paragraph “b” or “c”, if the alcohol, controlled substance, or other drug concentration indicated by the chemical test minus the established margin of error inherent in the device or method used to conduct the chemical test does not equal or exceed the level prohibited by subsection 1, paragraph “b” or “c”.

2007 Acts, ch 10, §174  
For provisions relating to third offense OWI driver’s license revocations and restoration of driving privileges, see 99 Acts, ch 153, §25  
Subsection 7, paragraph a amended

#### **321J.4 Revocation of license — ignition interlock devices — conditional temporary restricted license.**

1. If a defendant is convicted of a violation of section 321J.2 and the defendant’s driver’s license or nonresident operating privilege has not been revoked under section 321J.9 or 321J.12 for the occurrence from which the arrest arose, the department shall revoke the defendant’s driver’s license or nonresident operating privilege for one hundred eighty days if the defendant has had no previous conviction or revocation under this chapter. The defendant shall not be eligible for any temporary restricted license for at least ninety days if a test was refused under section 321J.9.

a. A defendant whose alcohol concentration is .08 or more but not more than .10 shall not be eligible for any temporary restricted license for at least thirty days if a test was obtained and an accident resulting in personal injury or property damage occurred. The defendant shall be ordered to install an ignition interlock device of a type approved by the commissioner of public safety on all vehicles owned or operated by the defendant if the defendant seeks a temporary restricted license. There shall be no such period of ineligibility if no such accident occurred, and the defendant shall not be ordered to install an ignition interlock device.

b. A defendant whose alcohol concentration is more than .10 shall not be eligible for any temporary restricted license for at least thirty days if a test was obtained and an accident resulting in personal injury or property damage occurred or the defendant’s alcohol concentration exceeded .15. There shall be no such period of ineligibility if no such accident occurred and the defendant’s alcohol concentration did not exceed .15. In either case, where a defendant’s alcohol concentration is more than .10, the defendant shall be ordered to install an ignition interlock device of a type approved by the commissioner of public safety on all vehicles owned or operated by the defendant if the defendant seeks a temporary restricted license.

c. If the defendant is under the age of twenty-

one, the defendant shall not be eligible for a temporary restricted license for at least sixty days after the effective date of revocation.

2. If a defendant is convicted of a violation of section 321J.2, and the defendant's driver's license or nonresident operating privilege has not already been revoked under section 321J.9 or 321J.12 for the occurrence from which the arrest arose, the department shall revoke the defendant's driver's license or nonresident operating privilege for two years if the defendant has had a previous conviction or revocation under this chapter. The defendant shall not be eligible for any temporary restricted license for one year after the effective date of revocation. The defendant shall be ordered to install an ignition interlock device of a type approved by the commissioner of public safety on all vehicles owned by the defendant if the defendant seeks a temporary restricted license at the end of the minimum period of ineligibility. A temporary restricted license shall not be granted by the department until the defendant installs the ignition interlock device.

3. If the court defers judgment pursuant to section 907.3 for a violation of section 321J.2, and if the defendant's driver's license or nonresident operating privilege has not been revoked under section 321J.9 or 321J.12, or has not otherwise been revoked for the occurrence from which the arrest arose, the department shall revoke the defendant's driver's license or nonresident operating privilege for a period of not less than thirty days nor more than ninety days. The defendant shall not be eligible for any temporary restricted license for at least ninety days if a test was refused.

*a.* A defendant whose alcohol concentration is .08 or more but not more than .10 shall not be eligible for any temporary restricted license for at least thirty days if a test was obtained and an accident resulting in personal injury or property damage occurred. The defendant shall be ordered to install an ignition interlock device of a type approved by the commissioner of public safety on all vehicles owned or operated by the defendant if the defendant seeks a temporary restricted license. There shall be no such period of ineligibility if no such accident occurred, and the defendant shall not be ordered to install an ignition interlock device.

*b.* A defendant whose alcohol concentration is more than .10 shall not be eligible for any temporary restricted license for at least thirty days if a test was obtained and an accident resulting in personal injury or property damage occurred or the defendant's alcohol concentration exceeded .15. There shall be no such period of ineligibility if no such accident occurred and the defendant's alcohol concentration did not exceed .15. In either case, where a defendant's alcohol concentration is more than .10, the defendant shall be ordered to install an ignition interlock device of a type approved by the commissioner of public safety on all

vehicles owned or operated by the defendant if the defendant seeks a temporary restricted license.

*c.* If the defendant is under the age of twenty-one, the defendant shall not be eligible for a temporary restricted license for at least sixty days after the effective date of the revocation.

4. Upon a plea or verdict of guilty of a third or subsequent violation of section 321J.2, the court shall order the department to revoke the defendant's driver's license or nonresident operating privilege for a period of six years. The defendant shall not be eligible for a temporary restricted license for at least one year after the effective date of the revocation. The court shall require the defendant to surrender to it all Iowa licenses or permits held by the defendant, which the court shall forward to the department with a copy of the order for revocation. The defendant shall be ordered to install an ignition interlock device of a type approved by the commissioner of public safety on all vehicles owned by the defendant if the defendant seeks a temporary restricted license at the end of the minimum period of ineligibility. A temporary restricted license shall not be granted by the department until the defendant installs the ignition interlock device.

5. Upon a plea or verdict of guilty of a violation of section 321J.2 which involved a personal injury, the court shall determine in open court, from consideration of the information in the file and any other evidence the parties may submit, whether a serious injury was sustained by any person other than the defendant and, if so, whether the defendant's conduct in violation of section 321J.2 caused the serious injury. If the court so determines, the court shall order the department to revoke the defendant's driver's license or nonresident operating privilege for a period of one year in addition to any other period of suspension or revocation. The defendant shall not be eligible for any temporary restricted license until the minimum period of ineligibility has expired under this section or section 321J.9, 321J.12, or 321J.20. The defendant shall surrender to the court any Iowa license or permit and the court shall forward it to the department with a copy of the order for revocation.

6. Upon a plea or verdict of guilty of a violation of section 321J.2 which involved a death, the court shall determine in open court, from consideration of the information in the file and any other evidence the parties may submit, whether a death occurred and, if so, whether the defendant's conduct in violation of section 321J.2 caused the death. If the court so determines, the court shall order the department to revoke the defendant's driver's license or nonresident operating privilege for a period of six years. The defendant shall not be eligible for any temporary restricted license for at least two years after the revocation. The defendant shall surrender to the court any Iowa license or permit and the court shall forward it to the depart-

ment with a copy of the order for revocation.

7. If a license or permit to operate a motor vehicle is revoked or denied under this section or section 321J.9 or 321J.12, the period of revocation or denial shall be the period provided for such a revocation or until the defendant reaches the age of eighteen whichever period is longer.

8. *a.* On a conviction for or as a condition of a deferred judgment for a violation of section 321J.2, the court may order the defendant to install ignition interlock devices of a type approved by the commissioner of public safety on all motor vehicles owned or operated by the defendant which, without tampering or the intervention of another person, would prevent the defendant from operating the motor vehicle with an alcohol concentration greater than a level set by rule of the commissioner of public safety.

*b.* The commissioner of public safety shall adopt rules to approve certain ignition interlock devices and the means of installation of the devices, and shall establish the level of alcohol concentration beyond which an ignition interlock device will not allow operation of the motor vehicle in which it is installed.

*c.* The order to install ignition interlock devices shall remain in effect for a period of time as determined by the court which shall not exceed the maximum term of imprisonment which the court could have imposed according to the nature of the violation. While the order is in effect, the defendant shall not operate a motor vehicle which does not have an approved ignition interlock device installed.

*d.* If the defendant's driver's license or nonresident operating privilege has been revoked, the department shall not issue a temporary permit or a driver's license to the person without certification that approved ignition interlock devices have been installed in all motor vehicles owned or operated by the defendant while the order is in effect.

*e.* A defendant who fails within a reasonable time to comply with an order to install an approved ignition interlock device may be declared in contempt of court and punished accordingly.

*f.* A person who tampers with or circumvents an ignition interlock device installed under a court order while an order is in effect commits a serious misdemeanor.

9. *a.* A person whose noncommercial driver's license has either been revoked under this chapter, or revoked or suspended under chapter 321 solely for violations of this chapter, or who has been determined to be a habitual offender under chapter 321 based solely on violations of this chapter or on violations listed in section 321.560, subsection 1, paragraph "b", and who is not eligible for a temporary restricted license under this chapter may petition the court upon the expiration of the minimum period of ineligibility for a temporary restricted license provided for under this section,

section 321J.9, 321J.12, 321J.20, or 321.560, for an order to the department to require the department to issue a temporary restricted license to the person notwithstanding section 321.560.

*b.* The petition shall include a current certified copy of the petitioner's official driving record issued by the department.

*c.* Upon the filing of a petition for a temporary restricted license under this section, the clerk of the district court in the county where the violation that resulted in the revocation occurred shall send notice of the petition to the department and the prosecuting attorney. The department and the prosecuting attorney shall each be given an opportunity to respond to and request a hearing on the petition.

*d.* The court shall determine if the temporary restricted license is necessary for the person to maintain the person's present employment. However, a temporary restricted license shall not be ordered or issued for a violation of section 321J.2A or to a person under the age of twenty-one whose license is revoked under this section or section 321J.9 or 321J.12. If the court determines that the temporary restricted license is necessary for the person to maintain the person's present employment, and that the minimum period of ineligibility for receipt of a temporary license has expired, the court shall order the department to issue to the person a temporary restricted license conditioned upon the person's certification to the court of the installation of approved ignition interlock devices in all motor vehicles that it is necessary for the person to operate to maintain the person's present employment. A person whose driver's license or nonresident operating privilege has been revoked under section 321J.21 may apply to the department for a temporary restricted license without the requirement of an ignition interlock device if at least twelve years have elapsed since the end of the underlying revocation period for a violation of section 321J.2.

*e.* Section 321.561 does not apply to a person operating a motor vehicle in the manner permitted under this subsection.

*f.* If the person operates a motor vehicle which does not have an approved ignition interlock device or if the person tampers with or circumvents an ignition interlock device, in addition to other penalties provided, the person's temporary restricted license shall be revoked.

*g.* A person holding a temporary restricted license issued under this subsection shall not operate a commercial motor vehicle, as defined in section 321.1, on a highway if a commercial driver's license is required for the person to operate the commercial motor vehicle.

*h.* Notwithstanding any provision of this chapter to the contrary, the court may order the department to issue a temporary restricted license to a person otherwise eligible for a temporary restrict-

ed license under this subsection, whose period of revocation under this chapter has expired, but who has not met all requirements for reinstatement of the person's noncommercial driver's license or nonresident operating privileges.

2007 Acts, ch 143, §21  
For provisions relating to third offense OWI driver's license revocations and restoration of driving privileges, see 99 Acts, ch 153, §25  
Subsection 9, paragraph d amended

### 321J.8 Statement of officer.

1. A person who has been requested to submit to a chemical test shall be advised by a peace officer of the following:

a. If the person refuses to submit to the test, the person's driver's license or nonresident operating privilege will be revoked by the department as required by and for the applicable period specified under section 321J.9.

b. If the person submits to the test and the results indicate the presence of a controlled substance or other drug, or an alcohol concentration equal to or in excess of the level prohibited by section 321J.2 or 321J.2A, the person's driver's license or nonresident operating privilege will be revoked by the department as required by and for the applicable period specified under section 321J.12.

c. (1) If the person is operating a commercial motor vehicle as defined in section 321.1 and either refuses to submit to the test or submits to the test and the results indicate an alcohol concentration of 0.04 or more, the person is disqualified from operating a commercial motor vehicle for the applicable period under section 321.208 in addition to any revocation of the person's driver's license or nonresident operating privilege which may be applicable under this chapter.

(2) If the person is operating a noncommercial motor vehicle and holding a commercial driver's license as defined in section 321.1 and either refuses to submit to the test or operates a motor vehicle while under the influence of an alcoholic beverage or other drug or controlled substance or a combination of such substances, the person is disqualified from operating a commercial motor vehicle for the applicable period under section 321.208 in addition to any revocation of the person's driver's license or nonresident operating privilege which may be applicable under this chapter.

2. This section does not apply in any case involving a person described in section 321J.7.

2007 Acts, ch 69, §1  
Unnumbered paragraph 1 designated editorially as subsection 1, unnumbered paragraph 1 and former subsections 1 and 2 redesignated as paragraphs a and b of subsection 1

Former subsection 3 redesignated editorially as subparagraph (1) of subsection 1, paragraph c

Subsection 1, paragraph c, NEW subparagraph (2)  
Former unnumbered paragraph 2 designated editorially as subsection 2

### 321J.20 Temporary restricted license.

1. The department may, on application, issue a temporary restricted license to a person whose

noncommercial driver's license is revoked under this chapter allowing the person to drive to and from the person's home and specified places at specified times which can be verified by the department and which are required by the person's full-time or part-time employment, continuing health care or the continuing health care of another who is dependent upon the person, continuing education while enrolled in an educational institution on a part-time or full-time basis and while pursuing a course of study leading to a diploma, degree, or other certification of successful educational completion, substance abuse treatment, court-ordered community service responsibilities, and appointments with the person's parole or probation officer if the person's driver's license has not been revoked previously under section 321J.4, 321J.9, or 321J.12 and if any of the following apply:

a. The person's noncommercial driver's license is revoked under section 321J.4 and the minimum period of ineligibility for issuance of a temporary restricted license has expired. This subsection shall not apply to a revocation ordered under section 321J.4 resulting from a plea or verdict of guilty of a violation of section 321J.2 that involved a death.

b. The person's noncommercial driver's license is revoked under section 321J.9 and the person has entered a plea of guilty on a charge of a violation of section 321J.2 which arose from the same set of circumstances which resulted in the person's driver's license revocation under section 321J.9 and the guilty plea is not withdrawn at the time of or after application for the temporary restricted license, and the minimum period of ineligibility for issuance of a temporary restricted license has expired.

c. The person's noncommercial driver's license is revoked under section 321J.12, and the minimum period of ineligibility for issuance of a temporary restricted license has expired.

However, a temporary restricted license may be issued if the person's noncommercial driver's license is revoked under section 321J.9, and the revocation is a second revocation under this chapter, and the first three hundred sixty-five days of the revocation have expired.

2. This section does not apply to a person whose license was revoked under section 321J.2A or section 321J.4, subsection 4 or 6, or to a person whose license is suspended or revoked for another reason.

3. A person holding a temporary restricted license issued by the department under this section shall not operate a motor vehicle for pleasure.

4. A person holding a temporary restricted license issued by the department under this section shall not operate a commercial motor vehicle on a highway if a commercial driver's license is required for the person's operation of the commercial motor vehicle.

5. A person holding a temporary license issued by the department under this chapter shall be prohibited from operating a school bus.

6. Following certain minimum periods of ineligibility, a temporary restricted license under this section shall not be issued until such time as the applicant installs an ignition interlock device of a type approved by the commissioner of public safety on all motor vehicles owned or operated by the applicant, in accordance with section 321J.2, 321J.4, 321J.9, or 321J.12. Installation of an ignition interlock device under this section shall be re-

quired for the period of time for which the temporary restricted license is issued.

7. Notwithstanding any provision of this chapter to the contrary, the department may issue a temporary restricted license to a person otherwise eligible for a temporary restricted license under this section, whose period of revocation under this chapter has expired, but who has not met all requirements for reinstatement of the person's driver's license or nonresident operating privileges.

2007 Acts, ch 196, §6

Subsection 1, unnumbered paragraph 1 amended

## CHAPTER 321M

### COUNTY ISSUANCE OF DRIVER'S LICENSES

#### **321M.5 Agreement between the department and issuing counties.**

1. The department and each county participating in county issuance shall execute an agreement pursuant to chapter 28E, detailing the relative responsibilities and liabilities of each party to the agreement.

2. The agreement required by subsection 1 shall specifically address the following issues, in addition to other issues that may be required by chapter 28E or that may otherwise be deemed necessary for inclusion in the agreement by the parties to the agreement:

*a.* Responsibility for collection of, and accounting for, any fees and penalties associated with the licensing process.

*b.* Oversight guidelines.

*c.* Performance standards.

*d.* Progressive discipline standards and measures, including appeals.

3. An addendum to such an agreement may be executed by the parties, in accordance with chapter 28E.

2005 Acts, ch 54, §7, 12

2005 amendment to subsection 2, paragraph a, takes effect July 1, 2007;  
2005 Acts, ch 54, §12

Subsection 2, paragraph a amended

#### **321M.9 Financial responsibility.**

1. *Fees to counties.* Notwithstanding any other provision in the Code to the contrary, the county treasurer of a county authorized to issue driver's licenses under this chapter shall retain for deposit in the county general fund seven dollars of fees received for each issuance or renewal of driver's licenses and nonoperator's identification cards, but shall not retain any moneys for the issuance of any persons with disabilities identification devices. The five dollar processing fee charged by a county treasurer for collection of a civil penalty under section 321.218A or 321A.32A shall be retained for deposit in the county general fund. The county treasurer shall remit the balance of fees

and all civil penalties to the department.

*2. Digitized photolicensing equipment.*

*a.* The department shall pay for all digitized photolicensing equipment, including that used by the department and authorized for use by issuing counties under this subsection. Moneys from the road use tax fund shall be used, subject to appropriation by the general assembly, for payment of costs associated with the purchase or lease of digitized photolicensing equipment.

*b.* An issuing county shall be entitled to one set of digitized photolicensing equipment, unless the county was served at multiple sites by the department, in which case the county shall be entitled to two sets of digitized photolicensing equipment.

*3. Other equipment.* The department shall pay for all other equipment needed by a county to participate in county issuance, comparable to the equipment provided for issuance activities by a department itinerant team, with the exception of the following:

*a.* Office furniture.

*b.* Computer hardware needed to access department computer databases, facsimile machines used to transmit documents between the department and the county, and similar office equipment of a general nature that is not dedicated solely or primarily to the issuance process.

*4. Periodic fee adjustment.* The auditor of state, in consultation with the state department of transportation and the Iowa county treasurers association, shall conduct a study of the fiscal impact of the county driver's license issuance program and report its findings and recommendations to the general assembly prior to January 1, 2006, and repeat the study and reporting every four years thereafter. The auditor of state's costs for conducting the study shall be paid by the department. The study shall include a comparison of the cumulative costs to issue driver's licenses and nonoperator's identification cards under both the state department of transportation program and the coun-



ty issuance program. The study shall be based on those issuance activities that are common to both programs. Prior to the study period, the auditor of state shall meet with the department and the county treasurers association to determine the study methodology to ensure appropriate accounting for time and cost during the study. The findings and recommendations submitted by the audi-

tor of state shall be considered by the general assembly in adjusting the amount of the fees retained by the county treasurers for issuance of driver's licenses and nonoperator's identification cards.

2005 Acts, ch 54, §8, 12  
2005 amendment to subsection 1 takes effect July 1, 2007; 2005 Acts, ch 54, §12  
Subsection 1 amended

## CHAPTER 322

### MOTOR VEHICLE MANUFACTURERS, DISTRIBUTORS, AND DEALERS

#### 322.4 Application for license.

1. Each person before engaging in this state in the business of selling at retail motor vehicles or representing or advertising that the person is engaged or intends to engage in such business in this state shall file in the office of the department an application for license as a motor vehicle dealer in the state in such form as the department may prescribe, duly verified by oath, which application shall include the following:

*a.* The name of the applicant and the applicant's principal place of business wherever situated, and the following, as appropriate:

(1) If the applicant is an individual, the name or style under which the individual intends to engage in such business.

(2) If the applicant is a copartnership, the name or style under which the copartnership intends to engage in such business and the name and bona fide address of two partners.

(3) If the applicant is a corporation, the state of incorporation and the name and bona fide address of two officers of the corporation.

*b.* The make or makes of new motor vehicles, if any, which the applicant will offer for sale at retail in this state.

*c.* The location of each place of business within this state to be used by the applicant for the conduct of the applicant's business.

*d.* If the applicant is a party to any contract or agreement or understanding with any manufacturer or distributor of motor vehicles or is about to become a party to such a contract, agreement, or understanding, the applicant shall state the name of each such manufacturer or distributor and the make or makes of new motor vehicles, if any, which are the subject matter of each such contract.

*e.* A statement of the previous history, record, and association of the applicant and if the applicant is a copartnership, of each partner thereof, and if the applicant is a corporation, of each officer and director thereof, which statement shall be sufficient to establish to the department the reputation in business of the applicant.

*f.* A description of the general plan and method of doing business in this state, which the applicant

will follow if the license applied for in such application is granted.

*g.* Before the issuance of a motor vehicle dealer's license to a dealer engaged in the sale of vehicles for which a certificate of title is required under chapter 321, the applicant shall furnish a surety bond executed by the applicant as principal and executed by a corporate surety company, licensed and qualified to do business within this state, which bond shall run to the state of Iowa, be in the amount of fifty thousand dollars and be conditioned upon the faithful compliance by the applicant as a dealer with all of the statutes of this state regulating or applicable to the business of a dealer in motor vehicles, and indemnifying any person who buys a motor vehicle from the dealer from any loss or damage occasioned by the failure of the dealer to comply with any of the provisions of chapter 321 and this chapter, including but not limited to the furnishing of a proper and valid certificate of title to the motor vehicle involved in a transaction. The bond shall also indemnify any motor vehicle purchaser from any loss or damage caused by the failure of the dealer to comply with the odometer requirements in section 321.71, regardless of whether the motor vehicle was purchased directly from the dealer. The bond shall be filed with the department prior to the issuance of a license. The aggregate liability of the surety, however, shall not exceed the amount of the bond.

*h.* Proof that the applicant has financial liability coverage as defined in section 321.1, except that such coverage shall be in limits of not less than one hundred thousand dollars because of bodily injury to or death of one person in any one accident and, subject to the limit for one person, three hundred thousand dollars because of bodily injury to or death of two or more persons in any one accident, and fifty thousand dollars because of injury to or destruction of property of others in any one accident.

*i.* If the applicant is applying for a used motor vehicle dealer license, certification that the applicant has met the educational requirements for licensure under section 322.7A. The certification may be transmitted to the department by the edu-

cation provider in electronic format.

*j.* Such other information touching the business of the applicant as the department may require.

2. For the purpose of investigating the matters contained in such application, the department may withhold the granting of a license for a period not exceeding thirty days.

3. For purposes of this section, “*bona fide address*” means the same as defined in section 321.1.

2007 Acts, ch 51, §1; 2007 Acts, ch 143, §22  
See Code editor’s note to §29A.28  
Section amended

### 322.7 License of motor vehicle dealer.

1. If the department grants the application of any person for a license as a motor vehicle dealer, it shall evidence the granting thereof by a final order and shall issue to the person a license in such form as may be prescribed by the department, which license shall include the following:

*a.* If the applicant is an individual or a copartnership, the name or style under which the licensee will engage in such business.

*b.* The principal place of business of the licensee and location therein of each place wherein the licensee is licensed to carry on such business.

*c.* The make or makes of new motor vehicles which the licensee is licensed to sell.

2. The instrument evidencing the license or a certified copy thereof provided by the department shall be kept posted conspicuously in the principal office of the licensee and in each place of business maintained and operated by the applicant pursuant to the license in this state.

3. The license of a motor vehicle dealer is valid for a two-year period and expires, unless revoked or suspended, on December 31 of even-numbered years.

4. The motor vehicle dealer license provided for in this chapter shall be renewed upon application in the form and content prescribed by the department and upon payment of the required fee. A used motor vehicle dealer license shall not be renewed for an applicant who is subject to continuing education requirements until the licensee certifies completion of the educational requirements for license renewal under section 322.7A. The certification may be transmitted to the department by the education provider in electronic format. A licensee shall have the month of expiration and the month after the month of expiration to renew the license. A person who fails to renew a license by the end of this time period and desires to hold a license shall file a new license application and pay the required fee.

2007 Acts, ch 51, §2; 2007 Acts, ch 143, §23  
Subsections 1 and 4 amended

### 322.7A Used motor vehicle dealer education program.

1. An applicant for a license as a used motor

vehicle dealer shall complete a minimum of eight hours of prelicensing education program courses pursuant to this section prior to submitting an application to the department.

2. A person seeking renewal of a used motor vehicle dealer license shall complete a minimum of five hours of continuing education program courses over a two-year period pursuant to this section prior to submitting an application for license renewal. However, an applicant for renewal of a used motor vehicle dealer license who has met the prelicensing education requirement under subsection 1 within the preceding twelve months is exempt from the continuing education requirement for license renewal.

3. To meet the requirements of this section, at least one individual who is associated with the used motor vehicle dealer as an owner, principal, corporate officer, director, or member or partner of a limited liability company or limited liability partnership shall complete the education program courses.

4. The Iowa independent automobile dealers association, in consultation with the state department of transportation, the department of education, the attorney general, and the Iowa association of community college trustees, shall develop the prelicensing and continuing education course curricula for the used motor vehicle dealer education program, which shall include but not be limited to examination of federal and state laws applicable to the motor vehicle industry and federal and state regulations pertaining to used motor vehicle dealers. The education program courses shall be provided by community colleges as defined in section 260C.2 or by the Iowa independent automobile dealers association in conjunction with a community college. The department of education shall adopt rules establishing reasonable fees to be charged for the prelicensing education courses and the continuing education courses.

5. A community college shall issue a certificate to each person who successfully completes the prelicensing education program or a continuing education program under this section. The current certificate of completion, or a copy of the certificate, shall be posted conspicuously in the principal office of the licensee.

6. The provisions of this section apply to all used motor vehicle dealers, including but not limited to individuals, corporations, and partnerships, except for the following:

*a.* Motor vehicle rental companies having a national franchise.

*b.* National motor vehicle auction companies.

*c.* Wholesale dealer-only auction companies.

*d.* Used car dealerships owned by a franchise motor vehicle dealer.

*e.* Banks, credit unions, and savings and loan associations.

7. Each community college providing used mo-

tor vehicle dealer education program courses shall transmit a report on the program annually by December 31 to the director of transportation, the director of the department of education, the attorney general, and the president of the Iowa association of community college trustees.

2007 Acts, ch 51, §3  
NEW section

### 322.29 Issuance of license — fees.

1. Application for license shall be made to the department by a manufacturer, distributor, or wholesaler, in a form and containing information as the department requires and shall be accompanied by the required license fee. The license shall be granted or refused within thirty days after application. A license expires, unless sooner revoked or suspended, on December 31 of even-numbered years. A licensee shall have the month of expiration and the month after the month of expiration to renew the license. A person who fails to renew a license by the end of this time period and desires to hold a license shall file a new license application and pay the required fee.

2. License fees for each two-year period or part thereof are as follows:

a. For a motor vehicle manufacturer, seventy dollars.

b. For a new motor vehicle distributor or wholesaler, forty dollars.

3. A license shall not be issued to a person as a distributor or wholesaler for a new motor vehicle

model unless the distributor or wholesaler has written authorization from the manufacturer as a distributor or wholesaler of the motor vehicle model.

4. Upon payment of the license fee as provided in this section, a person who rebuilds new completed motor vehicles by fabricating, altering, adding, or replacing essential parts, components, or equipment for the purpose of building an ambulance, rescue vehicle, fire vehicle, or towing or recovery vehicle as defined in chapter 321 may be issued a license as a wholesaler of new motor vehicles of the make and model rebuilt without written authorization from the manufacturer.

5. Upon payment of the license fee as provided in this section, a person who installs cranes, hook loaders, buckets, aerial ladders, tanks, or special equipment on new completed motor trucks with a gross vehicle weight rating of fourteen thousand five hundred pounds or more may be issued a license as a wholesaler of new motor vehicles of the make and model on which the equipment is installed without written authorization from the manufacturer.

6. Notwithstanding section 322.3, subsection 1, a person licensed as a wholesaler under subsection 4 may be licensed as a used motor vehicle dealer solely for the purpose of dealing in used motor vehicles of the same make and model the person is licensed to wholesale.

2007 Acts, ch 102, §2  
NEW subsection 6

## CHAPTER 322E

### MOTOR HOMES AND MANUFACTURER'S CLUB RALLIES

Chapter applies only to motor home manufacturer's club rallies held on grounds of the county fair in Clay county; reporting; violations; 2007 Acts, ch 131, §6  
Chapter to be repealed June 30, 2012; see §322E.3

#### 322E.1 Definitions.

As used in this chapter, unless the context otherwise requires:

1. "Department" means the state department of transportation.

2. "Class A motor home", "class B motor home", and "class C motor home" mean the same as defined in section 321.124.

3. "Manufacturer" means a motor home manufacturer licensed under chapter 322.

4. "Nonresident" means a person who is not a resident of this state.

2007 Acts, ch 131, §2, 6  
NEW section

#### 322E.2 Motor home manufacturer's club rally — retail sales of motor homes.

1. Notwithstanding chapter 322, a manufacturer of class A motor homes that sponsors a club

composed of owners of motor homes manufactured by the manufacturer may display and sell new class A motor homes manufactured by the manufacturer at a rally of those club members if all of the following conditions apply:

a. The rally is sponsored and conducted by the manufacturer.

b. The rally is held on the grounds of a county fair as described in chapter 174.

c. The manufacturer conducts no more than one rally annually in this state.

d. The rally is conducted for a single period of not more than seven consecutive days.

e. The rally is not open to the public.

f. Attendance at the rally is restricted to bona fide members of the club sponsored by the manufacturer and the members' immediate families.

g. Persons who attend the rally camp on the fairgrounds where the rally is held in their respec-

tive motor homes manufactured by the manufacturer sponsoring and conducting the rally.

*h.* Sales of class A motor homes are made by the manufacturer only to nonresident attendees of the rally who meet the requirements of paragraphs “*f*” and “*g*”.

2. Notwithstanding chapter 322, a manufacturer of class A motor homes that sponsors and conducts a rally as provided in subsection 1 may accept trade-ins of used motor homes manufactured by the manufacturer from attendees of the rally who meet the requirements of subsection 1, paragraphs “*f*” and “*g*” who purchase from the manufacturer a new class A motor home manufactured by the manufacturer. A manufacturer may sell or trade such a used motor home acquired from a purchaser in trade at the rally, provided that the manufacturer has in its possession at the rally the certificate of title to the motor home, assigned to the manufacturer. A manufacturer shall not sell or trade, at a rally, a used motor home acquired from a purchaser in trade at the rally to any person other than a nonresident attendee who meets all of the requirements of subsection 1, paragraphs “*f*” and “*g*”.

3. A manufacturer of class A motor homes

shall provide notice to the department not less than ninety days prior to the beginning date of a rally to be sponsored and conducted by the manufacturer. The notice shall be in a form and contain such information as may be required by the department.

4. An Iowa certificate of title and registration shall not be issued for a motor home sold by a manufacturer at a rally pursuant to this section.

5. A motor home sold by a manufacturer at a rally pursuant to this section may be operated or moved on the highways of this state only for the purpose of removing the motor home from the state, as provided in section 321.18, subsection 9.

6. Notwithstanding chapter 322, a manufacturer of class A motor homes that sponsors and conducts a rally as provided in subsection 1 may display but not sell at the rally new class B and class C motor homes manufactured by the manufacturer.

2007 Acts, ch 131, §3, 6  
NEW section

**322E.3 Future repeal.**

This chapter is repealed June 30, 2012.

2007 Acts, ch 131, §4, 6  
NEW section

**CHAPTER 326**

**REGISTRATION RECIPROCITY**

**326.10A Payment by check.**

The department shall accept payment of fees under this chapter by personal or corporate check. The fee shall be deemed to have been paid upon receipt of the check. If the check is not honored, all fees and penalties shall accumulate as if the fee was not paid. After appropriate warning from the department, the registration account shall be suspended, collection pursued, and the delinquent registration fees shall become a debt due the state of Iowa. After a dishonored check has been received from an applicant, payments submitted by the applicant during the following year must be made with guaranteed funds. However, the department may instead accept payment in the form of a corporate check made on behalf of the applicant from an approved company with a satisfactory payment history.

2007 Acts, ch 143, §24  
Section amended

**326.16 Delinquent fees.**

1. If the fees for proportional registration are not paid to each contracting jurisdiction entitled thereto on the basis of the proportional registration application and supporting documents filed with the department by the fleet owner within a

reasonable amount of time as determined by the department, the department shall calculate late payment penalties. The fleet owner shall be notified by regular mail that fees and penalties are due and must be paid within thirty days of the invoice date. If fees and penalties are not received, the fleet owner shall be notified by certified mail that the owner’s registration has been suspended.

2. A five percent late payment penalty shall be assessed if an invoice is not paid within thirty days of the invoice date or within thirty days of January 31 of the registration year, whichever is later, with an additional five percent penalty assessed the first of each month thereafter until all fees and penalties are paid. In addition, the fees due for registration in this state shall be a debt due to the state of Iowa.

3. Failure to receive a renewal notice or an invoice by mail, facsimile transmission, or any other means of delivery does not relieve the registrant of the financial responsibility for the renewal fees, invoiced amount, or accrued penalties.

2007 Acts, ch 143, §25  
NEW subsection 3

**326.24 Registration denied or suspended.**

If the international fuel tax agreement license

issued to an applicant or registrant under chapter 452A is suspended or revoked or if the director refuses to issue an international fuel tax agreement license because of unpaid debt, the director may

deny or suspend the applicant's or registrant's registration under this chapter.

2007 Acts, ch 143, §26  
NEW section

## CHAPTER 327B

### REGISTRATION OF CARRIER AUTHORITY

#### **327B.1 Authority secured and registered.**

1. *a.* It is unlawful for a carrier to perform an interstate transportation service for compensation upon the highways of this state without first registering the authority obtained from the United States department of transportation or evidence that such authority is not required with the state department of transportation.

*b.* The department shall participate in the single state insurance registration program for regulated motor carriers as provided in 49 U.S.C. § 14504 and United States department of transportation regulations.

*c.* Registration for carriers transporting commodities exempt from United States department of transportation regulation shall be granted without hearing upon application and payment of a twenty-five-dollar filing fee and an annual one-dollar fee per vehicle.

*d.* The state department of transportation may execute reciprocity agreements with authorized representatives of any state exempting non-residents from payment of fees as set forth in this chapter. The state department of transportation shall adopt rules pursuant to chapter 17A for the identification of vehicles operated under reciprocity agreements.

*e.* Fees may be subject to reduction or proration pursuant to sections 326.5 and 326.32.

2. *a.* On and after the date on which the secretary of the United States department of transportation establishes the unified carrier registration system in accordance with Title 49, United States Code, as amended by Pub. L. No. 109-59, a foreign or domestic motor carrier, motor private carrier, leasing company, broker, or freight forwarder shall not operate any motor vehicle on the highways of this state without first registering the motor vehicle under the unified carrier registration system and paying all required fees.

*b.* The state department of transportation shall continue to require each interstate for-hire motor carrier to make an annual payment of one dollar per owned and operated vehicle for filings made with the state department of transportation under the single state registration system until the occurrence of the transition termination date in accordance with 49 U.S.C. § 13902(f), as amended by Pub. L. No. 109-59.

*c.* The state department of transportation may participate in the unified carrier registration plan and agreement established in accordance with 49 U.S.C. § 14504a, as amended by Pub. L. No. 109-59, and to file on behalf of the state the plan required by the provisions of 49 U.S.C. § 14504a(e).

3. A motor carrier shall keep proper evidence of interstate authority in the motor vehicle being operated by the motor carrier and the motor carrier owner or driver shall make such evidence available to a peace officer upon request.

4. A motor carrier owner or driver charged with failure to have proper evidence of interstate authority shall not be convicted of such violation and the citation shall be dismissed by the court if the person produces to the clerk of court prior to the date of such person's court appearance as indicated on the citation, proof of interstate authority issued to that person and valid at the time the person was charged with the violation under this section. Upon dismissal, the court or clerk of court shall assess the costs of the action against the defendant named on the citation.

2007 Acts, ch 143, §27, 35

For applicable scheduled fines, see §805.8A, subsection 13, paragraphs f and g

Section amended

**327B.4 Private carriers exempt.** Repealed by 2007 Acts, ch 143, § 34, 35.

#### **327B.6 Insurance or bond.**

1. Registration under section 327B.1 shall not be granted until the exempt carrier has filed with the state department of transportation evidence of insurance or surety bond issued by an insurance carrier or bonding company authorized to do business in this state in a form prescribed by the department. The minimum limits of liability for each interstate motor carrier for hire subject to federal minimum limits of liability are those adopted under United States Code, Title 49, and prescribed in 49 C.F.R. § 387.3 and § 387.9 for motor carriers of property and in 49 C.F.R. § 387.27 and § 387.33 for motor carriers of passengers.

2. The insurance policy or surety bond shall bind the insurance company or bonding company to make compensation to claimants for the carrier's liability. The insurance policy or surety bond

shall also provide that a person having a cause of action against the carrier may bring action directly upon the policy or bond when service cannot be obtained on the interstate carrier within this state.

3. Failure to keep insurance or bond in effect at all times shall cause the registration of the interstate carrier to be revoked.

4. This section is repealed on the transition termination date referred to in section 327B.1,

subsection 2, paragraph “b”.

2007 Acts, ch 143, §28, 35  
 State department of transportation to notify Code editor of transition termination date described in subsection 4 as date of section repeal; 2007 Acts, ch 143, §31

Unnumbered paragraphs 1 – 3 designated editorially as subsections 1 – 3

NEW subsection 4

**327B.7 Reciprocity for exempt commodity base state registration system.** Repealed by 2007 Acts, ch 143, § 34, 35.

## CHAPTER 327C

### SUPERVISION OF CARRIERS

#### **327C.5 Schedule violations — penalties.**

Violations of the provisions of this chapter and chapters 327D through 327G shall be punished as a schedule “one” penalty unless otherwise indicated. Violations of a continuing nature shall constitute a separate offense for each violation unless otherwise provided. The schedule of violations shall be:

1. “*Schedule one*” means a penalty of one hundred dollars per violation.

2. “*Schedule two*” means a penalty of not less than one hundred dollars nor more than five hundred dollars per violation.

3. “*Schedule three*” means a penalty of not less than five hundred dollars nor more than one thousand dollars per violation.

4. “*Schedule four*” means a penalty of not less than five hundred dollars nor more than five thousand dollars per violation.

5. “*Schedule five*” means a penalty of not less than five hundred dollars nor more than five thousand dollars for the first violation and not less than five thousand dollars nor more than ten thousand dollars for each subsequent violation.

2007 Acts, ch 22, §70  
 Unnumbered paragraph 1 amended

## CHAPTER 327F

### CONSTRUCTION AND OPERATION OF RAILWAYS

**327F.6 through 327F.12** Reserved.

#### **327F.13 Close-clearance warning devices.**

1. The owner of a railroad track shall place a warning device at a location where the close clearance between the track and a building, machinery, trees, brush, or other object is such that the building, machinery, trees, brush, or other object physically impedes a person who is lawfully riding the side of a train in the course of the person’s duties in service to a railroad company from clearing the building, machinery, trees, brush, or other object.

2. The warning device shall be placed in a location which provides adequate notice to a person riding the side of a train so that the person may prepare for the close clearance. Any signs posted shall not be a danger to other persons working on the property.

3. Placement of a warning device pursuant to this section does not relieve the owner of a railroad track from any duties required under chapter 317 or section 327F.27.

4. A violation of this section is punishable as a

schedule “one” penalty under section 327C.5.

5. This section does not apply to a railroad that operates locomotives powered by overhead or suspended electric power lines.

6. The department of transportation shall adopt rules to implement this section. Notwithstanding any other provision, the department of transportation shall be allowed to enter any property on which railroad track is located for the purpose of administering and enforcing this section. Entry upon any private property shall be with knowledge and notice to the property owner.

7. This section only applies to a location where a close-clearance warning device is required to be placed pursuant to rules of the department when funds are available from the department to reimburse the owner of the railroad track for the cost of the close-clearance warning device, including cost of installation.

2007 Acts, ch 164, §1  
 Moneys in the railroad revolving loan and grant fund established pursuant to section 327H.20A may be used for close-clearance warning device acquisition and installation; 2007 Acts, ch 219, §1, 2

NEW section

**327F.37** Reserved.

## CHAPTER 327H

### RAILWAY ASSISTANCE

#### **327H.20A Railroad revolving loan and grant fund.**

1. A railroad revolving loan and grant fund is established in the office of the treasurer of state under the control of the authority. Moneys in the fund shall be expended for the following purposes:

*a.* Grants or loans to provide assistance for the restoration, conservation, improvement, and construction of railroad main lines, branch lines, switching yards, sidings, rail connections, intermodal yards, highway grade separations, and other railroad-related improvements.

*b.* Grants or loans for rail economic development projects that improve rail facilities, including the construction of branch lines, sidings, rail connections, intermodal yards, and other rail-related improvements that spur economic development and job growth.

2. The authority shall administer a program for the granting and administration of loans and grants under this section. No more than fifty percent of the total moneys available in the fund in any year shall be awarded in the form of grants.

The authority may establish a limit on the amount that may be awarded as a grant for any given project in order to maximize the use of the moneys in the fund. The authority may enter into agreements with railroad corporations, the United States government, cities, counties, and other persons for carrying out the purposes of this section.

3. Notwithstanding any other provision to the contrary, on or after July 1, 2006, moneys received as repayments for loans made pursuant to this chapter or chapter 327I before, on, or after July 1, 2005, other than repayments of federal moneys subject to section 327H.21, shall be credited to the railroad revolving loan and grant fund. Notwithstanding section 8.33, moneys in the railroad revolving loan and grant fund shall not revert to the general fund of the state but shall remain available indefinitely for expenditure under this section.

Moneys in the railroad revolving loan and grant fund may be used for close-clearance warning device acquisition and installation; 2007 Acts, ch 219, §1, 2

Section not amended; footnote revised

## CHAPTER 327K

### MIDWEST INTERSTATE PASSENGER RAIL COMPACT

#### **327K.1 Midwest interstate passenger rail compact.**

The midwest interstate passenger rail compact is enacted into law and entered into with all other states legally joining in the compact in substantially the following form:

#### ARTICLE I STATEMENT OF PURPOSE

The purposes of this compact are, through joint or cooperative action:

*a.* To promote development and implementation of improvements to intercity passenger rail service in the midwest.

*b.* To coordinate interaction among midwestern state elected officials and their designees on passenger rail issues.

*c.* To promote development and implementation of long-range plans for high-speed rail passenger service in the midwest and among other regions of the United States.

*d.* To work with the public and private sectors at the federal, state, and local levels to ensure coordination among the various entities having an interest in passenger rail service and to promote

midwestern interests regarding passenger rail.

*e.* To support efforts of transportation agencies involved in developing and implementing passenger rail service in the midwest.

#### ARTICLE II ESTABLISHMENT OF COMMISSION

To further the purposes of the compact, a commission is created to carry out the duties specified in this compact.

#### ARTICLE III COMMISSION MEMBERSHIP

The manner of appointment of commission members, terms of office consistent with the terms of this compact, provisions for removal and suspension, and manner of appointment to fill vacancies shall be determined by each party state pursuant to its laws, but each commissioner shall be a resident of the state of appointment. Commission members shall serve without compensation from the commission.

The commission shall consist of four resident members of each state as follows: the governor or

the governor's designee who shall serve during the tenure of office of the governor, or until a successor is named; one member of the private sector who shall be appointed by the governor and shall serve during the tenure of office of the governor, or until a successor is named; and two legislators, one from each legislative chamber (or two legislators from any unicameral legislature), who shall serve two-year terms, or until successors are appointed, and who shall be appointed by the appropriate appointing authority in each legislative chamber. All vacancies shall be filled in accordance with the laws of the appointing states. A commissioner appointed to fill a vacancy shall serve until the end of the incomplete term. Each member state shall have equal voting privileges, as determined by the commission bylaws.

ARTICLE IV  
POWERS AND DUTIES OF THE COMMISSION

*a.* The duties of the commission are to:

(1) Advocate for the funding and authorization necessary to make passenger rail improvements a reality for the region.

(2) Identify and seek to develop ways that states can form partnerships, including with rail industry and labor, to implement improved passenger rail service in the region.

(3) Seek development of a long-term, interstate plan for high-speed rail passenger service implementation.

(4) Cooperate with other agencies, regions, and entities to ensure that the midwest is adequately represented and integrated into national plans for passenger rail development.

(5) Adopt bylaws governing the activities and procedures of the commission and addressing, among other subjects: the powers and duties of officers; and the voting rights of commission members, voting procedures, commission business, and any other purposes necessary to fulfill the duties of the commission.

(6) Expend such funds as required to carry out the powers and duties of the commission.

(7) Report on the activities of the commission to the legislatures and governors of the member states on an annual basis.

*b.* In addition to its exercise of these duties, the commission may:

(1) Provide multistate advocacy necessary to implement passenger rail systems or plans, as approved by the commission.

(2) Work with local elected officials, economic development planning organizations, and similar entities to raise the visibility of passenger rail service benefits and needs.

(3) Educate other state officials, federal agencies, other elected officials, and the public on the advantages of passenger rail as an integral part of an intermodal transportation system in the region.

(4) Work with federal agency officials and members of Congress to ensure the funding and authorization necessary to develop a long-term, interstate plan for high-speed rail passenger service implementation.

(5) Make recommendations to member states.

(6) If requested by each state participating in a particular project and under the terms of a formal agreement approved by the participating states and the commission, implement or provide oversight for specific rail projects.

(7) Establish an office and hire staff as necessary.

(8) Contract for or provide services.

(9) Assess dues, in accordance with the terms of this compact.

(10) Conduct research.

(11) Establish committees.

ARTICLE V  
OFFICERS

The commission shall annually elect from among its members a chair, a vice chair who shall not be a resident of the state represented by the chair, and others as approved in the commission bylaws. The officers shall perform such functions and exercise such powers as are specified in the commission bylaws.

ARTICLE VI  
MEETINGS AND COMMISSION  
ADMINISTRATION

The commission shall meet at least once in each calendar year and at such other times as may be determined by the commission. Commission business shall be conducted in accordance with the procedures and voting rights specified in the bylaws.

ARTICLE VII  
FINANCE

Except as otherwise provided, the moneys necessary to finance the general operations of the commission in carrying forth its duties, responsibilities, and powers as stated in this compact shall be appropriated to the commission by the compacting states, when authorized by the respective legislatures, by equal apportionment among the compacting states. Nothing in this compact shall be construed to commit a member state to participate in financing a rail project except as provided by law of a member state.

The commission may accept, for any of its purposes and functions, donations, gifts, grants, and appropriations of money, equipment, supplies, materials, and services from the federal government, from any party state or from any department, agency, or municipality thereof, or from any



institution, person, firm, or corporation. All expenses incurred by the commission in executing the duties imposed upon it by this compact shall be paid by the commission out of the funds available to it. The commission shall not issue any debt instrument. The commission shall submit to the officer designated by the laws of each party state, periodically as required by the laws of each party state, a budget of its actual past and estimated future expenditures.

ARTICLE VIII  
ENACTMENT, EFFECTIVE DATE,  
AND AMENDMENTS

The states of Illinois, Indiana, Iowa, Kansas, Michigan, Minnesota, Missouri, Nebraska, North Dakota, Ohio, South Dakota, and Wisconsin are eligible to join this compact. Upon approval of the commission, according to its bylaws, other states may also be declared eligible to join the compact. As to any eligible party state, this compact shall become effective when its legislature shall have enacted the same into law; provided that it shall not become initially effective until enacted into law by any three party states incorporating the provisions of this compact into the laws of such states. Amendments to the compact shall become effective upon their enactment by the legislatures of all compacting states.

ARTICLE IX  
WITHDRAWAL, DEFAULT, AND  
TERMINATION

Withdrawal from this compact shall be by enactment of a statute repealing the same and shall take effect one year after the effective date of such statute. A withdrawing state shall be liable for any obligations which it may have incurred prior to the effective date of withdrawal.

If any compacting state defaults in the performance of any of its obligations, assumed or im-

posed, in accordance with this compact, all rights, privileges, and benefits conferred by this compact or agreements under this compact shall be suspended from the effective date of such default as fixed by the commission, and the commission shall stipulate the conditions and maximum time for compliance under which the defaulting state may resume its regular status. Unless such default is remedied under the stipulations and within the time period set forth by the commission, this compact may be terminated with respect to such defaulting state by affirmative vote of a majority of the other commission members. Any such defaulting state may be reinstated, upon vote of the commission, by performing all acts and obligations as stipulated by the commission.

ARTICLE X  
CONSTRUCTION AND SEVERABILITY

The provisions of this compact shall be severable and if any phrase, clause, sentence, or provision of this compact is declared to be contrary to the constitution of any compacting state or of the United States, or the applicability thereof to any government, agency, person, or circumstance is held invalid, the validity of the remainder of this compact and the applicability thereof to any government, agency, person, or circumstance shall not be affected by the declaration or holding. If this compact is held to be contrary to the constitution of any compacting state, the compact shall remain in full force and effect as to the remaining states and in full force and effect as to the state affected as to all severable matters. This compact shall be liberally construed to effectuate the purposes of the compact.

2007 Acts, ch 94, §1

Section is effective upon appropriation by the general assembly for the fiscal year beginning July 1, 2007, in amount sufficient to pay dues assessed pursuant to the midwest interstate passenger compact; action taken by legislative council to approve funding for compact dues at June 13, 2007, meeting; 2007 Acts, ch 94, §3

Legislative intent that moneys directed to be deposited in road use tax fund under §312.1 shall not be used for participation in compact; 2007 Acts, ch 94, §2

NEW section

## CHAPTER 328

### AERONAUTICS

#### **328.36 Deposit and use of revenues.**

1. All moneys received by the department pursuant to section 328.21 shall be deposited into the state aviation fund in section 328.56.

2. Notwithstanding subsection 1, for the fiscal year beginning July 1, 2007, and ending June 30, 2008, fifty percent of the moneys collected under section 328.21 shall be deposited in the state aviation fund in section 328.56 and fifty percent shall

be deposited in the general fund of the state.

2006 Acts, ch 1179, §56, 66

2006 amendment to this section takes effect July 1, 2007; 2006 Acts, ch 1179, §66

Section stricken and rewritten

#### **328.56 State aviation fund.**

1. A state aviation fund is created under the authority of the department. The fund shall consist of moneys deposited in the fund pursuant to

sections 328.36 and 452A.82 and other moneys appropriated to the fund.

2. Moneys in the state aviation fund are appropriated to the department of transportation for use by the department for airport engineering studies, construction or improvements, and the windsock program for public airports and marketing at commercial service airports. In awarding

moneys, the department shall give preference to projects that demonstrate a collaborative effort between airports.

2006 Acts, ch 1179, §57, 66; 2007 Acts, ch 22, §115; 2007 Acts, ch 219, §40  
2007-2008 appropriation from state aviation fund; 2007 Acts, ch 219, §16  
2006 enactment of this section takes effect July 1, 2007; 2006 Acts, ch 1179, §66

NEW section

## CHAPTER 331

### COUNTY HOME RULE IMPLEMENTATION

#### **331.304 Procedural limitations on general county powers.**

If a county proposes to exercise any of the following powers, it shall do so in accordance with the following limitations:

1. The power to act jointly with other political subdivisions or public or private agencies shall be exercised in accordance with chapter 28E or 28I or other applicable state law.

2. The power to authorize games of skill or chance at amusement concessions shall be exercised in accordance with section 99B.4.

3. The power to adopt, administer and enforce the state building code shall be exercised in accordance with chapter 103A. The power to adopt by ordinance, administer, and enforce a county building code, is subject to the following restrictions:

a. A county building code shall not apply within the incorporated area of a city except at the option of the city, and shall not apply within a city's two-mile limit referred to in section 414.23, to the extent that the city has adopted a building code within the two-mile limit.

b. A county building code shall not apply to farm houses or other farm buildings which are primarily adapted for use for agricultural purposes, while so used or under construction for that use.

4. A county shall not license elevator inspectors or regulate elevator conveyances except as provided in section 89A.15.

5. The power to adopt airport zoning regulations applicable to airport hazard areas shall be exercised in accordance with chapter 329.

6. The power to adopt county zoning regulations shall be exercised in accordance with chapter 335.

7. The board may file a petition with the city development board as provided in section 368.11.

8. The power to take private property for public use shall only be exercised by counties for public purposes which are reasonable and necessary as an incident to the powers and duties conferred upon counties, and in accordance with chapters 6A and 6B. Section 306.19 is also applicable to condemnation of right-of-way for secondary roads. Sections 306.27 through 306.37 are applicable to

the condemnation of right-of-way that is contiguous to existing road right-of-way and necessary for the maintenance, safety improvement, or upgrade of the existing secondary road.

9. The board, upon application, may grant permits for the display of fireworks as provided in section 727.2.

10. A county shall not adopt or enforce any ordinance imposing any registration or licensing system or registration or license fees for owner-occupied manufactured or mobile homes including the lots or lands upon which they are located. A county shall not adopt or enforce any ordinance imposing any registration or licensing system, or registration or license fees, or safety or sanitary standards for rental manufactured or mobile homes unless similar registration or licensing system, or registration or license fees, or safety or sanitary standards are required for other rental properties intended for human habitation. This subsection does not preclude the investigation and abatement of a nuisance or the enforcement of a tiedown system, or the enforcement of any regulations of the state or local board of health if those regulations apply to other rental properties or to owner-occupied housing intended for human habitation.

11. A county shall not adopt or enforce any ordinance imposing any limitation on the amount of rent that can be charged for leasing private residential or commercial property. This subsection does not prevent the right of a county to manage and control residential property in which the county has a property interest.

2007 Acts, ch 16, §16  
Subsection 4 amended

#### **331.341 Contracts.**

1. When the estimated total cost of a public improvement, other than improvements which may be paid for from the secondary road fund, exceeds the competitive bid threshold in section 26.3, or as established in section 314.1B, the board shall follow the competitive bid procedures for governmental entities in chapter 26 and the contract letting procedures in section 384.103. As used in this

section, “*public improvement*” means the same as defined in section 26.2 as modified by this subsection.

2. The board shall give preference to Iowa products and labor in accordance with chapter 73 and shall comply with bid and contract requirements in chapter 26.

3. Contracts for improvements which may be paid for from the secondary road fund shall be awarded in accordance with sections 309.40 to 309.43, 310.14, 314.1, 314.2, and other applicable state law.

4. If the contract price for a public improvement is twenty-five thousand dollars or more, the board shall require a contractor’s bond in accordance with chapter 573.

5. In exercising its power to contract for public improvements, the board may contract for the application of contract termination procedures in accordance with chapter 573A.

2007 Acts, ch 144, §13  
Optional waiver; §12.44  
Subsection 1 amended

### 331.361 County property.

1. Counties bounded by a body of water have concurrent jurisdiction over the entire body of water lying between them.

2. In disposing of an interest in real property by sale or exchange, by lease for a term of more than three years, or by gift, the following procedures shall be followed, except as otherwise provided by state law:

a. The board shall set forth its proposal in a resolution and shall publish notice of the time and place of a public hearing on the proposal, in accordance with section 331.305.

b. After the public hearing, the board may make a final determination on the proposal by resolution.

c. When unused highway right-of-way is not being sold or transferred to another governmental authority, the county shall comply with the requirements of section 306.23.

3. An interest in real property which is assessed for taxation as residential or commercial multifamily property may be disposed of through a public request for proposals process. A proposal submitted pursuant to this section shall state the housing use planned by the person submitting the proposal. The board shall publish the proposals in a notice of the time and place of a public hearing on the proposals, in accordance with section 331.305. After the public hearing, the board may choose by resolution from among the proposals submitted or may reject all proposals and submit a new request for proposals.

4. The board shall not dispose of real property by gift except for a public purpose, as determined by the board, in accordance with other state law.

5. The board shall:

a. Proceed upon a petition to establish a me-

morial hall or monument under chapter 37, as provided in that chapter.

b. Comply with section 103A.10, subsection 4, in the construction of new buildings.

c. Proceed upon a petition to, or with approval of the voters, establish a county public hospital under chapter 347 or sell or lease a county hospital for use as a private hospital or as a merged area hospital under chapter 145A or sell or lease a county hospital in conjunction with the establishment of a merged area hospital in accordance with procedures set out in chapter 347.

d. Bid for real property at a tax sale as required under section 446.19, and handle the property in accordance with section 446.31 and chapter 569.

e. Require the conduction of a life cycle cost analysis for county facilities in accordance with chapter 470.

f. Comply with chapter 216D if food service is provided in public buildings.

g. Comply with section 216C.9 if curbs and ramps are constructed.

h. Provide facilities for the district court in accordance with section 602.1303.

i. Perform other duties required by state law.

6. In exercising its power to manage county real property, the board may lease land for oil and gas exploration as provided in section 458A.21.

7. The board shall not lease, purchase, or construct a facility or building before considering the leasing of a vacant facility or building which is located in the county and owned by a public school corporation. The board may lease a facility or building owned by the public school corporation with an option to purchase the facility or building in compliance with section 297.22. The lease shall provide that the public school corporation may terminate the lease if the corporation needs to use the facility or building for school purposes. The public school corporation shall notify the board at least thirty days before the termination of the lease.

2007 Acts, ch 54, §32  
Subsection 4 amended

### 331.383 Duties and powers relating to elections.

The board shall ensure that the county commissioner of elections conducts primary, general, city, school, and special elections in accordance with applicable state law. The board shall canvass elections in accordance with sections 43.49 to 43.51, 43.60 to 43.62, 46.24, 50.13, 50.24 to 50.29, 50.44 to 50.47, 260C.39, 275.25, 277.20, 376.1, 376.7, and 376.9. The board shall prepare and deliver a list of persons nominated in accordance with section 43.55, provide for a recount in accordance with section 50.48, provide for election precincts in accordance with sections 49.3, 49.4, 49.6 to 49.8, and 49.11, pay election costs as provided in section 47.3, participate in election contests as provided in sections 62.1A and 62.9, and perform other elec-

tion duties required by state law. The board may authorize additional precinct election officials as provided in section 51.1, provide for the use of a voting machine or optical scan voting system as provided in sections 52.2, 52.3, and 52.8, and exercise other election powers as provided by state law.

2007 Acts, ch 190, §40  
Section amended

### 331.401 Duties relating to finances.

1. The board shall:
  - a. Audit expenses charged to the county for the annual examination by the auditor of state and approve or object to the expenses as provided in section 11.21.
  - b. Establish budgets for the farm-to-market road fund and the secondary road fund in accordance with sections 309.10 and 309.93 to 309.97.
  - c. Pay expenses of administration of juvenile justice, attributable to the county under section 232.141.
  - d. Provide for the expense of persons committed to the county jail or a regional detention facility in accordance with section 356.15.
  - e. Adopt resolutions authorizing the county assessor to provide forms for homestead exemption claimants as provided in section 425.2 and military service tax exemptions as provided in section 426A.14.
  - f. Examine and allow or disallow claims for homestead exemption in accordance with section 425.3 and claims for military service tax exemption in accordance with chapter 426A. The board, by a single resolution, may allow or disallow the exemptions recommended by the assessor.
  - g. Hear appeals relating to the agricultural land tax credit in accordance with section 426.6.
  - h. Order the suspension of property taxes of certain persons in accordance with section 427.9.
  - i. Approve or deny an application for a property tax exemption for impoundment structures, as provided in section 427.1, subsection 20.
  - j. Serve on the conference board as provided in section 441.2.
  - k. Levy taxes as certified to it by tax-certifying bodies in the county, in accordance with the statutes authorizing the levies and in accordance with chapter 24 and sections 444.1 to 444.8, and levy taxes as required in chapters 433, 434, 437, and 438.
  - l. Carry out duties in regard to the collection of taxes as provided in sections 445.16, 445.60, and 445.62.
  - m. Apportion taxes upon receipt of a petition, in accordance with sections 449.1A to 449.3.
  - n. Comply with chapters 12B and 12C in the management of public funds.
  - o. Allocate payments from flood control projects as provided in sections 161E.13 and 161E.14.
  - p. Examine and settle all accounts of the receipts and expenditures of the county and all claims against the county, except as otherwise pro-

vided by state law.

q. Require a local historical society to submit to it a proposed budget, including the amount of available funds and estimated expenditures, as a prerequisite to receiving funds. A local historical society receiving funds shall present to the board an annual report describing in detail its use of the funds received.

r. Retain overpayments of moneys paid to the county in an amount of five dollars or less, unless the payor has requested a refund of the overpayment.

s. Perform other financial duties as required by state law.

2. The board shall not pay membership dues for a county officers association in this state other than the Iowa state association of counties or an organization affiliated with it. This subsection does not prohibit expenditures for organizations with which the Iowa state association or its affiliates are affiliated.

3. The board shall not pay bounties on crows, rattlesnakes, foxes, or wolves other than coyotes.

2007 Acts, ch 75, §1; 2007 Acts, ch 185, §1  
Subsection 1, paragraph k amended  
Subsection 1, NEW paragraph r, and former paragraph r redesignated  
as s

### 331.424A County mental health, mental retardation, and developmental disabilities services fund.

1. For the purposes of this chapter, unless the context otherwise requires, “*services fund*” means the county mental health, mental retardation, and developmental disabilities services fund created in subsection 2. The county finance committee created in section 333A.2 shall consult with the state commission in adopting rules and prescribing forms for administering the services fund.

2. For the fiscal year beginning July 1, 1996, and succeeding fiscal years, county revenues from taxes and other sources designated for mental health, mental retardation, and developmental disabilities services shall be credited to the mental health, mental retardation, and developmental disabilities services fund of the county. The board shall make appropriations from the fund for payment of services provided under the county management plan approved pursuant to section 331.439. The county may pay for the services in cooperation with other counties by pooling appropriations from the fund with other counties or through county regional entities including but not limited to the county’s mental health and developmental disabilities regional planning council created pursuant to section 225C.18.

3. For the fiscal year beginning July 1, 1996, and succeeding fiscal years, receipts from the state or federal government for such services shall be credited to the services fund, including moneys allotted to the county from the state payment made pursuant to section 331.439 and moneys allotted to the county for property tax relief pursu-

ant to section 426B.1.

4. For the fiscal year beginning July 1, 1996, and for each subsequent fiscal year, the county shall certify a levy for payment of services. For each fiscal year, county revenues from taxes imposed by the county credited to the services fund shall not exceed an amount equal to the amount of base year expenditures for services as defined in section 331.438, less the amount of property tax relief to be received pursuant to section 426B.2, in the fiscal year for which the budget is certified. The county auditor and the board of supervisors shall reduce the amount of the levy certified for the services fund by the amount of property tax relief to be received. A levy certified under this section is not subject to the appeal provisions of section 331.426 or to any other provision in law authorizing a county to exceed, increase, or appeal a property tax levy limit.

5. Appropriations specifically authorized to be made from the mental health, mental retardation, and developmental disabilities services fund shall not be made from any other fund of the county.

Reimbursement rate increase for purchase of service providers for fiscal years beginning on July 1 of 2000, 2001, and 2002; 2000 Acts, ch 1221, §3; 2001 Acts, ch 184, §2, 4, 15; 2001 Acts, ch 191, §34, 53; 2002 Acts, ch 1174, §2; 2003 Acts, ch 183, §2; 2004 Acts, ch 1176, §2; 2005 Acts, ch 176, §2; 2006 Acts, ch 1181, §2; 2007 Acts, ch 208, §2

Transfers of funds from other funds by county or utilization of nonreversion authority permitted during 2007 fiscal year for decategorization project funding; report; 2007 Acts, ch 218, §96

Section not amended; footnotes revised

### 331.427 General fund.

1. Except as otherwise provided by state law, county revenues from taxes and other sources for general county services shall be credited to the general fund of the county, including revenues received under sections 9I.11, 101A.3, 101A.7, 123.36, 123.143, 142B.6, 176A.8, 321.105, 321.152, 321G.7, 321I.8, section 331.554, subsection 6, sections 341A.20, 364.3, 368.21, 423A.7, 428A.8, 433.15, 434.19, 445.57, 453A.35, 458A.21, 483A.12, 533.329, 556B.1, 583.6, 602.8108, 904.908, and 906.17, and the following:

a. License fees for business establishments.

b. Moneys remitted by the clerk of the district court and received from a magistrate or district associate judge for fines and forfeited bail imposed pursuant to a violation of a county ordinance.

c. Other amounts in accordance with state law.

2. Fees and charges including service delivery fees, credit card fees, and electronic funds transfer charges payable to a third party, not to the county, that are imposed for completing an electronic financial transaction with the county are not considered county revenues for purposes of subsection 1.

3. The board may make appropriations from the general fund for general county services, including but not limited to the following:

a. Expenses of a joint emergency management commission under chapter 29C.

b. Development, operation, and maintenance of memorial buildings or monuments under chapter 37.

c. Purchase of voting machines under chapter 52.

d. Expenses incurred by the county conservation board established under chapter 350, in carrying out its powers and duties.

e. Local health services. The county auditor shall keep a complete record of appropriations for local health services and shall issue warrants on them only on requisition of the local or district health board.

f. Expenses relating to county fairs, as provided in chapter 174.

g. Maintenance of a juvenile detention home under chapter 232.

h. Relief of veterans under chapter 35B.

i. Care and support of the poor under chapter 252.

j. Operation, maintenance, and management of a health center under chapter 346A.

k. For the use of a nonprofit historical society organized under chapter 504, Code 1989, or current chapter 504, a city-owned historical project, or both.

l. Services listed in section 331.424, subsection 1, and section 331.554.

m. Closure and postclosure care of a sanitary disposal project under section 455B.302.

4. Appropriations specifically authorized to be made from the general fund shall not be made from the rural services fund, but may be made from other sources.

2007 Acts, ch 174, §92; 2007 Acts, ch 185, §2

See Code editor's note to §29A.28

Subsection 1, unnumbered paragraph 1 amended

### 331.432 Interfund transfers.

1. It is unlawful to make permanent transfers of money between the general fund and the rural services fund.

2. Moneys credited to the secondary road fund for the construction and maintenance of secondary roads shall not be transferred.

3. Except as authorized in section 331.477, transfers of moneys between the county mental health, mental retardation, and developmental disabilities services fund and any other fund are prohibited.

4. Other transfers, including transfers from the debt service fund made in accordance with section 331.430, and transfers from the general or rural services fund to the secondary road fund in accordance with section 331.429, subsection 1, paragraphs "a" and "b", are not effective until authorized by resolution of the board.

5. The transfer of inactive funds is subject to section 24.21.

Transfers of funds from other funds by county or utilization of nonreversion authority permitted during 2007 fiscal year for decategorization project funding; report; 2007 Acts, ch 218, §96

Section not amended; footnote added

**331.434 County budget — notice and hearing — appropriations.**

Annually, the board of each county, subject to sections 331.423 through 331.426 and other applicable state law, shall prepare and adopt a budget, certify taxes, and provide appropriations as follows:

1. The budget shall show the amount required for each class of proposed expenditures, a comparison of the amounts proposed to be expended with the amounts expended for like purposes for the two preceding years, the revenues from sources other than property taxation, and the amount to be raised by property taxation, in the detail and form prescribed by the director of the department of management. For each county that has established an urban renewal area, the budget shall include estimated and actual tax increment financing revenues and all estimated and actual expenditures of the revenues, proceeds from debt and all estimated and actual expenditures of the debt proceeds, and identification of any entity receiving a direct payment of taxes funded by tax increment financing revenues and shall include the total amount of loans, advances, indebtedness, or bonds outstanding at the close of the most recently ended fiscal year, which qualify for payment from the special fund created in section 403.19, including interest negotiated on such loans, advances, indebtedness, or bonds. For purposes of this subsection, “*indebtedness*” includes written agreements whereby the county agrees to suspend, abate, exempt, rebate, refund, or reimburse property taxes, provide a grant for property taxes paid, or make a direct payment of taxes, with moneys in the special fund. The amount of loans, advances, indebtedness, or bonds shall be listed in the aggregate for each county reporting. The county finance committee, in consultation with the department of management and the legislative services agency, shall determine reporting criteria and shall prepare a form for reports filed with the department pursuant to this section. The department shall make the information available by electronic means.

2. Not less than twenty days before the date that a budget must be certified under section 24.17 and not less than ten days before the date set for the hearing under subsection 3 of this section, the board shall file the budget with the auditor. The auditor shall make available a sufficient number of copies of the budget to meet the requests of taxpayers and organizations and have them available for distribution at the courthouse or other places designated by the board.

3. The board shall set a time and place for a public hearing on the budget before the final certification date and shall publish notice of the hearing not less than ten nor more than twenty days prior to the hearing in the county newspapers selected under chapter 349. A summary of the pro-

posed budget, in the form prescribed by the director of the department of management, shall be included in the notice. Proof of publication shall be filed with and preserved by the auditor. A levy is not valid unless and until the notice is published and filed. The department of management shall prescribe the form for the public hearing notice for use by counties.

4. At the hearing, a resident or taxpayer of the county may present to the board objections to or arguments in favor of any part of the budget.

5. After the hearing, the board shall adopt by resolution a budget and certificate of taxes for the next fiscal year and shall direct the auditor to properly certify and file the budget and certificate of taxes as adopted. The board shall not adopt a tax in excess of the estimate published, except a tax which is approved by a vote of the people, and a greater tax than that adopted shall not be levied or collected. A county budget and certificate of taxes adopted for the following fiscal year becomes effective on the first day of that year.

6. The board shall appropriate, by resolution, the amounts deemed necessary for each of the different county officers and departments during the ensuing fiscal year. Increases or decreases in these appropriations do not require a budget amendment, but may be provided by resolution at a regular meeting of the board, as long as each class of proposed expenditures contained in the budget summary published under subsection 3 of this section is not increased. However, decreases in appropriations for a county officer or department of more than ten percent or five thousand dollars, whichever is greater, shall not be effective unless the board sets a time and place for a public hearing on the proposed decrease and publishes notice of the hearing not less than ten nor more than twenty days prior to the hearing in the county newspapers selected under chapter 349.

7. Taxes levied by a county whose budget is certified after March 15 shall be limited to the prior year’s budget amount. However, this penalty may be waived by the director of the department of management if the county demonstrates that the March 15 deadline was missed because of circumstances beyond the control of the county.

2007 Acts, ch 186, §3  
Subsection 1 amended

**331.438 County mental health, mental retardation, and developmental disabilities services expenditures — joint state-county planning, implementing, and funding.**

1. For the purposes of section 331.424A, this section, section 331.439, and chapter 426B, unless the context otherwise requires:

a. “*Base year expenditures*” means the amount selected by a county and reported to the county finance committee pursuant to this paragraph. The amount selected shall be equal to the amount of

net expenditures made by the county for qualified mental health, mental retardation, and developmental disabilities services provided in one of the following:

(1) The actual amount reported to the state on October 15, 1994, for the fiscal year beginning July 1, 1993.

(2) The net expenditure amount contained in the county's final budget certified in accordance with chapter 24 for the fiscal year beginning July 1, 1995, and reported to the county finance committee.

b. "Qualified mental health, mental retardation, and developmental disabilities services" means the services specified on forms issued by the county finance committee following consultation with the state commission.

c. "State commission" means the mental health, mental retardation, developmental disabilities, and brain injury commission created in section 225C.5.

d. "State payment" means the payment made by the state to a county determined to be eligible for the payment in accordance with section 331.439.

2. A state payment to a county for a fiscal year shall consist of the sum of the state funding the county is eligible to receive from the property tax relief fund in accordance with section 426B.2 plus the county's portion of state funds appropriated for the allowed growth factor adjustment established by the general assembly under section 331.439, subsection 3, and paid from the allowed growth funding pool in accordance with section 426B.5.

3. The state payment shall not include any expenditures for services that were provided but not reported in the county's base year expenditures or for any expenditures which were not included in the county management plan submitted by the county in accordance with section 331.439. A county's eligibility for state payment is subject to the provisions of section 331.439.

4. a. The state commission shall make recommendations and take actions for joint state and county planning, implementing, and funding of mental health, mental retardation or other developmental disabilities, and brain injury services, including but not limited to developing and implementing fiscal and accountability controls, establishing management plans, and ensuring that eligible persons have access to appropriate and cost-effective services.

b. The state commission shall do all of the following:

(1) Identify characteristics of the service system, including amounts expended, equity of funding among counties, funding sources, provider types, service availability, and equity of service availability among counties and among persons served.

(2) Assess the accuracy and uniformity of rec-

ordkeeping and reporting in the service system.

(3) Identify for each county the factors associated with inflationary growth of the service system.

(4) Identify opportunities for containing service system growth.

(5) Consider proposals for revising service system administrative rules.

(6) Consider provisions and adopt rules for counties to implement a central point of coordination to plan, budget, and monitor county expenditures for the service system. The provisions shall provide options for counties to implement the central point of coordination in collaboration with other counties.

(7) Develop criteria for annual county mental health, mental retardation, and developmental disabilities plans.

(8) Adopt administrative rules identifying qualified mental health, mental retardation, and developmental disabilities service expenditures for purposes of state payment pursuant to subsection 1.

(9) Adopt rules for the county central point of coordination and clinical assessment processes required under section 331.440 and other rules necessary for the implementation of county management plans and expenditure reports required for state payment pursuant to section 331.439.

(10) Consider recommendations to improve the programs and cost-effectiveness of state and county contracting processes and procedures, including strategies for negotiations relating to managed care. The recommendations implemented by the commission for the state and county regarding managed care shall include but are not limited to standards for limiting excess costs and profits, and for restricting cost shifting under a managed care system.

(11) Provide input, when appropriate, to the director of human services in any decision involving administrative rules which were adopted by the department of human services pertaining to the mental illness, mental retardation, and developmental disabilities services administered by counties.

(12) Identify the fiscal impact of existing or proposed legislation and administrative rules on state and county expenditures.

(13) Adopt administrative rules providing statewide standards and a monitoring methodology to determine whether cost-effective individualized services are available as required pursuant to section 331.439, subsection 1, paragraph "b".

(14) Consider recommendations for and adopt administrative rules establishing statewide minimum standards for services and other support required to be available to persons covered by a county management plan under section 331.439.

(15) Consider recommendations for measuring and improving the quality of state and county mental health, mental retardation, and develop-

mental disabilities services and other support.

(16) Develop a procedure for each county to disclose to the department of human services information approved by the commission concerning the mental health, mental retardation, developmental disabilities, and brain injury services provided to the individuals served through the county central point of coordination process. The procedure shall incorporate protections to ensure that if individually identified information is disclosed, it is disclosed and maintained in compliance with applicable Iowa and federal confidentiality laws, including but not limited to federal Health Insurance Portability and Accountability Act, Pub. L. No. 104-191, requirements.

2007 Acts, ch 218, §78, 79

For specific exceptions to payments and expenditures provided under this section, see appropriations and other noncodified enactments in the annual Acts of the general assembly

Subsection 1, paragraph b stricken and former paragraphs c – e redesignated as b – d

Subsection 2 amended

### **331.439 Eligibility for state payment.**

1. The state payment to eligible counties under this section shall be made as provided in sections 331.438 and 426B.2. A county is eligible for the state payment, as defined in section 331.438, for a fiscal year if the director of human services, in consultation with the state commission, determines for a specific fiscal year that all of the following conditions are met:

*a.* The county accurately reported by December 1 the county's expenditures for mental health, mental retardation, and developmental disabilities services and the information required under section 225C.6A, subsection 2, paragraph "c", for the previous fiscal year on forms prescribed by rules adopted by the state commission.

*b.* The county developed and implemented a county management plan for the county's mental health, mental retardation, and developmental disabilities services in accordance with the provisions of this paragraph "b". The plan shall comply with the administrative rules adopted for this purpose by the state commission and is subject to the approval of the director of human services in consultation with the state commission. The plan shall include a description of the county's service management provision for mental health, mental retardation, and developmental disabilities services. For mental retardation and developmental disabilities service management, the plan shall describe the county's development and implementation of a managed system of cost-effective individualized services and shall comply with the provisions of paragraph "f". The goal of this part of the plan shall be to assist the individuals served to be as independent, productive, and integrated into the community as possible. The service management provisions for mental health shall comply with the provisions of paragraph "e". A county is subject to all of the following provisions in regard

to the county's management plan and planning process:

(1) The county shall have in effect an approved policies and procedures manual for the county's services fund. The county management plan shall be defined in the manual. The manual submitted by the county as part of the county's management plan for the fiscal year beginning July 1, 2000, as approved by the director of human services, shall remain in effect, subject to amendment. An amendment to the manual shall be submitted to the department of human services at least forty-five days prior to the date of implementation. Prior to implementation of any amendment to the manual, the amendment must be approved by the director of human services in consultation with the state commission.

(2) For informational purposes, the county shall submit a management plan review to the department of human services by December 1 of each year. The annual review shall incorporate an analysis of the data associated with the services managed during the preceding fiscal year by the county or by a managed care entity on behalf of the county. The annual review shall also identify measurable outcomes and results showing the county's progress in fulfilling the purposes listed in paragraph "c", and in achieving the disability services outcomes and indicators identified by the commission pursuant to section 225C.6.

(3) For informational purposes, every three years the county shall submit to the department of human services a three-year strategic plan. The strategic plan shall describe how the county will proceed to attain the plan's goals and objectives, and the measurable outcomes and results necessary for moving the county's service system toward an individualized, community-based focus in accordance with paragraph "c". The three-year strategic plan shall be submitted by April 1, 2000, and by April 1 of every third year thereafter.

*c.* The county implements its county management plan under paragraph "b" and other service management functions in a manner that seeks to achieve all of the following purposes identified in section 225C.1 for persons who are covered by the plan or are otherwise subject to the county's service management functions:

(1) The service system seeks to empower persons to exercise their own choices about the amounts and types of services and other support received.

(2) The service system seeks to empower the persons to accept responsibility, exercise choices, and take risks.

(3) The service system seeks to provide services and other support that are individualized, provided to produce results, flexible, and cost-effective.

(4) The service system seeks to provide services and other supports in a manner which supports



the ability of the persons to live, learn, work, and recreate in communities of their choice.

*d.* Commencing with the fiscal year beginning July 1, 2007, the county management plan under paragraph “c” shall do both of the following:

(1) Describe how the county will provide services and other support that are individualized, provided to produce results, flexible, and cost-effective in accordance with paragraph “c”, subparagraph (3).

(2) Describe how the ability of the individuals covered by the plan to live, learn, work, and recreate in communities of the individuals’ choice will be enhanced as provided in paragraph “c”, subparagraph (4).

*e.* (1) For mental health service management, the county may either directly implement a system of service management and contract with service providers, or contract with a private entity to manage the system, provided all requirements of this lettered paragraph are met by the private entity. The mental health service management shall incorporate a central point of coordination and clinical assessment process developed in accordance with the provisions of section 331.440.

(2) A managed care system for mental health proposed by a county shall include but is not limited to all of the following elements which shall be specified in administrative rules adopted by the state commission:

- (a) The enrollment and eligibility process.
- (b) The scope of services included.
- (c) The method of plan administration.
- (d) The process for managing utilization and access to services and other assistance.
- (e) The quality assurance process.
- (f) The risk management provisions and fiscal viability of the provisions, if the county contracts with a private managed care entity.

*f.* For mental retardation and developmental disabilities services management, the county must either develop and implement a managed system of care which addresses a full array of appropriate services and cost-effective delivery of services or contract with a state-approved managed care contractor or contractors. Any system or contract implemented under this paragraph shall incorporate a central point of coordination and clinical assessment process developed in accordance with the provisions of section 331.440. The elements of the county managed system of care shall be specified in rules developed by the department of human services in consultation with and adopted by the state commission.

2. The county management plan shall address the county’s criteria for serving persons with chronic mental illness, including any rationale used for decision making regarding this population.

3. *a.* For the fiscal year beginning July 1, 1996, and succeeding fiscal years, the county’s mental health, mental retardation, and develop-

mental disabilities service expenditures for a fiscal year are limited to a fixed budget amount. The fixed budget amount shall be the amount identified in the county’s management plan and budget for the fiscal year. The county shall be authorized an allowed growth factor adjustment as established by statute for services paid from the county’s services fund under section 331.424A which is in accordance with the county’s management plan and budget, implemented pursuant to this section. The statute establishing the allowed growth factor adjustment shall establish the adjustment for the fiscal year which commences two years from the beginning date of the fiscal year in progress at the time the statute is enacted.

*b.* Based upon information contained in county management plans and budgets and proposals made by representatives of counties, the state commission shall recommend an allowed growth factor adjustment to the governor by November 15 for the fiscal year which commences two years from the beginning date of the fiscal year in progress at the time the recommendation is made. The allowed growth factor adjustment shall address costs associated with new consumers of service, service cost inflation, and investments for economy and efficiency. In developing the service cost inflation recommendation, the state commission shall consider the cost trends indicated by the gross expenditure amount reported in the expenditure reports submitted by counties pursuant to subsection 1, paragraph “a”. The governor shall consider the state commission’s recommendation in developing the governor’s recommendation for an allowed growth factor adjustment for such fiscal year. The governor’s recommendation shall be submitted at the time the governor’s proposed budget for the succeeding fiscal year is submitted in accordance with chapter 8.

*c.* The amount of the appropriation required to fund the allowed growth factor adjustment for a fiscal year shall be calculated by applying the adjustment established by statute for that fiscal year to the sum of the following:

(1) The total amount of base year expenditures for all counties.

(2) The total amount of the appropriations for allowed growth factor adjustments made to all counties in all of the fiscal years prior to that fiscal year.

4. A county may provide assistance to service populations with disabilities to which the county has historically provided assistance but who are not included in the service management provisions required under subsection 1, subject to the availability of funding.

5. *a.* A county shall implement the county’s management plan in a manner so as to provide adequate funding for the entire fiscal year by budgeting for ninety-nine percent of the funding anticipated to be available for the plan. A county may expend all of the funding anticipated to be avail-

able for the plan.

b. If a county determines that the county cannot provide services in accordance with the county's management plan and remain in compliance with the budgeting requirement of paragraph "a" for the fiscal year, the county may implement a waiting list for the services. The procedures for establishing and applying a waiting list shall be specified in the county's management plan. If a county implements a waiting list for services, the county shall notify the department of human services. The department shall maintain on the department's internet website an up-to-date listing of the counties that have implemented a waiting list and the services affected by each waiting list.

6. The director's approval of a county's mental health, mental retardation, and developmental disabilities services management plan shall not be construed to constitute certification of the county's budget.

7. A county shall annually report data concerning the services managed by the county. At a minimum, the data reported shall indicate the number of different individuals who utilized services in a fiscal year and the various types of services. Data reported under this subsection shall be submitted with the county's expenditure report required under subsection 1, paragraph "a".

8. A county's management plans submitted under this section shall provide for services to children from community mental health centers and other mental health service providers accredited under chapter 225C.

9. The county management plan shall designate at least one hospital licensed under chapter 135B that the county has contracted with to provide services covered under the plan. If the designated hospital does not have a bed available to provide the services, the county is responsible for the cost of covered services provided at an alternate hospital licensed under chapter 135B.

2007 Acts, ch 218, §80, 88, 92

For specific exceptions to payments and expenditures provided under this section, see appropriations and other noncodified enactments in the annual Acts of the general assembly

2007 amendment to subsection 1, paragraph a, takes effect May 29, 2007, and applies retroactively to and after December 1, 2006, for information collected as of that date; deadline for submission of data for preceding fiscal year; penalties; report regarding transfer of funds to county services fund or utilization of nonreversion authority for decategorization project funding; 2007 Acts, ch 218, §92, 96

Subsection 1, paragraph a amended

Subsection 5 amended

**331.440 Mental health, mental retardation, and developmental disabilities services — central point of coordination process — state case services.**

1. a. For the purposes of this section, unless the context otherwise requires, "*central point of coordination process*" means a central point of coordination process established by a county or consortium of counties for the delivery of mental health, mental retardation, and developmental disabilities services which are paid for in whole or

in part by county funds. The central point of coordination process may include but is not limited to reviewing a person's eligibility for services, determining the appropriateness of the type, level, and duration of services, and performing periodic review of the person's continuing eligibility and need for services. Any recommendations developed concerning a person's plan of services shall be consistent with the person's unique strengths, circumstances, priorities, concerns, abilities, and capabilities. For those services funded under the medical assistance program, the central point of coordination process shall be used to assure that the person is aware of the appropriate service options available to the person.

b. The central point of coordination process may include a clinical assessment process to identify a person's service needs and to make recommendations regarding the person's plan for services. The clinical assessment process shall utilize qualified mental health professionals and qualified mental retardation professionals.

c. The central point of coordination and clinical assessment process shall include provision for the county's participation in a management information system developed in accordance with rules adopted pursuant to subsection 4.

2. For the purposes of this section, unless the context otherwise requires:

a. "*Adult person*" means a person who is age eighteen or older and is a United States citizen or a qualified alien as defined in 8 U.S.C. § 1641.

b. "*County of residence*" means the county in this state in which, at the time an adult person applies for or receives services, the adult person is living and has established an ongoing presence with the declared, good faith intention of living for a permanent or indefinite period of time. The county of residence of an adult person who is a homeless person is the county where the homeless person usually sleeps.

c. "*Homeless person*" means the same as defined in section 48A.2.

d. "*State case services and other support*" means the mental health, mental retardation, and developmental disabilities services and other support paid for under the rules and requirements in effect prior to October 1, 2006, from the annual appropriation made to the department of human services for such services and other support provided to persons who have no established county of legal settlement or the legal settlement is unknown so that the person is deemed to be a state case. Such services and other support do not include medical assistance program services or services provided in a state institution.

3. The department of human services shall seek federal approval as necessary for the central point of coordination and clinical assessment processes to be eligible for federal financial participation under the medical assistance program. A county may implement the central point of coordi-

nation process as part of a consortium of counties and may implement the process beginning with the fiscal year ending June 30, 1995.

4. *a.* An application for services may be made through the central point of coordination process of an adult person's county of residence. Effective July 1, 2007, if an adult person who is subject to a central point of coordination process has legal settlement in another county, the central point of coordination process functions relating to the application shall be performed by the central point of coordination process of the person's county of residence in accordance with the county of residence's management plan approved under section 331.439 and the person's county of legal settlement is responsible for the cost of the services or other support authorized at the rates reimbursed by the county of residence.

*b.* The county of residence shall determine whether or not the person's county of legal settlement has implemented a waiting list in accordance with section 331.439, subsection 5. If the person's county of legal settlement has implemented a waiting list, the services or other support for the person shall be authorized by the county of residence in accordance with the county of legal settlement's waiting list provisions.

*c.* At the time services or other support are authorized, the county of residence shall send the county of legal settlement a copy of the authorization notice.

5. Effective October 1, 2006, if an adult person has no established county of legal settlement or the legal settlement is unknown so that the person is deemed to be a state case, the person's eligibility and the authorization for state case services and other support shall be determined by the adult person's county of residence in accordance with that county's management plan approved under section 331.439. The costs of the state case services and other support provided for the person shall be the responsibility of the person's county of legal residence. The funding appropriated to the department of human services for purposes of the state case services and other support shall be distributed as provided in the appropriation to the counties of residence responsible for the costs.

6. The state commission shall consider the recommendations of county representatives in adopting rules outlining standards and requirements for implementation of the central point of coordination and clinical assessment processes on the date required by subsection 3. The rules shall permit counties options in implementing the process based upon a county's consumer population and available service delivery system.

2006 Acts, ch 1115, §17, 19; 2007 Acts, ch 218, §81  
Methodology for distribution of funding for state case services; rules; cost projections; 2006 Acts, ch 1115, §19

2007-2008 appropriation; 2007 Acts, ch 218, §25  
2006 amendment to subsection 4 takes effect July 1, 2007; 2006 Acts, ch 1115, §19

Subsection 4 amended

**331.440A Adult mental health, mental retardation, and developmental disabilities services funding decategorization pilot project.** Repealed by 2007 Acts, ch 218, § 86.

With respect to proposed amendment by 2007 Acts, ch 218, §121, to subsection 7, paragraph b, subparagraph (1) of former §331.440A, see Code editor's note to §29A.28

**331.441 Definitions.**

1. As used in this part, the use of the conjunctive "and" includes the disjunctive "or" and the use of the disjunctive "or" includes the conjunctive "and", unless the context clearly indicates otherwise.

2. As used in this part, unless the context otherwise requires:

*a.* "General obligation bond" means a negotiable bond issued by a county and payable from the levy of ad valorem taxes on all taxable property within the county through its debt service fund which is required to be established by section 331.430.

*b.* "Essential county purpose" means any of the following:

(1) Voting machines or an optical scan voting system.

(2) Bridges on highways or parts of highways which are located along the corporate limits of cities and are partly within and partly without the limits and are in whole or in part secondary roads.

(3) Sanitary disposal projects as defined in section 455B.301.

(4) Works and facilities useful for the collection, treatment, and disposal of sewage and industrial waste in a sanitary manner, for the collection and disposal of solid waste, and for the collection and disposal of surface waters and streams, including the planning, acquisition, leasing, construction, reconstruction, extension, remodeling, improvement, repair, equipping, maintenance, and operation of the works and facilities.

(5) Public buildings, including the site or grounds of, and the erection, equipment, remodeling, or reconstruction of, and additions or extensions to the buildings, and including the provision and maintenance of juvenile detention or shelter care facilities, when the cost does not exceed the following limits:

(a) Six hundred thousand dollars in a county having a population of twenty-five thousand or less.

(b) Seven hundred fifty thousand dollars in a county having a population of more than twenty-five thousand but not more than fifty thousand.

(c) Nine hundred thousand dollars in a county having a population of more than fifty thousand but not more than one hundred thousand.

(d) One million two hundred thousand dollars in a county having a population of more than one hundred thousand but not more than two hundred thousand.

(e) One million five hundred thousand dollars

in a county having a population of more than two hundred thousand.

(6) Funding or refunding outstanding indebtedness if the outstanding indebtedness exceeds five thousand dollars on the first day of January, April, June, or September in any year. However, a county shall not levy taxes to repay refunding bonds for bridges on property within cities.

(7) Enlargement and improvement of a county hospital acquired and operated under chapter 347A, subject to a maximum of two percent of the assessed value of the taxable property in the county. However, notice of the proposed bond issue shall be published once each week for two consecutive weeks and if, within twenty days following the date of the first publication, a petition requesting an election on the proposal and signed by eligible electors of the county equal in number to at least twenty percent of the votes cast at the preceding election for governor is filed with the county auditor, the proposal is subject to the election requirements in section 331.442, subsections 2, 3, and 4, for general county purpose bonds.

(8) The provision of insurance, or funding a self-insurance program or local government risk pool, including but not limited to the investigation and defense of claims, the payment of claims, and the administration and management of such self-insurance program or local government risk pool.

(9) The acquisition, restoration, or demolition of abandoned, dilapidated, or dangerous buildings, structures or properties or the abatement of a nuisance.

(10) The establishment or funding of programs to provide for or assist in providing for the acquisition, restoration, or demolition of housing, as part of a municipal housing project under chapter 403 or otherwise, or for other purposes as may be authorized under chapter 403A.

(11) The acquiring, developing, and improving of a geographic computer data base system suitable for automated mapping and facilities management.

(12) Funding the acquisition, construction, reconstruction, improvement, repair, or equipping of waterworks, water mains and extensions, ponds, reservoirs, capacity, wells, dams, pumping installations, real and personal property, or other facilities available or used for the storage, transportation, or utilization of water.

(a) The county board of supervisors may on its own motion or upon a written petition of a water supplier established under chapter 357A or 504 direct the county auditor to establish a special service area tax district for the purpose of issuing general obligation bonds. The special service area tax district shall include only unincorporated portions of the county and shall be drawn according to engineering recommendations provided by the water supplier or the county engineer and, in addition, shall be drawn in order that an election provided for in subparagraph subdivision (b) can be

administered. The county's debt service tax levy for the county general obligation bonds issued for the purposes set out in this subparagraph shall be levied only against taxable property within the county which is included within the boundaries of the special service area tax district. An owner of property not included within the boundaries of the special service area tax district may petition the board of supervisors to be included in the special service area tax district subsequent to its establishment.

(b) General obligation bonds for the purposes described in this subparagraph are subject to an election held in the manner provided in section 331.442, subsections 1 through 4, if not later than fifteen days following the action by the county board of supervisors, eligible electors file a petition with the county commissioner of elections asking that the question of issuing the bonds be submitted to the registered voters of the special service area tax district. The petition must be signed by eligible electors equal in number to at least five percent of the registered voters residing in the special service area tax district. If the petition is duly filed within the fifteen days, the board of supervisors shall either adopt a resolution declaring that the proposal to issue the bonds is abandoned, or direct the county commissioner of elections to call a special election within a special service area tax district upon the question of issuing the bonds.

(13) The acquisition, pursuant to a chapter 28E agreement, of a city convention center or veterans memorial auditorium, including the renovation, remodeling, reconstruction, expansion, improvement, or equipping of such a center or auditorium, provided that debt service funds shall not be derived from the division of taxes under section 403.19.

(14) The aiding of the planning, undertaking, and carrying out of urban renewal projects under the authority of chapter 403 and for the purposes set out in section 403.12. However, bonds issued for this purpose are subject to the right of petition for an election as provided in section 331.442, subsection 5, without limitation on the amount of the bond issue or the population of the county, and the board shall include notice of the right of petition in the notice of proposed action required under section 331.443, subsection 2.

(15) The establishment, construction, reconstruction, repair, equipping, remodeling, extension, maintenance, and operation of works, vehicles, and facilities of a regional transit district.

(16) Capital projects for the construction, reconstruction, improvement, repair, or equipping of bridges, roads, and culverts if such capital projects assist in economic development which creates jobs and wealth.

c. "General county purpose" means any of the following:

(1) A memorial building or monument to com-

memorate the service rendered by members of the armed services of the United States, including the acquisition of ground and the purchase, erection, construction, reconstruction, and equipment of the building or monument, to be managed by a commission as provided in chapter 37.

(2) Acquisition and development of land for a public museum, park, parkway, preserve, playground, or other recreation or conservation purpose to be managed by the county conservation board. The board may submit a proposition under this subparagraph only upon receipt of a petition from the county conservation board asking that bonds be issued for a specified amount.

(3) The building and maintenance of a bridge over state boundary line streams. The board shall submit a proposition under this subparagraph to an election upon receipt of a petition which is valid under section 331.306.

(4) Contributions of money to the state department of transportation to help finance the construction of toll bridges across navigable rivers constituting boundaries between the county and an adjoining state.

(5) An airport, including establishment, acquisition, equipment, improvement, or enlargement of the airport.

(6) A joint city-county building, established by contract between the county and its county seat city, including purchase, acquisition, ownership, and equipment of the county portion of the building.

(7) A county health center as defined in section 346A.1, including additions and facilities for the center and including the acquisition, reconstruction, completion, equipment, improvement, repair, and remodeling of the center, additions, or facilities. Bonds for the purpose specified in this subparagraph are exempt from taxation by the state and the interest on the bonds is exempt from state income taxes.

(8) A county public hospital, including procuring a site and the erection, equipment, and maintenance of the hospital, and additions to the hospital, subject to the levy limits in section 347.7.

(9) Public buildings, including the site or grounds of, the erection, equipment, remodeling, or reconstruction of, and additions or extensions to the buildings, and including the provision and maintenance of juvenile detention or shelter care facilities, when the cost exceeds the limits stated in subsection 2, paragraph "b", subparagraph (5).

(10) The undertaking of any project jointly or in cooperation with any other governmental body which, if undertaken by the county alone, would be for a general county purpose, including the joint purchase, acquisition, construction, ownership, or control of any real or personal property.

(11) Any other purpose which is necessary for the operation of the county or the health and welfare of its citizens.

3. The "cost" of a project for an essential county

purpose or general county purpose includes construction contracts and the cost of engineering, architectural, technical, and legal services, preliminary reports, property valuations, estimates, plans, specifications, notices, acquisition of real and personal property, consequential damages or costs, easements, rights-of-way, supervision, inspection, testing, publications, printing and sale of bonds, interest during the period or estimated period of construction and for twelve months thereafter or for twelve months after the acquisition date, and provisions for contingencies.

2007 Acts, ch 109, §1, 2; 2007 Acts, ch 190, §41  
Subsection 2, paragraph b, subparagraph (1) amended  
Subsection 2, paragraph b, subparagraph (5), subparagraph subdivisions (a) - (e) amended  
Subsection 2, paragraph b, NEW subparagraph (16)

**331.442 General county purpose bonds.**

1. A county which proposes to carry out any general county purpose within or without its boundaries, and to contract indebtedness and issue general obligation bonds to provide funds to pay all or any part of the costs of a project, shall do so in accordance with this part.

2. Before the board may institute proceedings for the issuance of bonds for a general county purpose, it shall call a county special election to vote upon the question of issuing the bonds. At the election the proposition shall be submitted in the following form:

Shall the county of . . . . ., state of Iowa, be authorized to . . . . . (state purpose of project) at a total cost not exceeding \$ . . . . . and issue its general obligation bonds in an amount not exceeding \$ . . . . . for that purpose?

3. Notice of the election shall be given by publication as specified in section 331.305. At the election the ballot used for the submission of the proposition shall be in substantially the form for submitting special questions at general elections.

4. The proposition of issuing bonds for a general county purpose is not carried or adopted unless the vote in favor of the proposition is equal to at least sixty percent of the total vote cast for and against the proposition at the election. If the proposition of issuing the general county purpose bonds is approved by the voters, the board may proceed with the issuance of the bonds.

5. a. Notwithstanding subsection 2, a board, in lieu of calling an election, may institute proceedings for the issuance of bonds for a general county purpose by causing a notice of the proposal to issue the bonds, including a statement of the amount and purpose of the bonds, and the right to petition for an election, to be published as provided in section 331.305 at least ten days prior to the meeting at which it is proposed to take action for the issuance of the bonds subject to the following limitations:

(1) In counties having a population of twenty thousand or less, in an amount of not more than

one hundred thousand dollars.

(2) In counties having a population of over twenty thousand and not over fifty thousand, in an amount of not more than two hundred thousand dollars.

(3) In counties having a population of over fifty thousand, in an amount of not more than three hundred thousand dollars.

b. If at any time before the date fixed for taking action for the issuance of the bonds, a petition is filed with the auditor in the manner provided by section 331.306 asking that the question of issuing the bonds be submitted to the registered voters of the county, the board shall either by resolution declare the proposal to issue the bonds to have been abandoned or shall direct the county commissioner of elections to call a special election upon the question of issuing the bonds. Notice of the election and its conduct shall be in the manner provided in subsections 2, 3 and 4.

c. If no petition is filed, or if a petition is filed and the proposition of issuing the bonds is approved at an election, the board may proceed with the authorization and issuance of the bonds.

2007 Acts, ch 109, §3  
Subsection 5, paragraph a, subparagraphs (1) – (3) amended

**331.553 General powers.**

The treasurer may:

1. Administer oaths and take affirmations as provided in sections 63A.2 and 421.21.

2. Subject to the requirements of section 331.903, appoint and remove deputies, clerks and assistants.

3. Require that payment be made by guaranteed funds for tax sale redemptions, issuance of plat clearances, issuance of tax clearances for mobile homes, payments of taxes or assessments made within the thirty days prior to the annual tax sale or any adjournment of the tax sale, and any other payment which is to be collected by the county treasurer. For the purposes of this subsection, “guaranteed funds” means cash, cashier’s check, money order, travelers’ check, or certified check.

4. Charge five dollars, as an administrative expense, for every rate, charge, rental, or special assessment certified as a lien to the treasurer for collection. This amount shall be added to the amount of the lien, collected at the time of payment from the payor, and credited to the county general fund. If the amount of the lien is paid in annual installments, an administrative expense charge shall be added to each annual installment.

5. Accept credit cards and electronic transfers of funds in payment of moneys due to the county, including but not limited to credits and reimbursements received from the state, tax payments, and tax sale redemptions. A county treasurer may adjust fees to reflect the cost of processing such payments.

6. Require a payor or an agent of a payor to

make payment by electronic transfer of the funds through the county treasurer’s authorized website when the payment totals fifty thousand dollars or more.

7. Treat a payment made by electronic funds transfer as if it were a paper check for purposes of section 554.3512.

8. Pursuant to an agreement under chapter 28E, collect delinquent parking fines on behalf of a city in conjunction with renewal of motor vehicle registrations pursuant to section 321.40. If the agreement provides for a fee to be paid to or retained by the county treasurer from the collection of parking fines, such fees shall be credited to the county general fund. Fines collected pursuant to this subsection shall be remitted biannually to the city. Notwithstanding section 28E.10, a county treasurer may utilize the state department of transportation’s vehicle registration and titling system to facilitate the purposes of this subsection.

2005 Acts, ch 54, §9, 12  
For definitions applicable to subsection 3, see §445.1  
2005 amendment adding new subsection 8 takes effect July 1, 2007;  
2005 Acts, ch 54, §12  
NEW subsection 8

**331.557A Duties relating to issuance of driver’s licenses.**

The treasurer of any county participating in county issuance of driver’s licenses under chapter 321M shall:

1. Issue, renew, and replace lost or damaged nonoperator identification cards and driver’s licenses, including commercial driver’s licenses, according to the provisions of chapter 321M.

2. Issue persons with disabilities parking permits under chapter 321L.

3. Collect fees associated with nonoperator identification cards and driver’s licenses, including commercial driver’s licenses, and pay to the state amounts in excess of the amount the treasurer is permitted to retain for deposit in the county general fund for license issuance.

4. Accept payment of civil penalties pursuant to sections 321.218A and 321A.32A and remit the penalties to the state department of transportation.

5. Participate in voter registration according to the terms of chapter 48A, and submit completed voter registration forms to the state registrar of voters.

6. Attend initial training as required by chapter 321M, and participate in continuing education as offered by the state department of transportation.

7. Comply with the terms of any applicable agreements created pursuant to chapter 28E, and state department of transportation operating standards for license issuance.

2005 Acts, ch 54, §10, 12  
2005 amendment adding new subsection 4 takes effect July 1, 2007;  
2005 Acts, ch 54, §12  
NEW subsection 4 and former subsections 4 – 6 renumbered as 5 – 7

**331.606A Document content — personally identifiable information.**

1. *Definitions.*

a. “*Personally identifiable information*” means one or more of the following specific unique identifiers when combined with an individual’s name:

- (1) Social security number.
- (2) Checking, savings, or share account number, credit, debit, or charge card number.

b. “*Preparer*” means the person or entity who creates, drafts, edits, revises, or last changes the documents that are recorded with the recorder.

c. “*Redact*” or “*redaction*” means the process of removing personally identifiable information from documents.

2. *Inclusion of personally identifiable information.* The preparer of a document shall not include an individual’s personally identifiable information in a document that is prepared and presented for recording in the office of the recorder. This subsection shall not apply to documents that were executed by an individual prior to July 1, 2007. Unless provided otherwise by law, all documents described by this section are subject to inspection and copying by the public.

3. *Redaction on a recorder’s internet website.* If a document that includes an individual’s personally identifiable information was recorded with the recorder and is available on the recorder’s internet website, the individual may request that the recorder redact such information from the website. The recorder shall establish a procedure by which individuals may request that such personally identifiable information be redacted from the internet record available on the recorder’s internet website, at no fee to the requesting individual. The recorder shall comply with an individual’s request to redact personally identifiable information.

4. *Liability of preparer.* A preparer who, in violation of subsection 2, enters personally identifiable information in a document that is prepared and presented for recording is liable to the individual whose personally identifiable information appears in the recorded public document for actual damages of up to five hundred dollars for each act of recording.

5. *Applicability.* This section shall not apply to a preparer of a state or federal tax lien, a military separation or discharge record, or a death certificate that is prepared for recording in the office of county recorder. If a military separation or discharge record or a death certificate is recorded in the office of the county recorder, the military separation or discharge record or the death certificate shall not be accessible through the internet.

2007 Acts, ch 123, §1, 3

For applicability of 2007 amendments to this section, see 2007 Acts, ch 123, §3

Section stricken and rewritten

**331.610 Abolition of office of recorder — identification of office — place of filing.**

If the office of county recorder is abolished in a county, the auditor of that county shall be referred to as the county auditor and recorder. After abolition of the office of county recorder, references in the Code requiring filing or recording of documents with the county recorder shall be deemed to require the filing in the office of the county auditor and recorder, and all duties of the abolished office of recorder shall be performed by the county auditor and recorder. However, the board of supervisors may direct that any of the duties of the abolished office of recorder prescribed in section 331.602, subsection 9, 10, 11, or 16, or section 331.605, subsection 1, 2, 3, 4, or 5, shall be performed by other county officers or employees as provided in section 331.323.

2007 Acts, ch 126, §56  
Section amended

**331.756 Duties of the county attorney.**

The county attorney shall:

1. Diligently enforce or cause to be enforced in the county, state laws and county ordinances, violations of which may be commenced or prosecuted in the name of the state, county, or as county attorney, except as otherwise provided.

2. Appear for the state and the county in all cases and proceedings in the courts of the county to which the state or the county is a party, except actions or proceedings resulting from a change of venue from another county, and appear in the appellate courts in all cases in which the county is a party, and appear in all actions or proceedings which are transferred on a change of venue to another county or which require the impaneling of a jury from another county and in which the county or the state is a party.

3. Prosecute all preliminary hearings for charges triable upon indictment.

4. Prosecute misdemeanors under chapter 236. The county attorney shall prosecute other misdemeanors when not otherwise engaged in the performance of other official duties.

5. a. Enforce all forfeited bonds and recognizances and prosecute all proceedings necessary for the recovery of debts, revenues, moneys, fines, penalties, restitution of court-appointed attorney fees ordered pursuant to section 815.9, including the expense of a public defender, and forfeitures accruing to the state, the county or a road district in the county, and all suits in the county against public service corporations which are brought in the name of the state. To assist in this duty, the county attorney may procure a designee to assist with collection efforts.

b. If the designee is a professional collection services agency, the county attorney shall file with the clerk of the district court an indication of the

satisfaction of each obligation to the full extent of all moneys collected in satisfaction of that obligation, including all fees and compensation retained by the designee incident to the collection and not paid into the office of the clerk.

c. Before a county attorney designates another county official or agency to assist with collection of debts, revenues, moneys, fines, penalties, restitution of court-appointed attorney fees ordered pursuant to section 815.9, including the expense of a public defender, and forfeitures, the board of supervisors of the county must approve the designation.

d. All fines, penalties, court costs, fees, and restitution for court-appointed attorney fees ordered pursuant to section 815.9, including the expenses of a public defender which are delinquent as defined in section 602.8107 may be collected by the county attorney or the county attorney's designee. The county attorney or the county attorney's designee may collect delinquent obligations under an installment agreement pursuant to section 321.210B.

e. In order to receive a percentage of the amounts collected pursuant to section 602.8107, the county attorney must file annually with the clerk of the district court on or before July 1 a notice of full commitment to collect delinquent obligations and must file on the first day of each month a list of the cases in which the county attorney or the county attorney's designee is pursuing the collection of delinquent obligations. The list shall include a list of cases where delinquent obligations are being collected under an installment agreement pursuant to section 321.210B, and a list of cases in default which are no longer being collected under an installment agreement but remain delinquent. The annual notice shall contain a list of procedures which will be initiated by the county attorney. Amounts collected by the county attorney or the county attorney's designee shall be distributed in accordance with section 602.8107.

f. As used in this subsection, "*designee*" means a professional collection services agency operated by a person or organization, including a private attorney, that is generally considered to have knowledge and special abilities not generally possessed by the state, a local government, or another county official or agency, or a county attorney or a county attorney's designee in another county where the fine, penalty, surcharge, or court cost was not imposed.

6. Commence, prosecute, and defend all actions and proceedings in which a county officer, in the officer's official capacity, or the county is interested or a party.

7. Give advice or a written opinion, without compensation, to the board and other county officers and to school and township officers, when requested by an officer, upon any matters in which the state, county, school, or township is interested, or relating to the duty of the officer in any matters

in which the state, county, school, or township may have an interest, but the county attorney shall not appear before the board at a hearing in which the state or county is not interested.

8. Attend the grand jury when necessary for the purpose of examining witnesses before it or giving it legal advice. The county attorney shall procure subpoenas or other process for witnesses and prepare all informations and bills of indictment.

9. Give a receipt to all persons from whom the county attorney receives money in an official capacity and file a duplicate receipt with the county auditor.

10. Make reports relating to the duties and the administration of the county attorney's office to the governor when requested by the governor.

11. Cooperate with the auditor of state to secure correction of a financial irregularity as provided in section 11.15.

12. Submit reports as to the condition and operation of the county attorney's office when required by the attorney general as provided in section 13.2, subsection 8.

13. Reserved.

14. Hear and decide objections to a nomination filed with the county election commissioner as provided in section 44.7.

15. Review the report and recommendations of the ethics and campaign disclosure board and proceed to institute the recommended actions or advise the board that prosecution is not merited, as provided in sections 68B.32C and 68B.32D.

16. Prosecute or assist in the prosecution of actions to remove public officers from office as provided in section 66.11.

17. Institute legal proceedings against persons who violate laws administered by the division of labor services of the department of workforce development as provided in section 91.11.

18. Investigate complaints and prosecute violations of child labor laws as provided in section 92.22.

19. Prosecute violations of employment security laws and rules as provided in section 96.17, subsection 2.

20. Assist, at the request of the director of revenue, in the enforcement of cigar and tobacco tax laws as provided in sections 453A.32 and 453A.49.

21. Prosecute nuisances as provided in section 99.24.

22. Attend the hearing, interrogate witnesses, and advise a license-issuing authority relating to the revocation of a license for violation of gambling laws as provided in section 99A.7. The county attorney shall also represent the license-issuing authority in appeal proceedings taken under section 99A.6.

23. Represent the state fire marshal in legal proceedings as provided in section 100.20.

24. Prosecute, at the request of the director of the department of natural resources or an officer



appointed by the director, violations of the state fish and game laws as provided in section 481A.35.

25. Assist the department of public safety in the enforcement of beer and liquor laws as provided in section 123.14. The county attorney shall also prosecute nuisances, forfeitures of abatement bonds, and foreclosures of the bonds as provided in sections 123.62 and 123.86.

26. Reserved.

27. Serve as attorney for the county health care facility administrator in matters relating to the administrator's service as a conservator or guardian for a resident of the health care facility as provided in section 135C.24.

28. Reserved.

29. At the request of the director of public health, commence legal action to enjoin the unlawful use of radiation-emitting equipment as provided in section 136C.5.

30. Reserved.

31. Prosecute violations of the Iowa veterinary practice Act as provided in section 169.19.

32. Assist the department of inspections and appeals in the enforcement of the rules setting minimum standards to protect consumers from foodborne illness adopted pursuant to section 137F.2 and the Iowa hotel sanitation code, as provided in sections 137C.30 and 137F.19.

33. Institute legal procedures on behalf of the state to prevent violations of chapter 9H or 202B.

34. Prosecute violations of the Iowa dairy industry laws as provided in section 179.11.

35. Prosecute persons who fail to file an annual or special report with the secretary of agriculture under the meat and poultry inspection Act as provided in section 189A.17.

36. Cooperate with the secretary of agriculture in the enforcement of label requirements for food packages as provided in section 191.7.

37. Prosecute violations of the Iowa commercial feed law as provided in section 198.13, subsection 3.

38. Cooperate with the secretary of agriculture in the enforcement of the agricultural seed laws as provided in section 199.14.

39. Prosecute violations of the Iowa fertilizer law as provided in section 200.18, subsection 5.

40. Prosecute violations of the Iowa drug, device, and cosmetic Act as requested by the board of pharmacy as provided in section 126.7.

41. Provide the Iowa department of corrections with information relating to the background and criminal acts committed by each person sentenced to a state correctional institution from the county as provided in section 904.202.

42. Carry out duties relating to the commitment of a person with mental retardation as provided in section 222.18.

43. Proceed to collect, as requested by the county, the reasonable costs for the care, treatment, training, instruction, and support of a person with mental retardation from parents or other

persons who are legally liable for the support of the person with mental retardation as provided in section 222.82.

44. Reserved.

45. Appear on behalf of the administrator of the division of mental health and disability services of the department of human services in support of an application to transfer a person with mental illness who becomes incorrigible and dangerous from a state hospital for persons with mental illness to the Iowa medical and classification center as provided in section 226.30.

46. Carry out duties relating to the hospitalization of persons for mental illness as provided in section 229.12.

47. Carry out duties relating to the collection of the costs for the care, treatment, and support of persons with mental illness as provided in sections 230.25 and 230.27.

48. Carry out duties relating to the care, guidance, and control of juveniles as provided in chapter 232.

49. Prosecute violations of law relating to the family investment program, medical assistance, and supplemental assistance as provided in sections 239B.15, 249.13, and 249A.14.

50. Commence legal proceedings to enforce the rights of children placed under foster care arrangements as provided in section 233A.11.

51. Commence legal proceedings, at the request of the superintendent of the Iowa juvenile home, to recover possession of a child as provided in section 233B.12.

52. Furnish, upon request of the governor, a copy of the minutes of evidence and other pertinent facts relating to an application for a pardon, reprieve, commutation, or remission of a fine or forfeiture as provided in section 914.5.

53. Reserved.

54. Commence legal proceedings to recover school funds as provided in section 257B.33.

55. At the request of the state geologist, commence legal proceedings to obtain a copy of the map of a mine or mine extension as provided in section 456.12.

56. Enforce, upon complaint, the performance of duties by officers charged with the responsibilities of controlling or eradicating noxious weeds as provided in section 317.23.

57. Commence legal proceedings to remove billboards and signs which constitute a public nuisance as provided in section 318.11.

58. Reserved.

59. Assist, upon request, the department of transportation's general counsel in the prosecution of violations of common carrier laws and regulations as provided in section 327C.30.

60. Enforce the control of vegetation on railroad property by the railroad corporations as provided in section 327F.29.

61. Appoint a member of the civil service commission for deputy sheriffs as provided in section

341A.2 or 341A.3.

62. Represent the civil service commission for deputy sheriffs in civil suits initiated by the commission for the proper enforcement of the civil service law as provided in section 341A.16.

63. Present to the grand jury at its next session a copy of the report filed by the department of corrections of its inspection of the jails in the county as provided in section 356.43.

64. Represent the township trustees in counties having a population of less than twenty-five thousand except when the interests of the trustees and the county are adverse as provided in section 359.18.

64A. Reserved.

64B. Make a written report to the department of inspections and appeals within fifteen days of the end of each calendar quarter of the amount of funds which were owed to the state for indigent defense services and which were recouped pursuant to subsection 5.

65. Represent the assessor and the board of review in legal proceedings relating to assessments as provided in section 441.41.

66. Represent the state in litigation relating to the inheritance tax if requested by the department of revenue as provided in section 450.1.

67. Institute proceedings to enjoin persons from violating water treatment laws as provided in section 455B.224.

68. Conduct legal proceedings relating to the condemnation of private property as provided in section 6B.2.

69. Reserved.

70. Institute legal proceedings against violations of insurance laws as provided in section 511.7.

71. Assist, as requested by the attorney general, with the enforcement of the Iowa competition law as provided in section 553.7.

72. Initiate proceedings to enforce provisions relating to the recordation of conveyances and leases of agricultural land as provided in section 558.44.

73. Reserved.

74. Bid on real estate on behalf of the county when necessary to secure the county from loss as provided by section 569.2.

75. Reserved.

76. Reserved.

77. Prosecute a complaint to establish paternity and compel support for a child as provided in section 600B.19.

78. Give to an accused person a copy of each report of the findings of the criminalistics laboratory in the investigation of an indictable criminal charge against the accused as provided in section 691.4.

79. Notify state and local governmental agencies issuing licenses or permits, of a person's conviction of obscenity laws relating to minors as provided in section 728.8.

80. In the case of appeal from the district court, furnish the attorney general with a copy of the notice of appeal and pertinent material from the district court proceedings as provided in section 814.8.

81. Certify fees and mileage payable to witnesses subpoenaed by the county attorney before the district court as provided in section 815.3.

82. Carry out duties relating to extradition of fugitive defendants as provided in chapter 818.

83. Advise the director of the judicial district department of correctional services of the facts and circumstances surrounding the crime committed and the record and history of the defendant granted probation as provided in section 907.8.

83A. Carry out the duties imposed under sections 915.12 and 915.13.

83B. Establish a child protection assistance team in accordance with section 915.35.

84. Bring an action in the nature of quo warranto as provided in rule of civil procedure 1.1302.

85. Perform other duties required by law and duties assigned pursuant to section 331.323.

2007 Acts, ch 10, §175; 2007 Acts, ch 152, §51; 2007 Acts, ch 196, §7; 2007 Acts, ch 215, §219

Subsections 5, 32, 40, and 70 amended

### **331.902 Collection and disposition of fees.**

1. Unless otherwise specifically provided by statute, the fees and other charges collected by the auditor, treasurer, recorder, and sheriff, and their deputies or employees, belong to the county.

2. Each elective officer specified in subsection 1 shall maintain a record in the county system of each fee and charge collected. The record shall show the date, amount, payor, and type of service, and, when the fee is for recording an instrument, the names of the parties to the instrument. The record of the fees collected shall be retained for three years after audit of the county pursuant to section 11.6.

3. Each elective officer specified in subsection 1 shall make a quarterly report to the board showing, by type, the fees collected during the preceding quarter. The officer shall pay at least quarterly to the county treasury the fees and charges collected, except for the county auditor's transfer fees, which shall be paid directly to the county treasurer by the county recorder. The officer shall receive a receipt and maintain a record of the date and amount of each payment into the county treasury. This subsection does not apply to the county treasurer if the county treasurer credits the fees daily to the county treasury and reports the receipts on the monthly report to the auditor and the board of supervisors.

4. When examining, settling, or verifying reports or accounts of fees or other monetary receipts of the county under section 331.401, subsection 1, paragraph "p", this section, or chapter 12B,

the cash on hand in the office of the county officer or employee subject to the settlement or examination need not be counted in the presence of, or by, the board of supervisors or other examining county officer. This section does not prohibit the actual counting of cash on hand in a county at the time of the examination or settlement if the examining authority requests the actual count.

5. Each elective officer specified in subsection 1 shall retain overpayments of fees and other charges paid to the county in an amount of five dollars or less, unless the payor has requested a refund of the overpayment.

2007 Acts, ch 75, §2  
NEW subsection 5

### **331.904 Salaries of deputies, assistants, and clerks.**

1. The annual base salary of the first and second deputy officer of the office of auditor, treasurer, and recorder, the deputy in charge of the motor vehicle registration and title division, and the deputy in charge of driver's license issuance shall each be an amount not to exceed eighty-five percent of the annual salary of the deputy's principal officer. In offices where more than two deputies are required, the annual base salary of each additional deputy shall be an amount not to exceed eighty percent of the principal officer's salary. The amount of the annual base salary of each deputy shall be certified by the principal officer to the board and, if a deputy's annual base salary does not exceed the limitations specified in this subsection, the board shall certify the annual base salary to the auditor. The board shall not certify a deputy's annual base salary which exceeds the limitations of this subsection.

As used in this subsection, "*base salary*" means the basic compensation excluding overtime pay, longevity pay, shift differential pay, or other supplement pay and fringe benefits.

2. Each deputy sheriff shall receive an annual base salary as follows:

*a.* The annual base salary of a first or second deputy sheriff shall not exceed eighty-five percent of the annual base salary of the sheriff.

*b.* The annual base salary of any other deputy sheriff shall not exceed the annual base salary of

the first or second deputy sheriff.

*c.* The sheriff shall set the annual base salary of each deputy sheriff who is classified as exempt under the federal Fair Labor Standards Act of 1938, as amended, subject to the limitations specified in paragraphs "*a*" and "*b*". The sheriff shall certify the annual base salaries of the exempt deputy sheriffs to the board and, if the limitations of paragraphs "*a*" and "*b*" are not exceeded, the board shall certify the annual base salaries to the county auditor.

*d.* The board shall set the annual base salaries of any deputy sheriffs who are not classified as exempt under the federal Fair Labor Standards Act of 1938, as amended. Upon certification by the sheriff, the board shall review, and may modify, the annual base salaries of the deputy sheriffs who are not classified as exempt. The annual base salaries set by the board are subject to the limitations specified in paragraphs "*a*" and "*b*".

*e.* As used in this subsection, "*base salary*" means the basic compensation excluding overtime pay, longevity pay, shift differential pay, or other supplement pay and fringe benefits.

3. The annual salary of each assistant county attorney shall be determined by the county attorney within the budget set for the county attorney's office by the board. The salary of an assistant county attorney shall not exceed eighty-five percent of the maximum salary of a full-time county attorney. The county attorney shall inform the board of the full-time or part-time status of each assistant county attorney. In the case of a part-time assistant county attorney, the county attorney shall inform the board of the approximate number of hours per week the assistant county attorney shall devote to official duties.

4. The board shall determine the compensation of extra help and clerks appointed by the principal county officers.

5. The deputy officers, assistants, clerks, and other employees of the county are also entitled to reimbursement for actual and necessary expenses incurred in the performance of their official duties.

2007 Acts, ch 123, §2, 3  
2007 amendment to subsection 1 applies to county budgets for the fiscal year beginning July 1, 2008, and all subsequent fiscal years; 2007 Acts, ch 123, §3

Subsection 1 amended

## **CHAPTER 335**

### **COUNTY ZONING**

#### **335.34 Home and community-based services waiver recipient residence.**

1. A county, county board of supervisors, or county zoning commission shall consider the residence of the recipient of services under a home and community-based services waiver as a residential use of property for the purposes of zoning and shall

treat the use of the residence as a permitted use in all residential zones or districts, including all single-family residential zones or districts, of the county.

2. A county, county board of supervisors, or a county zoning commission shall not require that the recipient, or the owner of such a residence if

other than the recipient, obtain a conditional use permit, special use permit, special exception, or variance. A county, county board of supervisors, or county zoning commission shall not establish limitations regarding the proximity of one such residence to another.

3. This section applies to the residence of a recipient of services under a home and community-based services waiver if the residence meets any of the following conditions:

- a. The residence is a single-family dwelling owned or rented by the recipient.
- b. The residence is a multifamily dwelling

which does not hold itself out to the public as a community-based residential provider otherwise regulated by law, including but not limited to a residential care facility, and which provides dwelling units to no more than four recipients of services under a home and community-based services waiver at any one time.

4. For the purposes of this section, “home and community-based services waiver” means “waiver” as defined in section 249A.29.

2007 Acts, ch 218, §130, 132  
Similar provision, see §414.32  
NEW section

## CHAPTER 341A

### CIVIL SERVICE FOR DEPUTY COUNTY SHERIFFS

#### **341A.12 Discipline — hearing.**

No person in the classified civil service who has been permanently appointed or inducted into civil service under provisions of this chapter shall be removed, suspended, or demoted except for cause, and only upon written accusation of the county sheriff, which shall be served upon the accused, and a duplicate filed with the commission. Any person so removed, suspended, or reduced in rank or grade may, within ten days after presentation to the person of the order of removal, suspension or reduction, appeal to the commission from such order. The commission shall, within two weeks from the filing of such appeal, hold a hearing thereon, and fully hear and determine the matter, and either affirm, modify, or revoke such order. The appellant shall be entitled to appeal personally, produce evidence, and to have counsel. The finding and decision of the commission shall be certified to the sheriff, and shall be enforced and followed by the sheriff, but under no condition shall the employee who has appealed to the commission be permanently removed, suspended, or reduced in rank until such finding and decision of the commission is certified to the sheriff pursuant to the rules of civil procedure.

The county or the accused may appeal from the commission’s finding and decision to the district court of the county where the accused resides. Such appeal shall be taken by serving upon the commission within thirty days after the entry of its finding and decision, a written notice of appeal, stating the grounds thereof, and demanding that a certified transcript of the record and of all papers on file in the office of the commission affecting or relating to its finding and decision, be filed by the commission with the court. The commission shall, within ten days after the filing of the notice make, certify, and file such transcript with the court. The court shall proceed to hear and determine the appeal in a summary manner. Such hearing shall be confined to the determination of whether the finding and decision of the commission to affirm, modify, or revoke the order of the sheriff was made in good faith and for cause, and no appeal shall be taken except upon such grounds. The decision of the district court may be appealed to the supreme court.

2007 Acts, ch 58, §1  
Internal investigations and rights of peace officers and public safety and emergency personnel, see §80F.1  
Unnumbered paragraph 2 amended

## CHAPTER 351

### DOGS AND OTHER ANIMALS

#### **351.27 Right to kill tagged dog.**

It shall be lawful for any person to kill a dog, wearing a collar with a rabies vaccination tag attached, when the dog is caught in the act of chasing, maiming, or killing any domestic animal or

fowl, or when such dog is attacking or attempting to bite a person.

2007 Acts, ch 111, §1  
Section amended

## CHAPTER 355

### STANDARDS FOR LAND SURVEYING

#### 355.5 Measurements.

1. Measurements shall be made with instruments and methods capable of attaining the required accuracy for the particular problem involved.

2. Measurements as placed on plats shall be in conformance with the capabilities of the instruments used.

3. In a closed traverse the sum of the measured angles shall agree with the theoretical sum by a difference not greater than thirty seconds times the square root of the number of angles.

4. Distances shall be shown in decimal feet in accordance with the definition of the U.S. survey foot. Distance measurements shall refer to the horizontal plane.

2007 Acts, ch 143, §4  
Subsection 4 amended

#### 355.7 Plats of survey.

A plat of survey shall be made, showing information developed by the survey, for each land survey performed for the purpose of correcting boundaries, correcting descriptions of surveyed land, or for the division of land. Each plat of survey shall conform to the following provisions:

1. The original plat drawing shall remain the property of the surveyor.

2. The size of each plat sheet shall not be less than eight and one-half inches by eleven inches.

3. The scale of the plat drawing shall be clearly stated and graphically illustrated by a bar scale on every plat sheet.

4. An arrow indicating the northern direction shall be shown on each plat sheet.

5. The plat shall show that the survey is tied to a physically monumented land line which is identified by two United States public land survey system corners, or by two physically monumented corners of a recorded subdivision.

6. The plat shall show the lengths and bearings of the boundaries of the parcels surveyed. The course of each boundary line shown on the plat may be indicated by a direct bearing reference or by an angle between the boundary line and an intersecting line having a shown bearing, except when the boundary line has an irregular or constantly changing course, as along a body of water, or when a description of the boundary line is better achieved by measurements shown at points or intervals along a meander line or an offset line having a shown course. The bearings shall be referenced to a United States public land survey system land line, or recorded subdivision line. If the boundary lines show bearings, lengths, or loca-

tions which vary from those recorded in deeds, abutting plats, or other instruments of record, the following note shall be placed along the lines: "recorded as (show recorded bearing, length, or location)". Bearings and angles shown shall be given to at least the nearest minute of arc.

7. The plat shall show and identify all monuments necessary for the location of the parcel and shall indicate whether the monuments were found or placed.

8. If United States public land survey system corners control the land description, the corners shall be clearly identified on the plat including a description of the monumentation and shall indicate whether the monuments were found or placed.

9. Control monuments shall be adequately described and clearly identified on the plat and noted as found or placed. If additional monuments are to be placed subsequent to the recording of a subdivision as provided in section 355.6, the location of the additional monuments shall be shown on the plat.

10. Distance shall be shown in decimal feet in accordance with the definition of the U.S. survey foot. Distance measurements shall refer to the horizontal plane.

11. Curve data shall be stated in terms of radius, central angle, and length of curve, and as otherwise specified by local ordinance. In all cases, the curve data must be shown for the line affected.

12. The unadjusted error of closure shall not be greater than one in five thousand for an individual parcel.

13. If any part of the surveyed land is bounded by an irregular line, that part shall be enclosed by a meander line or an offset line showing complete data with distances along all lines extending beyond the enclosure to the irregular boundary, and shown with as much certainty as can be determined or as "more or less", if variable. In all cases, the true boundary shall be clearly indicated on the plat.

14. The plat shall be captioned to show the date of the survey, and shall be accompanied by a description of the parcel.

15. The plat shall contain a statement by a surveyor that the work was done and the plat was prepared by the surveyor or under the surveyor's direct personal supervision, shall be signed and dated by the surveyor, and shall bear the surveyor's Iowa registration number and legible seal.

2007 Acts, ch 143, §5  
Subsection 10 amended

### 355.8 Plats for subdivisions.

Subdivision plats shall conform to the following provisions where applicable:

1. The original plat drawing shall remain the property of the surveyor.
2. The size of each plat sheet shall not be less than eight and one-half inches by eleven inches.
3. If more than one sheet is used, each sheet shall display both the number of the sheet and the total number of sheets included in the plat, and clearly labeled match lines indicating where the other sheets adjoin. An index shall be provided to show the relationship between the sheets.
4. The scale of the plat drawing shall be clearly stated and graphically illustrated by a bar scale on every plat sheet.
5. Each subdivision plat shall be designated, by name or as otherwise prescribed, in bold letters inside the margin at the top of each plat sheet.
6. An arrow indicating the northern direction shall be shown on each plat sheet.
7. The plat shall show that the subdivision is tied to a physically monumented land line which is identified by two United States public land survey system corners, or by two physically monumented corners of a recorded subdivision.
8. The plat shall show the lengths and bearings of the boundaries of the tracts surveyed. The course of each boundary line shown on the plat may be indicated by a direct bearing reference or by an angle between the boundary line and an intersecting line having a shown bearing, except when the boundary line has an irregular or constantly changing course, as along a body of water, or when a description of the boundary line is better achieved by measurements shown at points or intervals along a meander line or an offset line having a shown course. The bearing shall be referenced to a United States public land survey system land line, or recorded subdivision line. If the boundary lines show bearings, lengths, or locations which vary from those recorded in deeds, abutting plats, or other instruments of record, the following note shall be placed along the lines: "recorded as (show recorded bearing, length, or location)". Bearings and angles shown shall be given to at least the nearest minute of arc.
9. The plat shall show and identify all monuments necessary for the location of the tracts and shall indicate whether the monuments were found or placed.
10. If United States public land survey system corners control the land description, the corners shall be clearly identified on the plat including a description of the monumentation and shall indicate whether the monuments were found or placed.
11. Control monuments shall be adequately described and clearly identified on the plat and noted as found or placed. If additional monuments

are to be placed subsequent to the recording of a subdivision as provided in section 355.6, the location of the additional monuments shall be shown on the plat.

12. Survey data shall be shown to positively describe the bounds of every lot, block, street, easement, or other areas shown on the plat, and the boundaries of the surveyed lands.

13. Distances shall be shown in feet to at least the nearest one-tenth of a foot in accordance with the definition of the U.S. survey foot. Distance measurements shall refer to the horizontal plane.

14. Curve data shall be stated in terms of radius, central angle, and length of curve. Unless otherwise specified by local ordinance, curve data for streets of uniform width need only be shown with reference to the center line and lots fronting on such curves need only show the chord bearing and distance of the part of the curve included in the lot boundary. Otherwise, the curve data shall be shown for the line affected.

15. The unadjusted error of closure shall not be greater than one in ten thousand for subdivision boundaries and shall not be greater than one in five thousand for an individual lot.

16. If part of the surveyed land is bounded by an irregular line, that part shall be enclosed by a meander line or an offset line showing complete data with distances along all lines extending beyond the enclosure to the irregular boundary, and shown with as much certainty as can be determined or as "more or less", if variable. In all cases, the true boundary shall be clearly indicated on the plat.

17. Interior excepted parcels shall be clearly indicated and labeled, "not a part of this survey (or subdivision)".

18. Adjoining properties shall be identified, and if the adjoining properties are a part of a recorded subdivision, the name of that subdivision shall be shown. If the survey is a subdivision of a portion of a previously recorded subdivision plat, sufficient ties shall be shown to controlling lines appearing on such plat to permit a comparison to be made.

19. The purpose of any easement shown on the plat shall be clearly stated.

20. The purpose of areas dedicated to the public shall be clearly indicated on the plat.

21. The plat shall be accompanied by a description of the land included in the subdivision and shall contain a statement by the surveyor that the work was done and the plat was prepared by the surveyor or under the surveyor's direct personal supervision and shall be signed and dated by the surveyor and bear the surveyor's Iowa registration number and legible seal.

## CHAPTER 356

### JAILS AND MUNICIPAL HOLDING FACILITIES

#### **356.37 Confinement and detention report — design proposals.**

The division of criminal and juvenile justice planning of the department of human rights, in consultation with the department of corrections, the Iowa county attorneys association, the Iowa state sheriff's association, the Iowa association of police and peace officers, a statewide organization representing rural property taxpayers, the Iowa league of cities, and the Iowa board of supervisors association, shall prepare a report analyzing the confinement and detention needs of jails and facilities established pursuant to this chapter and chapter 356A. The report for each type of jail or facility shall include but is not limited to an inventory of prisoner space, daily prisoner counts, options for detention of prisoners with mental illness or substance abuse service needs,

and the compliance status under section 356.36 for each jail or facility. The report shall contain an inventory of recent jail or facility construction projects in which voters have approved the issuance of general obligation bonds, essential county purpose bonds, revenue bonds, or bonds issued pursuant to chapter 423B. The report shall be revised periodically as directed by the administrator of the division of criminal and juvenile justice planning. The first submission of the report shall include recommendations on offender data needed to estimate jail space needs in the next two, three, and five years, on a county, geographic region, and statewide basis, which may be based upon information submitted pursuant to section 356.49.

2007 Acts, ch 22, §71  
Section amended

## CHAPTER 357A

### RURAL WATER DISTRICTS

#### **357A.11 Board's powers and duties.**

The board shall be the governing body of the district, and shall:

1. Adopt rules, regulations, and rate schedules in conformity with the provisions of this Act and the bylaws of the district as necessary for the conduct of the business of the district.
2. Maintain at its office a record of the district's proceedings, rules and regulations, and any decisions and orders made pursuant to the provisions of this chapter, and furnish copies thereof to the supervisors or the council upon request.
3. Employ, appoint, or retain attorneys, engineers, other professional and technical employees, and other personnel as necessary, and require and approve bonds of district employees. The board may enter into agreements pursuant to chapter 28E to provide professional or technical services under this subsection to other water districts, non-profit corporations, or related associations.
4. Prior to each annual meeting of participating members:
  - a. Prepare an estimated budget for the coming year, and adjust water rates if necessary in order to produce the revenue required to fund the estimated budget, and make a report thereon at the annual meeting.
  - b. Have an audit made of the district's records and accounts, and make copies of the audit report available to all participating members attending the annual meeting and to any other participating

member who so requests.

5. Have authority to acquire by gift, lease, purchase, or grant any property, real or personal, in fee or a lesser interest needed to achieve the purposes for which the district was incorporated, to acquire easements for water lines and reservoirs by condemnation proceedings, and to sell and convey property owned, but no longer needed, by the district. Condemnation proceedings shall not apply to existing wells, ponds or reservoirs.
6. Have authority to construct, operate, maintain, repair, and when necessary to enlarge or extend, such ponds, reservoirs, pipelines, wells, check dams, pumping installations, or other facilities for the storage, transportation, or utilization of water, and such appurtenant structures and equipment, as may be necessary or convenient to carry out the purposes for which the district was incorporated. A district may purchase its water supply from any source.
7. Have power to borrow from, cooperate with and enter into agreements as deemed necessary with any agency of the federal government, this state, or a county of this state, and to accept financial or other aid from any agency of the federal government. To evidence any indebtedness the obligations may be one or more bonds or notes and the obligations may be sold at private sale.
8. Have power to finance all or part of the cost of the construction or purchase of any project necessary to carry out the purposes for which the dis-

trict is incorporated, or to refinance all or part of the original cost of any such project, and to evidence that financing by issuance of revenue bonds or notes which shall mature in a period not to exceed forty years from date of issuance, shall bear interest, or combined interest and insurance charges, at a rate not to exceed that permitted by chapter 74A, shall be payable only from revenue derived from sale of water by the district, and shall never become or be construed to be a debt against the state of Iowa or any of its political subdivisions other than the district issuing the bonds.

9. Finance all or part of the cost of the construction or purchase of a project necessary to carry out the purposes for which the district is incorporated or to refinance all or part of the original cost of that project, including, but not limited to, obligations originated by the district as a nonprofit corporation under chapter 504 and assumed by the district reorganized under this chapter. Financing or refinancing carried out under this subsection shall be in accordance with the terms and procedures set forth in the applicable provisions of sections 384.24A, 384.83 through 384.88, 384.92, and 384.93. References in these sections to a city shall be applicable to a rural water district operating under this chapter, and references in division V of chapter 384 to a city council shall be applicable to the board of directors of a rural water district. This subsection shall not create a lien against the property of a person who is not a rural water subscriber.

10. Have power to join the Iowa association of rural water districts, and pay out of funds available to the board, reasonable dues to the association. The financial condition and transactions of the Iowa association of rural water districts must be audited in the same manner as rural water districts.

11. Have authority to execute an agreement with a governmental entity, including a county, city, sanitary district, or another district, for purposes of managing or administering the works, facilities, or waterways which are useful for the collection, disposal, or treatment of wastewater or sewage and which are located within the jurisdiction of the governmental entity or the district. The board may do what is necessary to carry out the agreement, including but not limited to any of the following:

- a. Owning or acquiring by gift, lease, purchase, or grant any interest in real or personal property.
- b. Constructing, operating, maintaining, repairing, improving, or equipping any of the works, facilities, or waterways.
- c. Financing all or part of the cost of acquiring, constructing, maintaining, repairing, improving, or equipping any works, facilities, or waterways, or refinancing all or part of the cost. The financing

or refinancing shall be accomplished in accordance with the terms and procedures set forth in the applicable provisions of sections 384.24A, 384.83 through 384.88, 384.92, and 384.93. References in those sections to a city shall be applicable to a district and references in those sections to a governing body or a city council shall be applicable to the district's board.

12. Place all funds in investments to the extent practicable and may invest the funds jointly with one or more counties, judicial district departments of correctional services, cities, or city utilities pursuant to a joint investment agreement. All investments of funds shall be subject to sections 12B.10 and 12B.10A and other applicable law.

13. In addition to all other powers granted to the board, the board may sell, convey, merge, or otherwise dispose of all or any portion of the real property or personal property of the district and all or any portion of the district's right to provide water or wastewater service to an area in order that another service provider permitted by the department of natural resources pursuant to chapter 455B may assume any or all of the district's duties and obligations or that the district may be dissolved. If the district is to be dissolved, the board shall file a notice of dissolution with the auditor of the county or counties in which the district is located.

Prior to such sale, conveyance, merger, or disposition by the board that includes the relinquishment of the district's right to provide service to an area, the board shall publish notice of a public hearing not less than four nor more than twenty days before the date fixed for the hearing in a newspaper of general circulation in the area for which the board seeks to relinquish service. The board shall mail notice of a public hearing to the district's members in the area for which the board seeks to relinquish service not less than fourteen days prior to such public hearing. A public hearing is not required when the board relinquishes the district's right to service an area within the corporate limits of a city if the city will provide service in compliance with the city's annexation plan.

After hearing or if none is required, the board may adopt a resolution approving the sale, conveyance, merger, or disposition; however, the board shall provide for the continuation of water or wastewater service to the area by another service provider immediately following such sale, conveyance, merger, or disposition.

This chapter and chapter 384, as it applies to rural water districts, shall not be construed to mean that the real property of any rural water subscriber shall be used as security for any debts of a rural water district. However, the failure to pay water rates or charges by a subscriber may result in a lien being attached against the premises served upon certification to the county treasurer that the



rate or charges are due.

2007 Acts, ch 126, §57

Subsection 11, unnumbered paragraph 1 amended

**357A.22A Rural fire protection program — liability.**

A rural water district or rural water association incorporated under this chapter or chapter 504 shall establish a rural fire protection program which shall include, but is not limited to, providing access to designated soft-hose fill stations, providing annually or more often if necessary updated maps of soft-hose fill stations to all fire departments within the rural water service area, and sponsoring informational meetings for all fire departments and interested parties within the rural

water service area for the purpose of reviewing locations of facilities, operational procedures, communication procedures and facilities, and procedures designed to coordinate efforts to enhance rural fire protection.

A rural water district or rural water association incorporated under this chapter or chapter 504 which provides water service to cities, benefited fire districts, or townships shall not be liable for a claim against the district or association for failure to provide or maintain fire hydrants, facilities, or an adequate supply of water or water pressure for fire protection purposes if the purpose of the hydrants, facilities, or water used is not for fire protection.

2007 Acts, ch 126, §58

Unnumbered paragraph 2 amended

## CHAPTER 358

### SANITARY DISTRICTS

**358.16 Power to provide for sewage disposal.**

1. The board of trustees of any sanitary district organized under this chapter shall have power to provide for the disposal of the sewage thereof, including the sewage and drainage of any city or village within the boundaries of such district; to acquire, lay out, locate, establish, construct, maintain, and operate one or more drains, conduits, treatment plants, disposal plants, pumping plants, works, ditches, channels, and outlets of such capacity and character as may be required for the treatment, carrying off, and disposal of the sewage and industrial wastes and other drainage incidental thereto of such district; to lay out, establish, construct, maintain, and operate all such adjuncts, additions, auxiliary improvements, and works as may be necessary or proper for accomplishment of the purposes intended, and to procure supplies of water for operating, diluting, and flushing purposes; to maintain, repair, change, enlarge, and add to such facilities, improvements, and works as may be necessary or proper to meet the future requirements for the purposes aforesaid; and, when necessary for such purposes, any such facilities, improvements, and works and the maintenance and operation thereof may extend beyond the limits of such district, and the rights and powers of said board of trustees in respect thereto shall be the same as if located within said district, provided, no taxes shall be levied upon any property outside of such district; and provided further, that the district shall be liable for all damages sustained beyond its limits in consequence of any work or improvement authorized hereunder.

The board of trustees, however, may upon such petition of property owners representing at least twenty-five percent of the valuation of property

not included within the district as constituted which seeks benefit from the operation of such sanitary district, include such property and the area involved within the limits of such sanitary district, and such added areas shall be subject to the same taxation as other portions of the district.

Nothing contained herein shall be construed to authorize or empower such board of trustees to operate a system of waterworks for the purpose of furnishing water to the inhabitants of the district, or to construct, maintain, or operate local municipal sewerage facilities, or to deprive municipalities within the district of their powers to construct and operate sewers for local purposes within their limits.

The board of trustees of such sanitary district may, however, upon petition of the council or governing body of any incorporated city within the sanitary district, contract with such city to undertake the operation of local municipal sewerage facilities as part of the functioning of the sanitary district and make an agreement with such municipality for the levying of additional sewer or sewage disposal taxes, which taxes shall be levied by the municipality as now provided by law.

2. The board of trustees may require connection to the sanitary sewer system established, maintained, or operated by the district from any adjacent property within the district, and require the installation of sanitary toilets or other sanitary sewage facilities and removal of other toilet and other sewage facilities on the property.

If the property owner does not perform an action required under the preceding paragraph within a reasonable time after notice and hearing, the board of trustees may perform the required action and assess the costs of the action against the property for collection in the same manner as a proper-

ty tax. The notice shall state the nature of the action and the time within which the action is required to be performed by the property owner, state the date, time, and place where the property owner will be heard by the board of trustees for the purpose of stating why the intended action should not be required, and shall be given by certified mail to the property owner as shown on the records of the county auditor not less than four nor more than twenty days before the date of the hearing.

However, in the event of an emergency when the delay of notice and hearing might cause serious loss or injury to persons or property within the district, the board of trustees may perform any action which may be required under this section without prior notice and hearing, and assess the cost as provided in this section, following notice to the property owner and hearing in the time and manner provided in the preceding paragraph. In that event the board of trustees shall, by resolution, make a finding of the necessity to institute emergency proceedings under this section, and shall procure a certificate from a competent licensed professional engineer or registered architect certifying that emergency action is necessary.

3. If any amount assessed against property pursuant to this section will exceed one hundred dollars, the board of trustees may permit the assessment to be paid in up to ten annual installments, in the manner and with the same interest rates as provided for assessments against benefited property under chapter 384, division IV.

4. An assessment levied pursuant to this section, including all interest and penalties, is a lien against the property with respect to which action was taken from the date of filing the schedule of assessments until the assessment is paid. Assessments have equal precedence with ordinary taxes and are not divested by judicial sale.

5. The procedures for making and levying an assessment pursuant to this section and for an appeal of the assessment are the same procedures as provided in sections 384.59 through 384.67 and sections 384.72 through 384.75, except that any notice required in those sections to be published in a newspaper may be sent by certified mail to the owner of the property to be assessed as shown on the records of the county auditor in lieu of the publication. The references in those sections to the city council are applicable to the board of trustees.

2007 Acts, ch 126, §59

Former unnumbered paragraphs 1 – 4 editorially designated as subsection 1, unnumbered paragraphs 1 – 4

Former unnumbered paragraphs 5 and 6 editorially designated as subsection 2, unnumbered paragraphs 1 and 2

Former unnumbered paragraph 7 amended and editorially designated as unnumbered paragraph 3 of subsection 2

Former unnumbered paragraphs 8 – 10 editorially designated as subsections 3 – 5

### **358.40 Dissolution.**

1. After three years from the establishment of a sanitary district, a petition may be filed in the of-

fice of the county auditor, addressed to the board of supervisors, signed by a majority of persons owning land in the district and who in aggregate own at least sixty percent of the land in the district. The petition shall include the above facts and recite each of the following:

a. That more than three years has passed since the date of the election which established the district.

b. That there are no bonds or other evidences of indebtedness outstanding against the district, or if there is indebtedness, the petition shall contain a plan of dissolution which makes adequate provisions for payment of the indebtedness.

c. That a construction contract has not been let or work done on any improvements in the district or if either has occurred, the petition shall contain a plan of dissolution which makes adequate provisions for payment of the contract price or for the work.

2. All costs and expenses of the district shall be assessed against the district before dissolution by the levy of an annual tax necessary to accomplish payment, but the levy shall not exceed the rate provided in this section.

3. The board shall examine the petition at its next meeting after its filing or within twenty days of the filing, whichever date is earlier. Within ten days of the meeting, the board shall publish notice of the petition and the date, time, and place of the meeting at which time the board proposes to take action on the petition. The notice shall be published in a newspaper of general circulation published in the district and, if no newspaper is published within the district, in a newspaper published in the county in which the major part of the district is located. At the board's meeting, or subsequent meetings as necessary, if the petition is found to comply with the requirements of this section and the board of trustees consents by majority vote, the board of supervisors may provide for payment as requested or modify the method of payment of costs and expenses.

4. If the board decides that dissolution is warranted for the best interest of the public, it shall publish a notice in a newspaper of general circulation published in the district or, if no newspaper is published in the district, in a newspaper published in the county in which the major part of the district is located and give notice by mail to all known claimants or creditors of the district that it will receive and adjudicate claims against the district for four months from the date the notice is published and shall levy an annual tax as necessary against all property in the district for the number of years required to pay all claims allowed. However, the annual tax levied under this subsection shall not exceed four dollars per thousand dollars of assessed valuation of the taxable property within the district at the time of dissolution. The levy shall be made in the same manner as provided in section 76.2. After the board makes

a specific finding that all indebtedness, costs, and expenses have been paid or levies approved for their payment, the board shall dissolve the district by resolution entered upon its records. The dissolution order shall be noted by the auditor on the county records, showing the date when the dissolution became effective.

5. The records of a dissolved district including, but not limited to, copies of all engineering files and work undertaken by engineers of a dissolved district, shall be deposited with the county auditor of the county designated by the board. Any re-

maintaining balances shall be deposited in the general fund of the county designated by the board. All other assets of the dissolved district shall become, by dissolution, assets of the county.

6. An action shall not be commenced to contest action of the board of supervisors under this section in adjudicating claims, providing for the levy of a tax, or dissolving the district unless it is brought within thirty days of the entry of the dissolution order on the county record.

2007 Acts, ch 126, §60

Subsection 1, unnumbered paragraph 1 amended

## CHAPTER 359

### TOWNSHIPS AND TOWNSHIP OFFICERS

#### 359.17 Trustees — duties — meetings.

1. The board of township trustees in each township shall consist of three registered voters of the township. However, in townships with a taxable valuation for property tax purposes of two hundred fifty million dollars or more, the board of township trustees shall consist of five registered voters of the township. The trustees shall act as fence viewers and shall perform other duties assigned them by law. The board of trustees shall meet not less than two times a year. At least one of the meetings shall be scheduled to meet the requirements of section 359.49.

2. A board of township trustees shall give prior notice of a meeting to discuss, deliberate, or act upon a matter relating to the budget or a tax levy of the township or relating to the trustees' duty to provide fire protection service and, if provided, emergency medical service, pursuant to section 359.42. The trustees shall give notice of such meeting at least forty-eight hours preceding the commencement of the meeting. However, a notice is not required pursuant to this subsection when the trustees gather for minor or ministerial matters relating to the trustees' duty for providing such fire protection service or emergency medical service. The notice shall state the time, date, and place of the meeting and the proposed agenda. The notice shall be provided to the county auditor who shall post the notice in an area of the courthouse where notices to the public are commonly posted.

2007 Acts, ch 139, §1  
Fences, chapter 359A  
Section amended

#### 359.42 Township fire protection service, emergency warning system, and emergency medical service.

Except as otherwise provided in section 331.385, the trustees of each township shall provide fire protection service for the township, exclusive of any part of the township within a benefited fire district and may provide emergency medical

service. The trustees may purchase, own, rent, or maintain fire protection service or emergency medical service apparatus or equipment or both kinds of apparatus or equipment and provide housing for the equipment. The trustees of a township which is located within a county having a population of three hundred thousand or more may also establish and maintain an emergency warning system within the township. The trustees may contract with a public or private agency under chapter 28E for the purpose of providing any service or system required or authorized under this section.

Notice of meetings regarding services, §359.17  
Section not amended; footnote added

#### 359.49 Township budget.

Annually, a township shall prepare and adopt a budget, and shall certify taxes as follows:

1. A budget must be prepared for at least the following fiscal year. A proposed budget must show estimates of the following:

a. Expenditures from each fund.  
b. Income from sources other than property taxation.

c. Amount to be raised by property taxation, and the property tax rate expressed in dollars per one thousand dollars assessed valuation.

2. By January 15 of each year, each township fire department in the township shall provide to the board of trustees a proposed budget showing all revenues and all expenses for emergency services for the next fiscal year. By January 15 of each year, each township fire department, and each municipal fire department providing emergency services to a township, shall submit to the board of trustees a report detailing emergency services calls for the prior calendar year for the fire district and a copy of the fire report filed by the fire department with the state fire marshal's office. For purposes of this subsection, "municipal" means relating to a city, county, township, benefited fire district, or chapter 28E agency autho-

alized by law to provide emergency services.

3. Not less than ten days before the date set for the regular meeting of the board at which objections and arguments on the budget will be heard, the clerk shall make available a sufficient number of copies of the detailed budget to meet the requests of taxpayers and organizations.

4. The board of trustees shall transmit a copy of the proposed budget and a notice of the meeting set as required by subsection 5 to the county auditor for posting. The county auditor shall post the notice and the proposed budget in an area of the courthouse where notices to the public are commonly posted.

5. The board of trustees shall set a time and place for a regular meeting before final certification of the budget, which meeting shall provide time for comments and objections to be heard on the proposed budget. The meeting shall be held no less than ten days and no more than twenty days after the proposed budget is posted by the county auditor. The county auditor shall certify to the clerk the date of posting.

6. At the meeting, any resident or taxpayer of the township may present to the board of trustees objections to any part of the budget for the following fiscal year or arguments in favor of any part of the budget.

7. After the meeting on the proposed budget, the board of trustees shall adopt by resolution a budget for at least the next fiscal year, and the clerk shall certify the necessary tax levy for the next fiscal year to the county auditor and the county board of supervisors by March 15. The tax levy certified may be less than but shall not be more than the amount estimated in the proposed budget submitted at the meeting. Two copies each of the detailed budget as adopted and of the certified tax levy must be transmitted to the county auditor by

March 15.

8. A township that has entered into an agreement with a municipality to receive fire protection service or emergency medical service from the municipality may request that a portion of its taxes be paid directly to the municipality providing the fire protection service or emergency medical service. Each year, the township must note its request on the budget and must attach a copy of the emergency services agreement to each copy of the budget transmitted to the county auditor. The auditor shall direct the county treasurer as to what portion of the township taxes to disburse to the municipality providing the fire protection service or emergency medical service.

For purposes of this subsection, “municipality” means a city, county, township, benefited fire district, or agency formed under chapter 28E and authorized by law to provide emergency services.

9. Taxes from a township levy shall be collected but not disbursed by the county to a township until copies of the township budget are transmitted to the county auditor as required in subsection 7. If a township fails to certify property taxes by March 15, the amount of taxes collected by the county for the township shall be the amount collected for the township in the previous fiscal year to the extent that it does not exceed the applicable levy rate limits in this chapter. However, that amount may not exceed the amount the township could collect based on property assessments for the fiscal year for which the township failed to certify property taxes.

10. The township budget shall be prepared on forms, and pursuant to instructions, prescribed by the county finance committee in consultation with the department of management.

2007 Acts, ch 139, §2  
Subsection 4 amended

## CHAPTER 359A

### FENCES

#### 359A.22A Habitual trespass.

A landowner of land where livestock are kept or an owner of adjoining land shall be liable to erect or maintain a fence if the livestock trespasses upon the land of a neighboring landowner or

strays from the land where the livestock are kept onto a public road, as provided in section 169C.6.

2007 Acts, ch 64, §3  
NEW section

## CHAPTER 364

### POWERS AND DUTIES OF CITIES

#### 364.2 Vesting of power — franchises.

1. A power of a city is vested in the city council except as otherwise provided by a state law.

2. The enumeration of a specific power of a city does not limit or restrict the general grant of home rule power conferred by the Constitution of the

State of Iowa. A city may exercise its general powers subject only to limitations expressly imposed by a state or city law.

3. An exercise of a city power is not inconsistent with a state law unless it is irreconcilable with the state law.

4. *a.* A city may grant to any person a franchise to erect, maintain, and operate plants and systems for electric light and power, heating, telegraph, cable television, district telegraph and alarm, motor bus, trolley bus, street railway or other public transit, waterworks, or gasworks, within the city for a term of not more than twenty-five years. When considering whether to grant, amend, extend, or renew a franchise, a city shall hold a public hearing on the question. Notice of the time and place of the hearing shall be published as provided in section 362.3. The franchise may be granted, amended, extended, or renewed only by an ordinance, but no exclusive franchise shall be granted, amended, extended, or renewed.

*b.* Such an ordinance shall not become effective unless approved at an election. The proposal may be submitted by the council on its own motion to the voters at any city election. Upon receipt of a valid petition as defined in section 362.4 requesting that a proposal be submitted to the voters, the council shall submit the proposal at the next regular city election or at a special election called for that purpose before the next regular city election. However, the city council may dispense with such election as to the grant, amendment, extension, or renewal of an electric light and power, heating, or gasworks franchise unless there is a valid petition requesting submission of the proposal to the voters, or the party seeking such franchise, grant, amendment, extension, or renewal requests an election. If a majority of those voting approves the proposal, the city may proceed as proposed. The complete text of the ordinance shall be included on the ballot if conventional paper ballots are used. If an optical scan voting system or voting machine is used, the proposal shall be stated on the optical scan ballot and on the machine, and the full text of the ordinance posted for the voters pursuant to section 52.25. All absentee voters shall receive the full text of the ordinance.

*c.* Notice of the election shall be given by publication as prescribed in section 49.53 in a newspaper of general circulation in the city.

*d.* The person asking for the granting, amending, extension, or renewal of a franchise shall pay the costs incurred in holding the election, including the costs of the notice. A franchise shall not be

finally effective until an acceptance in writing has been filed with the council and payment of the costs has been made.

*e.* The franchise ordinance may regulate the conditions required and the manner of use of the streets and public grounds of the city, and it may, for the purpose of providing electrical, gas, heating, or water service, confer the power to appropriate and condemn private property upon the person franchised.

*f.* If a city franchise fee is assessed to customers of a franchise, the fee shall not be assessed to the city as a customer.

*g.* If a city grants more than one cable television franchise, the material terms and conditions of any additional franchise shall not give undue preference or advantage to the new franchisee. A city shall not grant a new franchise that does not include the same territory as that of the existing franchise. A new franchisee shall be given a reasonable period of time to build the new system throughout the territory.

5. If provided by ordinance, a city may enter into a chapter 28E agreement for the collection of delinquent parking fines by a county treasurer pursuant to section 321.40 at the time a person applies for renewal of a motor vehicle registration, for violations that have not been appealed or for which appeal has been denied. The city may pay the treasurer a reasonable fee for the collection of such fines, or may allow the county treasurer to retain a portion of the fines collected, as provided in the agreement.

2005 Acts, ch 54, §11, 12; 2007 Acts, ch 190, §42  
Subsection 4, paragraph b amended  
NEW subsection 5

### 364.7 Disposal of property.

A city may not dispose of an interest in real property by sale, lease for a term of more than three years, or gift, except in accordance with the following procedure:

1. The council shall set forth its proposal in a resolution and shall publish notice as provided in section 362.3, of the resolution and of a date, time and place of a public hearing on the proposal.

2. After the public hearing, the council may make a final determination on the proposal by resolution.

3. A city may not dispose of real property by gift except to a governmental body for a public purpose.

2007 Acts, ch 54, §33  
Subsection 3 amended

## CHAPTER 372

### ORGANIZATION OF CITY GOVERNMENT

#### 372.4 Mayor-council form.

1. A city governed by the mayor-council form has a mayor and five council members elected at large, unless the council representation plan is changed pursuant to section 372.13, subsection 11. The council may, by ordinance, provide for a city manager and prescribe the manager's powers and duties, and as long as the council contains an odd number of council members, may change the number of wards, abolish wards, or increase the number of council members at large without changing the form.

However, a city governed, on July 1, 1975, by the mayor-council form composed of a mayor and a council consisting of two council members elected at large and one council member from each of four wards, or a special charter city governed, on July 1, 1975, by the mayor-council form composed of a mayor and a council consisting of two council members elected at large and one council member elected from each of eight wards, may continue until the form of government is changed as provided in section 372.2 or section 372.9. While a city is thus operating with an even number of council members, the mayor may vote to break a tie vote on motions not involving ordinances, resolutions or appointments made by the council alone, and in a special charter city operating with ten council members under this section, the mayor may vote to break a tie vote on all measures.

2. The mayor shall appoint a council member as mayor pro tem, and shall appoint and dismiss the marshal or chief of police except where an intergovernmental agreement makes other provisions for police protection or as otherwise provided in section 400.13. However, the appointment and dismissal of the marshal or chief of police are subject to the consent of a majority of the council. Other officers must be selected as directed by the council. The mayor is not a member of the council and shall not vote as a member of the council.

3. In a city having a population of five hundred or more, but not more than five thousand, the city council may, or shall upon petition of the electorate meeting the numerical requirements of section 372.2, subsection 1, submit a proposal at the next regular or special city election to reduce the number of council members to three. If a majority of the voters voting on the proposal approves it, the proposal is adopted. If the proposal is adopted, the new council shall be elected at the next regular or special city election. The council shall determine by ordinance whether the three council members are elected at large or by ward.

4. In a city having a population of less than five hundred, the city council may adopt a resolution of

intent to reduce the number of council members from five to three and shall call a public hearing on the proposal. Notice of the time and place of the public hearing shall be published as provided in section 362.3, except that at least ten days' notice must be given. At the public hearing, the council shall receive oral and written comments regarding the proposal from any person. Thereafter, the council, at the same meeting as the public hearing or at a subsequent meeting, may adopt a final resolution to reduce the number of council members from five to three or may adopt a resolution abandoning the proposal. If the council adopts a final resolution to reduce the number of council members from five to three, a petition meeting the same requirements specified in section 362.4 for petitions authorized by city code may be filed with the clerk within thirty days following the effective date of the final resolution, requesting that the question of reducing the number of council members from five to three be submitted to the registered voters of the city. Upon receipt of a petition requesting an election, the council shall direct the county commissioner of elections to put the proposal on the ballot for the next regular city election. If the ballot proposal is adopted, the new council shall be elected at the next following regular city election. If a petition is not filed, the council shall notify the county commissioner of elections by July 1 of the year of the regular city election and the new council shall be elected at that regular city election. If the council notifies the commissioner of elections after July 1 of the year of the regular city election, the change shall take effect at the next following regular city election. The council shall determine by ordinance whether the three council members are elected at large or by ward.

5. City council membership reduced from five council members to three may be increased to five council members using the same procedure in subsection 3 or 4, as applicable.

2007 Acts, ch 55, §1  
NEW subsection 5

#### 372.13 The council.

1. A majority of all council members is a quorum.

2. A vacancy in an elective city office during a term of office shall be filled, at the council's option, by one of the two following procedures:

*a.* By appointment by the remaining members of the council, except that if the remaining members do not constitute a quorum of the full membership, paragraph "b" shall be followed. The appointment shall be for the period until the next

pending election as defined in section 69.12, and shall be made within forty days after the vacancy occurs. If the council chooses to proceed under this paragraph, it shall publish notice in the manner prescribed by section 362.3, stating that the council intends to fill the vacancy by appointment but that the electors of the city or ward, as the case may be, have the right to file a petition requiring that the vacancy be filled by a special election. The council may publish notice in advance if an elected official submits a resignation to take effect at a future date. The council may make an appointment to fill the vacancy after the notice is published or after the vacancy occurs, whichever is later. However, if within fourteen days after publication of the notice or within fourteen days after the appointment is made, there is filed with the city clerk a petition which requests a special election to fill the vacancy, an appointment to fill the vacancy is temporary and the council shall call a special election to fill the vacancy permanently, under paragraph "b". The number of signatures of eligible electors of a city for a valid petition shall be determined as follows:

(1) For a city with a population of ten thousand or less, at least two hundred signatures or at least the number of signatures equal to fifteen percent of the voters who voted for candidates for the office at the preceding regular election at which the office was on the ballot, whichever number is fewer.

(2) For a city with a population of more than ten thousand but not more than fifty thousand, at least one thousand signatures or at least the number of signatures equal to fifteen percent of the voters who voted for candidates for the office at the preceding regular election at which the office was on the ballot, whichever number is fewer.

(3) For a city with a population of more than fifty thousand, at least two thousand signatures or at least the number of signatures equal to ten percent of the voters who voted for candidates for the office at the preceding regular election at which the office was on the ballot, whichever number is fewer.

(4) The minimum number of signatures for a valid petition pursuant to subparagraphs (1) through (3) shall not be fewer than ten. In determining the minimum number of signatures required, if at the last preceding election more than one position was to be filled for the office in which the vacancy exists, the number of voters who voted for candidates for the office shall be determined by dividing the total number of votes cast for the office by the number of seats to be filled.

b. By a special election held to fill the office for the remaining balance of the unexpired term. If the council opts for a special election or a valid petition is filed under paragraph "a", the special election may be held concurrently with any pending election as provided by section 69.12 if by so doing the vacancy will be filled not more than ninety days after it occurs. Otherwise, a special election

to fill the office shall be called by the council at the earliest practicable date. The council shall give the county commissioner at least thirty-two days' written notice of the date chosen for the special election. The council of a city where a primary election may be required shall give the county commissioner at least sixty days' written notice of the date chosen for the special election. A special election held under this subsection is subject to sections 376.4 through 376.11, but the dates for actions in relation to the special election shall be calculated with regard to the date for which the special election is called. However, a nomination petition must be filed not less than twenty-five days before the date of the special election and, where a primary election may be required, a nomination petition must be filed not less than fifty-two days before the date of the special election.

If there are concurrent vacancies on the council and the remaining council members do not constitute a quorum of the full membership, a special election shall be called by the county commissioner at the earliest practicable date. The remaining council members shall give notice to the county commissioner of the absence of a quorum. If there are no remaining council members, the city clerk shall give notice to the county commissioner of the absence of a council. If the office of city clerk is vacant, the city attorney shall give notice to the county commissioner of the absence of a clerk and a council. Notice of the need for a special election shall be given under this paragraph by the end of the following business day.

3. The council shall appoint a city clerk to maintain city records and perform other duties prescribed by state or city law.

4. Except as otherwise provided by state or city law, the council may appoint city officers and employees, and prescribe their powers, duties, compensation, and terms. The appointment of a city manager must be made on the basis of that individual's qualifications and not on the basis of political affiliation.

5. The council shall determine its own rules and maintain records of its proceedings. City records and documents, or accurate reproductions, shall be kept for at least five years except that:

a. Ordinances, resolutions, council proceedings, records and documents, or accurate reproductions, relating to the issuance of public bonds or obligations shall be kept for at least eleven years following the final maturity of the bonds or obligations. Thereafter, such records, documents, and reproductions may be destroyed, preserving confidentiality as necessary. Records and documents pertaining to the transfer of ownership of bonds shall be kept as provided in section 76.10.

b. Ordinances, resolutions, council proceedings, records and documents, or accurate reproductions, relating to real property transactions shall be maintained permanently.

6. Within fifteen days following a regular or

special meeting of the council, the clerk shall cause the minutes of the proceedings of the council, including the total expenditure from each city fund, to be published in a newspaper of general circulation in the city. The publication shall include a list of all claims allowed and a summary of all receipts and shall show the gross amount of the claims. The list of claims allowed shall show the name of the person or firm making the claim, the reason for the claim, and the amount of the claim. If the reason for the claims is the same, two or more claims made by the same vendor, supplier, or claimant may be consolidated if the number of claims consolidated and the total consolidated claim amount are listed in the statement. However, the city shall provide at its office upon request an unconsolidated list of all claims allowed. Matters discussed in closed session pursuant to section 21.3 shall not be published until entered on the public minutes. However, in cities having more than one hundred fifty thousand population, the council shall each month print in pamphlet form a detailed itemized statement of all receipts and disbursements of the city, and a summary of its proceedings during the preceding month, and furnish copies to the city library, the daily newspapers of the city, and to persons who apply at the office of the city clerk, and the pamphlet shall constitute publication as required. Failure by the clerk to make publication is a simple misdemeanor. The provisions of this subsection are applicable in cities in which a newspaper is published, or in cities of two hundred population or over, but in all other cities, posting the statement in three public places in the city which have been permanently designated by ordinance is sufficient compliance with this subsection.

7. By ordinance, the council may divide the city into wards which shall be drawn according to the following standards:

a. All ward boundaries shall follow precinct boundaries.

b. Wards shall be as nearly equal as practicable to the ideal population determined by dividing the number of wards to be established into the population of the city.

c. Wards shall be composed of contiguous territory as compact as practicable.

d. Consideration shall not be given to the addresses of incumbent officeholders, political affiliations of registered voters, previous election results, or demographic information other than population head counts, except as required by the Constitution and the laws of the United States.

8. By ordinance, the council shall prescribe the compensation of the mayor, council members, and other elected city officers, but a change in the compensation of the mayor does not become effective during the term in which the change is adopted, and the council shall not adopt an ordinance changing the compensation of the mayor, council members, or other elected officers during the

months of November and December in the year of a regular city election. A change in the compensation of council members becomes effective for all council members at the beginning of the term of the council members elected at the election next following the change in compensation. Except as provided in section 362.5, an elected city officer is not entitled to receive any other compensation for any other city office or city employment during that officer's tenure in office, but may be reimbursed for actual expenses incurred. However, if the mayor pro tem performs the duties of the mayor or during the mayor's absence or disability for a continuous period of fifteen days or more, the mayor pro tem may be paid for that period the compensation determined by the council, based upon the mayor pro tem's performance of the mayor's duties and upon the compensation of the mayor.

9. A council member, during the term for which that member is elected, is not eligible for appointment to any city office if the office has been created or the compensation of the office has been increased during the term for which that member is elected. A person who resigns from an elective office is not eligible for appointment to the same office during the time for which that person was elected if during that time, the compensation of the office has been increased.

10. A council member, during the term for which that member is elected, is not precluded from holding the office of chief of the volunteer fire department if the fire department serves an area with a population of not more than two thousand. A person holding the office of chief of such a volunteer fire department at the time of the person's election to the city council may continue to hold the office of chief of the fire department during the city council term for which that person was elected.

11. Council members shall be elected according to the council representation plans under sections 372.4 and 372.5. However, the council representation plan may be changed, by petition and election, to one of those described in this subsection. Upon receipt of a valid petition, as defined in section 362.4, requesting a change to a council representation plan, the council shall submit the question at a special city election to be held within sixty days. If a majority of the persons voting at the special election approves the changed plan, it becomes effective at the beginning of the term following the next regular city election. If a majority does not approve the changed plan, the council shall not submit another proposal to change a plan to the voters within the next two years.

Eligible electors of a city may petition for one of the following council representation plans:

a. Election at large without ward residence requirements for the members.

b. Election at large but with equal-population ward residence requirements for the members.

c. Election from single-member, equal-popula-



tion wards, in which the electors of each ward shall elect one member who must reside in that ward.

*d.* Election of a specified number of members at large and a specified number of members from

single-member, equal-population wards.

2007 Acts, ch 112, §4  
Removal of appointees, see §372.15  
Removal of officers, chapter 66  
Subsection 2, paragraph b, unnumbered paragraph 1 amended

## CHAPTER 376

### CITY ELECTIONS

#### **376.4A Change to direct election of mayor — nomination petition signature requirements.**

1. If there is a change in government pursuant to section 372.6, subsection 2, the number of signatures required on a nomination petition for the office of mayor for the first election that office is on the ballot shall be an amount equal to the product of the following:

*a.* The total number of votes cast for at-large city council offices at the last regular city election divided by the number of city council seats to be filled at the last regular city election.

*b.* Two hundredths.

2. If the product of subsection 1, paragraphs “*a*” and “*b*”, is less than ten, the required number of signatures is ten.

2007 Acts, ch 18, §1  
NEW section

#### **376.11 Write-in votes.**

1. Write-in votes are permitted to be cast in all elections for city offices. A person who receives a sufficient number of write-in votes to be elected to a city office shall be declared the winner of the election. If a person who was elected by write-in votes chooses not to serve in that office the person shall submit a resignation in writing to the city clerk not later than five p.m. on the tenth day following the canvass of the election. If a person who was elected by write-in votes resigns at a later time, the office shall be considered vacant at the end of the term and the council shall fill the vacancy pursuant to the provisions of section 372.13, subsection 2.

2. Except in cities where the council has chosen a runoff election in lieu of a primary, following the resignation of a person who was elected by write-in votes, the city clerk shall notify the person who received the next highest number of votes cast for the office that the person may assume the office. If the person accepts the position, the person shall be considered the duly elected officer unless, within ten days after the clerk has given notice, a petition requesting a special election is filed by eligible electors of the city equal in number to twenty-five percent of the number of persons who voted for the office at the election. If the person declines, the person shall do so in writing to the city

clerk within ten days and the office shall be considered vacant at the end of the term. The vacancy shall be filled pursuant to the provisions of section 372.13, subsection 2. If the council chooses to appoint, the appointment may be made before the end of the current term.

3. In city primary elections any person who receives write-in votes shall execute an affidavit in substantially the form required by section 45.3, and file it with the county commissioner of elections or the city clerk not later than five o'clock p.m. on the day after the canvass of the primary election. If any person who received write-in votes fails to file the affidavit at the time required, the county commissioner shall disregard the write-in votes cast for that person. A notation shall be made on the abstract of votes showing which persons who received write-in votes filed affidavits. The total number of votes cast for each office on the ballot shall be amended by subtracting the write-in votes of those candidates who failed to file the affidavit. It is not necessary for a candidate whose name was printed upon the ballot to file an affidavit. Of the remaining candidates, those who receive the highest number of votes to the extent of twice the number of unfilled positions shall be placed on the ballot for the regular city election as candidates for that office.

4. In cities in which the city council has chosen a runoff election in lieu of a primary, if a person who was elected by write-in votes chooses not to accept the office by filing a resignation notice with the city clerk or commissioner of elections not later than five o'clock p.m. on the day following the canvass, all remaining persons who received write-in votes and who wish to be considered candidates for the runoff election shall execute an affidavit in substantially the form required by section 45.3 and file it with the county commissioner or the city clerk not later than five o'clock p.m. of the fourth day following the canvass. If a person receiving write-in votes fails to file the affidavit at the time required, the county commissioner of elections shall disregard the write-in votes cast for that person. The abstract of votes shall be amended to show that the person who was declared elected declined the office and a notation shall be made next to the names of those persons who did not file the affidavit. A runoff election shall be held with the

remaining candidates who have the highest number of votes to the extent of twice the number of unfilled positions.

5. In a city in which the council has chosen a runoff election, if no person was declared elected for an office all persons who received write-in votes shall execute an affidavit in substantially the form required by section 45.3 and file it with the county commissioner of elections or the city clerk not later than five o'clock p.m. on the day following the canvass of votes. If any person who received write-in votes fails to file the affidavit the county commissioner of elections shall disregard

the write-in votes cast for that person. The abstract of votes shall be amended to note which of the write-in candidates failed to file the affidavit. A runoff election shall be held with the remaining candidates who have the highest number of votes to the extent of twice the number of unfilled positions.

2007 Acts, ch 59, §18, 19  
2007 amendments to subsections 1 and 2 apply to elections held on or after January 1, 2008; 2007 Acts, ch 59, §19  
Unnumbered paragraphs 1 and 2 amended and editorially designated as subsections 1 and 2  
Unnumbered paragraphs 3 – 5 designated as subsections 3 – 5

## CHAPTER 380

### CITY LEGISLATION

#### **380.4 Majority requirement — tie vote — conflicts of interest.**

Passage of an ordinance, amendment, or resolution requires a majority vote of all of the members of the council, except when the mayor may vote to break a tie vote in a city with an even number of council members, as provided in section 372.4. Passage of a motion requires a majority vote of a quorum of the council. A resolution must be passed to spend public funds in excess of one hundred thousand dollars on a public improvement project, or to accept public improvements and facilities upon their completion. Each council member's vote on a measure must be recorded. A measure which fails to receive sufficient votes for passage shall be considered defeated.

As used in this chapter, "*all of the members of the council*" refers to all of the seats of the council in-

cluding a vacant seat and a seat where the member is absent, but does not include a seat where the council member declines to vote by reason of a conflict of interest.

A measure voted upon is not invalid by reason of a conflict of interest in a member of the council, unless the vote of the member of the council was decisive to passage of the measure. The vote must be computed on the basis of the number of members not disqualified by reason of conflict of interest. However, a majority of all members is required for a quorum. For the purpose of this section, the statement of a council member that the council member declines to vote by reason of conflict of interest is conclusive and must be entered of record.

2007 Acts, ch 144, §14  
Unnumbered paragraph 1 amended

## CHAPTER 384

### CITY FINANCE

#### **384.4 Debt service fund.**

A city shall establish a debt service fund and shall certify taxes to be levied for the debt service fund in the amount necessary to pay:

1. Judgments against the city, except those authorized by state law to be paid from other funds.
2. Interest as it becomes due and the amount necessary to pay, or to create a sinking fund to pay, the principal at maturity of all general obligation bonds issued by the city or to pay, or to create a sinking fund to pay, amounts as due on loans received through the former Iowa community development loan program pursuant to section 15E.120.
3. Payments required to be made from the debt service fund under a lease or lease-purchase

agreement.

4. Payments required to be made from the debt service fund under a loan agreement.

Moneys pledged or available to service general obligation bonds, and received from sources other than property taxes, must be deposited in the debt service fund.

If a final judgment is entered against a city with a population of five hundred or less for an amount in excess of eighty-eight thousand dollars over and above what is covered by liability insurance, such city may spread the budgeting and payment of that portion not covered by insurance over a period of time not to exceed ten years. Interest shall be paid by the city on the unpaid balance. This paragraph shall only apply to final judgments entered

but not fully satisfied prior to March 25, 1976.

2007 Acts, ch 22, §72  
Subsection 2 amended

### 384.16 City budget.

Annually, a city shall prepare and adopt a budget, and shall certify taxes as follows:

1. A budget must be prepared for at least the following fiscal year. When required by rules of the committee, a tentative budget must be prepared for one or two ensuing years. A proposed budget must show estimates of the following:

- a. Expenditures for each program.
- b. Income from sources other than property taxation.
- c. Amount to be raised by property taxation, and the property tax rate expressed in dollars per one thousand dollars assessed valuation.

A budget must show comparisons between the estimated expenditures in each program in the following year, the latest estimated expenditures in each program in the current year, and the actual expenditures in each program from the annual report as provided in section 384.22, or as corrected by a subsequent audit report. Wherever practicable, as provided in rules of the committee, a budget must show comparisons between the levels of service provided by each program as estimated for the following year, and actual levels of service provided by each program during the two preceding years. For each city that has established an urban renewal area, the budget shall include estimated and actual tax increment financing revenues and all estimated and actual expenditures of the revenues, proceeds from debt and all estimated and actual expenditures of the debt proceeds, and identification of any entity receiving a direct payment of taxes funded by tax increment financing revenues and shall include the total amount of loans, advances, indebtedness, or bonds outstanding at the close of the most recently ended fiscal year, which qualify for payment from the special fund created in section 403.19, including interest negotiated on such loans, advances, indebtedness, or bonds. For purposes of this subsection, "indebtedness" includes written agreements whereby the city agrees to suspend, abate, exempt, rebate, refund, or reimburse property taxes, provide a grant for property taxes paid, or make a direct payment of taxes, with moneys in the special fund. The amount of loans, advances, indebtedness, or bonds shall be listed in the aggregate for each city reporting. The city finance committee, in consultation with the department of management and the legislative services agency, shall determine reporting criteria and shall prepare a form for reports filed with the department pursuant to this section. The department shall make the information available by electronic means.

2. Not less than twenty days before the date that a budget must be certified to the county audi-

tor and not less than ten days before the date set for the hearing, the clerk shall make available a sufficient number of copies of the detailed budget to meet the requests of taxpayers and organizations, and have them available for distribution at the offices of the mayor and clerk and at the city library, if any, or have a copy posted at one of the three places designated by ordinance for posting notices if there is no library.

3. The council shall set a time and place for public hearing on the budget before the final certification date and shall publish notice of the hearing not less than ten nor more than twenty days before the hearing in a newspaper published at least once weekly and having general circulation in the city. However, if the city has a population of two hundred or less, publication may be made by posting in three public places in the city. A summary of the proposed budget shall be included in the notice. Proof of publication must be filed with the county auditor. The department of management shall prescribe the form for the public hearing notice for use by cities.

4. At the hearing, any resident or taxpayer of the city may present to the council objections to any part of the budget for the following fiscal year or arguments in favor of any part of the budget.

5. After the hearing, the council shall adopt by resolution a budget for at least the next fiscal year, and the clerk shall certify the necessary tax levy for the next fiscal year to the county auditor and the county board of supervisors. The tax levy certified may be less than but not more than the amount estimated in the proposed budget submitted at the final hearing, unless an additional tax levy is approved at a city election. Two copies each of the detailed budget as adopted and of the tax certificate must be transmitted to the county auditor, who shall complete the certificates and transmit a copy of each to the department of management.

6. Taxes levied by a city whose budget is certified after March 15 shall be limited to the prior year's budget amount. However, this penalty may be waived by the director of the department of management if the city demonstrates that the March 15 deadline was missed because of circumstances beyond the control of the city.

7. A city that does not submit a budget in compliance with this section shall have all state funds withheld until a budget that is in compliance with this section is filed with the county auditor and subsequently received by the department of management. The department of management shall send notice to state agencies responsible for disbursement of state funds and that notice is sufficient authorization for those funds to be withheld until later notice is given by the department of management to release those funds.

2007 Acts, ch 186, §4  
Subsection 1, unnumbered paragraph 2 amended

**384.20 Separate accounts.**

1. A city shall keep separate accounts corresponding to the programs and items in its adopted or amended budget, as recommended by the committee.

2. A city shall keep accounts which show an accurate and detailed statement of all public funds collected, received, or expended for any city purpose, by any city officer, employee, or other person, and which show the receipt, use, and disposition of all city property. Public moneys may not be expended or encumbered except under an annual or continuing appropriation.

3. *“Continuing appropriation”* means the unexpended portion of the cost of public improvements, as defined in section 26.2, which cost was adopted through a public hearing pursuant to section 26.12 and was included in an adopted or amended budget of a city. A continuing appropriation does not expire at the conclusion of a fiscal year. A continuing appropriation continues until the public improvement is completed, but expenditures under the continuing appropriation shall not exceed the resources available for paying for the public improvement.

2007 Acts, ch 144, §15  
Unnumbered paragraphs 1 and 2 editorially designated as subsections 1 and 2  
Unnumbered paragraph 3 amended and editorially designated as subsection 3

**384.23 Construction of words “and” and “or”.**

As used in divisions III to V of this chapter, the use of the conjunctive *“and”* includes the disjunctive *“or”* and the use of the disjunctive *“or”* includes the conjunctive *“and”*, unless the context clearly indicates otherwise.

2007 Acts, ch 144, §16  
Section amended

**384.37 Definitions.**

As used in this division, unless the context otherwise requires:

1. *“Abutting lot”* means a lot which abuts or joins the street in which the public improvement is located or which abuts the right-of-way of the public improvement.

2. *“Adjacent lot”* means a lot within the district which does not abut upon the street or right-of-way of the public improvement.

3. *“Construction”* includes materials, labor, acts, operations and services necessary to complete a public improvement.

4. *“District”* means the lots or parts of lots within boundaries established by the council for the purpose of the assessment of the cost of a public improvement.

5. *“Engineer”* means a professional engineer, licensed in the state of Iowa, authorized by the council to render services in connection with the

public improvement.

6. *“Final grade”* means the grade to which the public improvement is proposed to be constructed or repaired as shown on the final plans adopted by the council.

7. *“Grade”* means the longitudinal reference lines, as established by ordinance of the council, which designate the elevations at which a street or sidewalk is to be built.

8. *“Gravel”* includes gravel, crushed rock, cinders, shale and similar materials suitable for street construction or repair.

9. *“Lateral sewer”* means a sewer which contributes sewage, or surface or groundwater from a local area to a main sewer or outlet.

10. *“Lot”* means a parcel of land under one ownership, including improvements, against which a separate assessment is made. Two or more contiguous parcels under common ownership may be treated as one lot for purposes of this division if the parcels bear common improvements or if the council finds that the parcels have been assembled into a single unit for the purpose of use or development.

11. *“Main sewer”* means a sewer which serves as an outlet for two or more lateral sewers, and which is commonly referred to as an intercepting sewer, outfall sewer or trunk sewer.

12. *“Oil”* means any asphaltic or bituminous material suitable for street construction or repair.

13. *“Parking facilities”* means parking lots or other off-street areas for the parking of vehicles, including areas below or above the surface of streets.

14. *“Paving”* means any kind of hard street surface, including, but not limited to, concrete, bituminous concrete, brick, stabilized gravel, or combinations of these, together with or without curb and gutter.

15. *“Private property”* means all property within the district except streets.

16. *“Property owner”* or *“owner”* means the owner or owners of property, as shown by the transfer books in the office of the county auditor of the county in which the property is located.

17. *“Proposal”* means a legal bid on work advertised for a public improvement under chapter 26.

18. *“Publication”* means public notice given in the manner provided in section 362.3.

19. *“Public improvement”* includes the principal structures, works, component parts and accessories of any of the following:

- a. Sanitary, storm and combined sewers.
- b. Drainage conduits, channels and levees.
- c. Street grading, paving, graveling, macadamizing, curbing, guttering, and surfacing with oil, oil and gravel or chloride.
- d. Street lighting fixtures, connections and facilities.

e. Sewage pumping stations, and disposal and treatment plants.

f. Underground gas, water, heating, sewer and electrical connections located in streets for private property.

g. Sidewalks and pedestrian underpasses or overpasses.

h. Drives and driveway approaches located within the public right-of-way.

i. Waterworks, water mains and extensions.

j. Plazas, arcades and malls.

k. Parking facilities.

l. Removal of diseased or dead trees from any public place, publicly owned right-of-way or private property.

m. Traffic-control devices, fixtures, connections, and facilities.

20. “*Railways*” means all railways except street railways.

21. “*Repair*” includes materials, labor, acts, operations and services necessary for the repair, reconstruction, reconstruction by widening or resurfacing of a public improvement.

22. “*Sewer*” means structures designed, constructed and used for the purpose of controlling or carrying off streams, surface waters, waste or sanitary sewage.

23. “*Sewer systems*” are composed of the main sewers, sewage pumping stations, treatment and disposal plants, lateral sewers, drainage conduits or channels and sewer connections in public streets for private property.

24. “*Street*” means a public street, highway, boulevard, avenue, alley, parkway, public place, plaza, mall or publicly owned right-of-way or easement within the limits of the city.

25. “*Street improvement*” means the construction or repair of a street by grading, paving, curbing, guttering, and surfacing with oil, oil and gravel, or chloride, and street lighting fixtures, connections and facilities.

26. “*Total cost*” or “*cost*” of a public improvement includes the cost of engineering, preliminary reports, property valuations, estimates, plans, specifications, notices, legal services, acquisition of land, consequential damages or costs, easements, rights of way, construction, repair, supervision, inspection, testing, notices and publication, interest during construction and for not more than six months thereafter, and printing and sale of bonds.

2007 Acts, ch 126, §61; 2007 Acts, ch 144, §17  
Subsections 5 and 17 amended

### 384.53 Procedures to let contract.

Contract letting procedures shall be as provided in chapter 26. The council may award any number of contracts for construction of any public improvement.

2007 Acts, ch 144, §18  
Section amended

### 384.94 Prior projects preserved.

Projects and proceedings for the issuance of revenue bonds, pledge orders, and other temporary obligations commenced before the effective date of the city code may be consummated and completed as required or permitted by any statute or other law amended or repealed by 1972 Iowa Acts, ch. 1088, as though such repeal or amendment had not occurred, and the rights, duties, and interests flowing from such projects and proceedings remain valid and enforceable. Without limiting the foregoing, projects commenced prior to said effective date may be financed by the issuance of revenue bonds, pledge orders, and other temporary obligations under any such amended or repealed law or by the issuance of revenue bonds and pledge orders under the city code. For purposes of this section, commencement of a project includes, but is not limited to, action taken by the governing body or authorized officer to fix a date for either a hearing or an election in connection with any part of the project, and commencement of proceedings for the issuance of revenue bonds, pledge orders, and other temporary obligations includes, but is not limited to, action taken by the governing body to fix a date for either a hearing or a sale in connection with any part of such revenue bonds, pledge orders, or other temporary obligations or to order any part thereof to be issued.

2007 Acts, ch 22, §73  
Section amended

### 384.103 Bonds authorized — emergency repairs.

1. A governing body may authorize, sell, issue, and deliver its bonds whether or not notice and hearing on the plans, specifications, form of contract, and estimated cost for the public improvement to be paid for in whole or in part from the proceeds of said bonds has been given, and whether or not a contract has been awarded for the construction of the improvement. This subsection does not apply to bonds which are payable solely from special assessment levies against benefited property.

2. When emergency repair of a public improvement is necessary and the delay of advertising and a public letting might cause serious loss or injury to the city, the governing body shall, by resolution, make a finding of the necessity to institute emergency proceedings under this section, and shall procure a certificate from a competent licensed professional engineer or registered architect, not in the regular employ of the city, certifying that emergency repairs are necessary.

In that event the governing body may contract for emergency repairs without holding a public hearing and advertising for bids, and the provisions of chapter 26 do not apply.

2007 Acts, ch 126, §62  
Analogous provision, §73A.19  
Subsection 2, unnumbered paragraph 1 amended

## CHAPTER 386

### SELF-SUPPORTED MUNICIPAL IMPROVEMENT DISTRICTS

#### 386.6 Improvements.

When a city proposes to construct an improvement the cost of which is to be paid or financed under the provisions of this chapter, it must do so in accordance with the provisions of this section, as follows:

1. The council shall initiate proceedings for a proposed improvement upon receipt of a petition signed by at least twenty-five percent of all owners of property within the district representing ownership of property with an assessed value of twenty-five percent or more of the assessed value of all the property in the district.

2. Upon the receipt of such a petition the council shall notify the city planning commission, if one exists, the metropolitan or regional planning commission, if one exists, or the zoning commission, if one exists, in the order set forth in section 386.3, subsection 3. Upon notification by the council, the commission shall prepare an evaluative report for the council on the merit and feasibility of the improvement and carry out all other duties as set forth in section 386.3, subsection 3. If no planning or zoning commission exists, the council shall call a hearing on a proposed improvement upon receipt of a petition.

3. Upon the receipt of the commission's report the council shall set a time and place of meeting at which the council proposes to take action on the proposed improvement and shall publish and mail notice as provided in section 386.3, subsections 4 and 5.

4. The notice must include a statement that an improvement has been proposed, the nature of the improvement, the source of payment of the cost of the improvement, and the time and place of hearing.

5. At the time and place set in the notice the council shall hear all owners of property in the district or residents of the city desiring to express their views. The council must wait at least thirty days after the public hearing has been held before it may take action to order construction of the improvement. The provisions of section 386.3, subsections 7 and 9 relating to the adoption of the ordinance establishing a district, the requisite vote therefor, the remonstrance thereto and the withdrawal of the entire matter from council consideration apply to the adoption of the resolution ordering the construction of the improvement.

6. If the council orders the construction of the improvement, it shall proceed to let contracts therefor in accordance with chapter 26.

7. The adoption of a resolution ordering the construction of an improvement is a legislative de-

termination that the proposed improvement is in furtherance of the purposes of the district and that all property in the district will be affected by the construction of the improvement, or that all owners of property in the district have an interest in the construction of the improvement.

8. Any resident or property owner of the city may appeal the action or decisions of the council ordering the construction of the improvement to the district court of the county in which any part of the district is located within thirty days after the adoption of the resolution ordering construction of the improvement, but the action and decisions of the council are final and conclusive unless the court finds that the council exceeded its authority. No action may be brought questioning the regularity of the proceedings pertaining to the ordering of the construction of an improvement, or the right of the city to apply moneys in the capital improvement fund referred to in this chapter to the payment of the costs of the improvement, or the right of the city to issue bonds referred to in this chapter for the payment of the costs of the improvement, or the right of the city to levy taxes which with any other taxes authorized by this chapter do not exceed the maximum rate of tax that may be imposed upon property within the district for the payment of principal of and interest on bonds issued to pay the costs of the improvement, after thirty days from the date of adoption of the resolution ordering construction of the improvement.

9. The procedural steps contained in this section may be combined with the procedural steps for the petitioning and creation of the district or the procedural steps for the authorization of any tax or any combination thereof.

2007 Acts, ch 144, §19  
Subsection 6 amended

#### 386.7 Self-liquidating improvements.

When a city proposes to construct a self-liquidating improvement, the cost of which is to be paid or financed under the provisions of this chapter, it must do so in accordance with the provisions of this section as follows:

1. Section 386.6, subsections 1 to 5 are applicable to a self-liquidating improvement to the same extent as they are applicable to an improvement and the proceedings initiating a self-liquidating improvement shall be governed thereby.

2. Before the council may order the construction of a self-liquidating improvement, and after hearing thereon, it must find that the self-liquidating improvement and the leasing of a part or

the whole of it to any person or governmental body will further the corporate purposes of the city and will:

*a.* Aid in the commercial development of the district.

*b.* Further the interests of the district; or

*c.* Not substantially reduce the city's property tax base.

3. If the council orders the construction of the self-liquidating improvement, contracts for it shall be let in accordance with chapter 26.

4. The adoption of a resolution ordering the construction of a self-liquidating improvement is a legislative determination that the proposed self-liquidating improvement and the leasing of a part or the whole of it to any person or governmental body will further the corporate purposes of the city and will:

*a.* Aid in the commercial development of the district.

*b.* Further the interests of the district; or

*c.* Not substantially reduce the city's property tax base.

5. A city may lease any or all of a self-liquidating improvement to any person or governmental body.

6. A city may issue revenue bonds payable from the income and receipts derived from the self-liquidated improvement. Chapter 384, division V applies to revenue bonds for self-liquidating improvements and the term "*city enterprise*" as used in that division shall be deemed to include self-liquidating improvements authorized by this chapter.

7. Any resident or property owner of the city may appeal a decision of the council to order the construction of a self-liquidating improvement or to lease any or all of a self-liquidating improvement to the district court of the county in which any part of the district is located, within thirty days after the adoption of the resolution ordering the self-liquidating improvement, but the action of the council is final and conclusive unless the court finds that the council exceeded its authority.

8. No action may be brought questioning the regularity of the proceedings pertaining to the ordering of the construction of a self-liquidating improvement after thirty days from the date of adoption of the resolution ordering construction of the self-liquidating improvement. No action may be brought questioning the regularity of the proceedings pertaining to the leasing of any or all of a self-liquidating improvement after thirty days from the date of the adoption of a resolution approving the proposed lease. In addition to the limitation contained in section 384.92, no action may be brought which questions the legality of revenue bonds or the power of the city to issue revenue bonds or the effectiveness of any proceedings relating to the authorization and issuance of revenue bonds relating to a self-liquidating improvement after thirty days from the time the bonds are ordered issued by the city.

9. The procedural steps contained in this section may be combined with the procedural steps for the petitioning and creation of the district.

2007 Acts, ch 144, §20  
Subsection 3 amended

## CHAPTER 388

### CITY UTILITIES

#### 388.2 Submission to voters.

1. *a.* The proposal of a city to establish, acquire, lease, or dispose of a city utility, except a sanitary sewage or storm water drainage system, in order to undertake or to discontinue the operation of the city utility, or the proposal to establish or dissolve a combined utility system, or the proposal to establish or discontinue a utility board, is subject to the approval of the voters of the city, except that a board may be discontinued by resolution of the council when the city utility, city utilities, or combined utility system it administers is disposed of or leased for a period of over five years.

*b.* Upon the council's own motion, the proposal may be submitted to the voters at the general election, the regular city election, or at a special election called for that purpose. Upon receipt of a valid petition as defined in section 362.4, requesting that a proposal be submitted to the voters, the council shall submit the proposal at the next regu-

lar city election.

*c.* If the special election is to establish a gas or electric utility pursuant to this section, or if such a proposal is to be included on the ballot at the regular city or general election, the mayor or council shall give notice as required by section 376.1 to the county commissioner of elections and to any utility whose property would be affected by such election not less than sixty days before the proposed date of the special, regular city, or general election.

*d.* A proposal for the establishment of a utility board must specify a board of either three or five members.

2. *a.* If a majority of those voting for and against the proposal approves the proposal, the city may proceed as proposed.

*b.* If a majority of those voting for and against the proposal does not approve the proposal, the same or a similar proposal may not be submitted to the voters of the city for at least four years from

the date of the election at which the proposal was defeated.

2007 Acts, ch 215, §109, 110  
 Unnumbered paragraph 1 editorially designated as subsection 1, paragraph a  
 Unnumbered paragraph 2 amended and editorially designated as para-

graph b of subsection 1  
 Subsection 1, NEW paragraph c  
 Former unnumbered paragraph 3 editorially designated as paragraph d of subsection 1  
 Former unnumbered paragraphs 4 and 5 editorially designated as subsection 2, paragraphs a and b

## CHAPTER 400

### CIVIL SERVICE

#### 400.1 Appointment of commission.

1. In cities having a population of eight thousand or over and having a paid fire department or a paid police department, the mayor, one year after a regular city election, with the approval of the council, shall appoint three civil service commissioners who shall hold office, one until the first Monday in April of the second year, one until the first Monday in April of the third year, and one until the first Monday in April of the fourth year after such appointment, whose successors shall be appointed for a term of four years. In cities having a population of more than seventy thousand, the city council may establish, by ordinance, the number of civil service commissioners at not less than three.

2. For the purpose of determining the population of a city under this chapter, the federal census conducted in 1980 shall be used.

2007 Acts, ch 127, §1  
 Section amended

#### 400.8 Original entrance examination — appointments.

1. The commission, when necessary under the rules, including minimum and maximum age limits, which shall be prescribed and published in advance by the commission and posted in the city hall, shall hold examinations for the purpose of determining the qualifications of applicants for positions under civil service, other than promotions, which examinations shall be practical in character and shall relate to matters which will fairly test the mental and physical ability of the applicant to discharge the duties of the position to which the applicant seeks appointment. The physical examination of applicants for appointment to the positions of police officer, police matron, or fire fighter shall be held in accordance with medical protocols established by the board of trustees of the fire and police retirement system established by section 411.5 and shall be conducted in accordance with the directives of the board of trustees. However, the prohibitions of section 216.6, subsection 1, paragraph “d”, regarding tests for the presence of the antibody to the human immunodeficiency virus shall not apply to such examinations. The board of trustees may change the medical protocols at any time the board so determines. The physical examination of an applicant for the position of po-

lice officer, police matron, or fire fighter shall be conducted after a conditional offer of employment has been made to the applicant. An applicant shall not be discriminated against on the basis of height, weight, sex, or race in determining physical or mental ability of the applicant. Reasonable rules relating to strength, agility, and general health of applicants shall be prescribed. The costs of the physical examination required under this subsection shall be paid from the trust and agency fund of the city.

2. The commission shall establish the guidelines for conducting the examinations under subsection 1 of this section. It may prepare and administer the examinations or may hire persons with expertise to do so if the commission approves the examinations. It may also hire persons with expertise to consult in the preparation of such examinations if the persons so hired are employed to aid personnel of the commission in assuring that a fair examination is conducted. A fair examination shall explore the competence of the applicant in the particular field of examination.

3. All appointments to such positions shall be conditional upon a probation period of not to exceed six months, and in the case of police dispatchers and fire fighters a probation period not to exceed twelve months. In the case of police patrol officers, if the employee has successfully completed training at the Iowa law enforcement academy or another training facility certified by the director of the Iowa law enforcement academy before the initial appointment as a police patrol officer, the probationary period shall be for a period of up to nine months and shall commence with the date of initial appointment as a police patrol officer. If the employee has not successfully completed training at the Iowa law enforcement academy or another training facility certified by the director of the law enforcement academy before initial appointment as a police patrol officer, the probationary period shall commence with the date of initial employment as a police patrol officer and shall continue for a period of up to nine months following the date of successful completion of training at the Iowa law enforcement academy or another training facility certified by the director of the Iowa law enforcement academy. A police patrol officer transferring employment from one jurisdiction to an-



other shall be employed subject to a probationary period of up to nine months. However, in cities with a population over one hundred seventy-five thousand, appointments to the position of fire fighter shall be conditional upon a probation period of not to exceed twenty-four months. During the probation period, the appointee may be removed or discharged from such position by the appointing person or body without the right of appeal to the commission. A person removed or discharged during a probationary period shall, at the time of discharge, be given a notice in writing stating the reason or reasons for the dismissal. A copy of such notice shall be promptly filed with the com-

mission. Continuance in the position after the expiration of such probationary period shall constitute a permanent appointment.

For future amendment to subsection 1 effective July 1, 2008, see 2007 Acts, ch 167, §1, 2

Section not amended; footnote added

#### **400.20 Appeal.**

The suspension, demotion, or discharge of a person holding civil service rights may be appealed to the civil service commission within fourteen calendar days after the suspension, demotion, or discharge.

Internal investigations and rights of peace officers and public safety and emergency personnel, see §80F.1

Section not amended; footnote added

## CHAPTER 403

### URBAN RENEWAL

#### **403.19A Withholding agreement — tax credit.**

1. For purposes of this section, unless the context otherwise requires:

*a. "Business"* means any professional services, or industrial enterprise, including medical treatment facilities, manufacturing facilities, corporate headquarters, and research facilities. *"Business"* does not include a retail operation or a business which closes or substantially reduces its operation in one area of this state and relocates substantially the same operation to another area of this state.

*b. "Employee"* means the individual employed in a targeted job that is subject to a withholding agreement.

*c. "Employer"* means a business creating targeted jobs in an urban renewal area of a pilot project city pursuant to a withholding agreement.

*d. "Pilot project city"* means a city that has applied and been approved as a pilot project city pursuant to subsection 2.

*e. "Qualifying investment"* means a capital investment in real property including the purchase price of land and existing buildings, site preparation, building construction, and long-term lease costs. *"Qualifying investment"* also means a capital investment in depreciable assets.

*f. "Targeted job"* means a job in a business which is or will be located in an urban renewal area of a pilot project city that pays a wage at least equal to the countywide average wage. *"Targeted job"* includes new jobs from Iowa business expansions or retentions within the city limits of the pilot project city and those jobs resulting from established out-of-state businesses, as defined by the department of economic development, moving to or expanding in Iowa.

*g. "Withholding agreement"* means the agreement between a pilot project city and an employer

concerning the targeted jobs withholding credit authorized in subsection 3.

2. *a.* An eligible city may apply to the department of economic development to be designated as a pilot project city. An eligible city is a city that contains three or more census tracts and is located in a county meeting one of the following requirements:

- (1) A county that borders Nebraska.
- (2) A county that borders South Dakota.
- (3) A county that borders a state other than Nebraska or South Dakota.

*b.* (1) The department of economic development shall approve four eligible cities as pilot project cities, one pursuant to paragraph "a", subparagraph (1), one pursuant to paragraph "a", subparagraph (2), and two pursuant to paragraph "a", subparagraph (3). If two eligible cities are approved which are located in the same county and the county has a population of less than forty-five thousand, the two approved eligible cities shall be considered one pilot project city. If more than two cities meeting the requirements of paragraph "a", subparagraph (3), apply to be designated as a pilot project city, the department of economic development shall determine which two cities hold the most potential to create new jobs or generate the greatest capital within their areas. Applications from eligible cities filed on or after October 1, 2006, shall not be considered.

(2) If a pilot project city does not enter into a withholding agreement within one year of its approval as a pilot project city, the city shall lose its status as a pilot project city. If two pilot project cities are located in the same county, the loss of status by one pilot project city shall not cause the second pilot project city in the county to lose its status as a pilot project city. Upon such occurrence, the department of economic development shall take applications from other eligible cities to replace

that city. Another city shall be designated within six months.

3. *a.* A pilot project city may provide by ordinance for the deposit into a designated account in the special fund described in section 403.19, subsection 2, of the targeted jobs withholding credit described in this section. The targeted jobs withholding credit shall be based upon the wages paid to employees pursuant to a withholding agreement.

*b.* An amount equal to three percent of the gross wages paid by an employer to each employee under a withholding agreement shall be credited from the payment made by the employer pursuant to section 422.16. If the amount of the withholding by the employer is less than three percent of the gross wages paid to the employees covered by the withholding agreement, the employer shall receive a credit against other withholding taxes due by the employer or may carry the credit forward for up to ten years or until depleted, whichever is the earlier. The employer shall remit the amount of the credit quarterly, in the same manner as withholding payments are reported to the department of revenue, to the pilot project city to be allocated to and when collected paid into a designated account in the special fund for the urban renewal area in which the targeted jobs are located. All amounts so deposited shall be used or pledged by the pilot project city for an urban renewal project related to the employer pursuant to the withholding agreement.

*c.* (1) The pilot project city shall enter into a withholding agreement with each employer concerning the targeted jobs withholding credit. However, an agreement shall not be entered into by a pilot project city with a business currently located in this state unless the business either creates ten new jobs or makes a qualifying investment of at least five hundred thousand dollars within the urban renewal area. The withholding agreement may have a term of up to ten years. An employer shall not be obligated to enter into a withholding agreement.

(2) The pilot project city shall not enter into a withholding agreement after June 30, 2010.

*d.* A withholding agreement shall be disclosed to the public and shall contain but is not limited to all of the following:

(1) A copy of the adopted development agreement plan of the employer.

(2) A list of any other amounts of incentives or assistance the employer may be receiving from other economic development programs, including grants, loans, forgivable loans, and tax credits.

(3) The approval of local participating authorities.

(4) The amount of local incentives or assistance received for each project of the employer.

*e.* (1) The employer shall certify to the department of revenue that the targeted jobs withholding credit is in accordance with the withholding

agreement and shall provide other information the department may require. Notice of any withholding agreement shall be provided promptly to the department of revenue following execution of the agreement by the pilot project city and the employer.

(2) Following termination of the withholding agreement, the employer credits shall cease and any money received by the pilot project city after termination shall be remitted to the treasurer of state to be deposited into the general fund of the state. Notice shall be provided promptly to the department of revenue following termination.

*f.* If the employer ceases to meet the requirements of the withholding agreement, the agreement shall be terminated and any withholding tax credits for the benefit of the employer shall cease. However, in regard to the number of new jobs that are to be created, if the employer has met the number of new jobs to be created pursuant to the withholding agreement and subsequently the number of new jobs falls below the required level, the employer shall not be considered as not meeting the new job requirement until eighteen months after the date of the decrease in the number of new jobs created.

*g.* A pilot project city shall certify to the department of revenue the amount of the targeted jobs withholding credit an employer has remitted to the city and shall provide other information the department may require.

*h.* An employee whose wages are subject to a withholding agreement shall receive full credit for the amount withheld as provided in section 422.16.

*i.* An employer may participate in a new jobs credit from withholding under section 260E.5, or a supplemental new jobs credit from withholding under section 15E.197 or under section 15.331, Code 2005, at the same time as the employer is participating in the withholding credit under this section. Notwithstanding any other provision in this section, the new jobs credit from withholding under section 260E.5, and the supplemental new jobs credit from withholding under section 15E.197 or under section 15.331, Code 2005, shall be collected and disbursed prior to the withholding credit under this section.

*j.* A pilot project city that enters into a withholding agreement shall arrange for a match of at least one dollar for each withholding credit dollar received by the city. The local match may come from the pilot project city, a private donor, or the business, or a combination of all three. The local match may be in cash or in kind to be used for the business project.

*k.* At the time of submitting its budget to the department of management, the pilot project city shall submit to the department of management and the department of economic development a description of the activities involving the use of withholding agreements. The description shall in-

clude but is not limited to the following:

(1) The total number of targeted jobs and a breakdown as to those that are Iowa business expansions or retentions within the city limits of the pilot project city and those that are jobs resulting from established out-of-state businesses moving to or expanding in Iowa.

(2) The number of withholding agreements and the amount of withholding credits involved.

(3) The types of businesses that entered into agreements, and the types of businesses that declined the city's proposal to enter into an agreement.

l. The department of economic development in consultation with the department of revenue shall coordinate the pilot project program with the pilot project cities under this section. The department of economic development is authorized to adopt, amend, and repeal rules to implement the pilot project program under this section. The department of economic development shall prepare an annual report for the governor, the general assembly, and the legislative services agency on the pilot

project program. The pilot project program annual report shall include but not be limited to all of the following:

(1) The amount each project received from each state economic development and tax credit program.

(2) The number of new jobs resulting from the pilot program.

(3) The average wage resulting from the pilot project.

(4) An evaluation of the investment made by the state of Iowa, including but not limited to the terms in subparagraphs (1) through (3).

2007 Acts, ch 2, §1, 2; 2007 Acts, ch 126, §63

2007 amendment to subsection 2, paragraph b, applies retroactively to July 1, 2006, for pilot project city applications received prior to October 1, 2006; 2007 Acts, ch 2, §2

Subsection 2, paragraph b amended and editorially designated as subparagraphs (1) and (2)

Subsection 3, paragraphs e, f, and k amended

**403.23 Biennial reporting.** Repealed by 2007 Acts, ch 186, § 28. See § 331.434(1) and § 384.16(1).

## CHAPTER 403A

### MUNICIPAL HOUSING PROJECTS

#### 403A.3 Powers.

Every municipality in addition to other powers conferred by this or any other chapter, shall have power:

1. To prepare, carry out, and operate housing projects and to provide for the construction, reconstruction, improvement, extension, alteration or repair of any housing project or any part thereof.

2. To undertake and carry out studies and analyses of the housing needs and of the meeting of such needs (including data with respect to population and family groups and the distribution thereof according to income groups, the amount and quality of available housing and its distribution according to rentals and sales prices, employment, wages and other factors affecting the local housing needs and the meeting thereof) and to make the results of such studies and analyses available to the public and the building, housing and supply industries; and to engage in research and disseminate information on housing and slum clearance.

3. To arrange or contract for the furnishing by any person or agency, public or private, of services, privileges, works or facilities for, or in connection with, a housing project or the occupants thereof; and (notwithstanding anything to the contrary contained in this chapter or in any other provision of law) to agree to any conditions attached to federal financial assistance relating to the determination of prevailing salaries or wages or payment of

not less than prevailing salaries or wages or compliance with labor standards, in the development or administration of projects, and to include in any contract let in connection with a project, stipulations requiring that the contractor and any subcontractor comply with requirements as to minimum salaries or wages and maximum hours of labor, and comply with any conditions which the federal government may have attached to its financial aid of the project.

4. To lease or rent any dwellings, accommodations, lands, buildings, structures or facilities embraced in any project and (subject to the limitations contained in this chapter with respect to the rental of dwellings in housing projects) to establish and revise the rents or charges therefor; to own, hold and improve real or personal property; to purchase, lease, obtain options upon, acquire by gift, grant, bequest, devise or otherwise any real or personal property or any interest therein; to acquire by the exercise of the power of eminent domain any real property subject to section 403A.20; to sell, lease, exchange, transfer, assign, pledge or dispose of any real or personal property or any interest therein; to insure or provide for the insurance, in any stock or mutual company of any real or personal property or operations of the municipality against any risks or hazards; to procure or agree to the procurement of federal or state government insurance or guarantees of the payment of any bonds or parts thereof issued by a municipi-

pality, including the power to pay premiums on any such insurance.

5. To invest any funds held in connection with a housing project in reserve or sinking funds, or any fund not required for immediate disbursement, in property or securities which banks designated as state depositories may use to secure the deposit of state funds; to redeem its bonds at the redemption price established therein or to purchase its bonds at less than such redemption price, all bonds so redeemed or purchased to be canceled.

6. To determine where slum areas exist or where there is unsafe, insanitary or overcrowded housing; to make studies and recommendations relating to the problem of clearing, replanning and reconstructing of slum areas and the problem of eliminating unsafe, insanitary or overcrowded housing and providing dwelling accommodations for persons of low income; and to co-operate with any state public body in action taken in connection with these problems.

7. To conduct examinations and investigations and to hear testimony and take proof under oath at public or private hearings on any matter material for its information; to administer oaths, issue subpoenas requiring the attendance of witnesses or the production of books and papers and to issue commissions for the examination of witnesses who are outside of the state or unable to attend or excused from attendance; to make available to appropriate agencies (including those charged with

the duty of abating or requiring the correction of nuisances or like conditions or of demolishing unsafe or insanitary structures within its area of operation) its findings and recommendations with regard to any building or property where conditions exist which are dangerous to the public health, morals, safety or welfare.

8. To, within its area of operation, enter into any building or property in any municipal housing area in order to make inspections, surveys, appraisals, soundings or test borings, and to obtain an order for this purpose from a court of competent jurisdiction in the event entry is denied or resisted.

9. To exercise all or any part or combination of powers herein granted. No provision of law with respect to the acquisition, operation or disposition of property by public bodies shall be applicable to a municipality in its operations pursuant to this chapter unless the legislature shall specifically so state.

10. To cooperate with the Iowa finance authority, to participate in any of its programs, to use any of the funds available to the municipality for the uses of this chapter to contribute to such programs in which it participates, and to comply with the provisions of chapter 16 and the rules of the Iowa finance authority promulgated thereunder.

2007 Acts, ch 54, §34  
Subsection 10 amended

## CHAPTER 404A

### PROPERTY REHABILITATION TAX CREDIT

#### **404A.1 Historic preservation and cultural and entertainment district tax credit — eligible property.**

1. A historic preservation and cultural and entertainment district tax credit, subject to the availability of the credit, is granted against the tax imposed under chapter 422, division II, III, or V, or chapter 432, for the rehabilitation of eligible property located in this state as provided in this chapter. Tax credits in excess of tax liabilities shall be refunded or credited as provided in section 404A.4, subsection 3.

2. Eligible property for which a taxpayer may receive the historic preservation and cultural and entertainment district tax credit computed under this chapter includes all of the following:

*a.* Property listed on the national register of historic places or eligible for such listing.

*b.* Property designated as of historic significance to a district listed in the national register of historic places or eligible for such designation.

*c.* Property or district designated a local landmark by a city or county ordinance.

*d.* A barn constructed prior to 1937.

2007 Acts, ch 165, §1, 9  
2007 amendment to subsection 1 applies to historic preservation and cultural and entertainment district tax credits applied for or reserved prior to July 1, 2007; 2007 Acts, ch 165, §9  
Subsection 1 amended

#### **404A.4 Project completion and tax credit certification — credit refund or carryforward.**

1. Upon completion of the rehabilitation project, a certification of completion must be obtained from the state historic preservation office of the department of cultural affairs. A completion certificate shall identify the person claiming the tax credit under this chapter and the rehabilitation costs incurred up to the two years preceding the completion date.

2. After verifying the eligibility for the tax credit, the state historic preservation office, in consultation with the department of economic development, shall issue a historic preservation and cultural and entertainment district tax credit certificate to be attached to the person's tax return.

The tax credit certificate shall contain the taxpayer's name, address, tax identification number, the date of project completion, the amount of credit, other information required by the department of revenue, and a place for the name and tax identification number of a transferee and the amount of the tax credit being transferred.

3. A person receiving a historic preservation and cultural and entertainment district tax credit under this chapter which is in excess of the person's tax liability for the tax year is entitled to a refund. Any credit in excess of the tax liability shall be refunded with interest computed under section 422.25. In lieu of claiming a refund, a taxpayer may elect to have the overpayment shown on the taxpayer's final, completed return credited to the tax liability for the following year.

4. The total amount of tax credits that may be approved for a fiscal year under this chapter shall not exceed ten million dollars in the fiscal year beginning July 1, 2007, fifteen million dollars in the fiscal year beginning July 1, 2008, and twenty million dollars in the fiscal year beginning July 1, 2009, and each fiscal year thereafter. Of the tax credits approved for a fiscal year under this chapter, ten percent of the dollar amount of tax credits shall be allocated for purposes of new projects with qualified costs of five hundred thousand dollars or less, and forty percent of the dollar amount of tax credits shall be allocated for purposes of new projects located in cultural and entertainment districts certified pursuant to section 303.3B or identified in Iowa great places agreements developed pursuant to section 303.3C. Any of the tax credits allocated for projects located in certified cultural and entertainment districts or identified in Iowa great places agreements and for projects with a cost of five hundred thousand dollars or less that are not reserved during a fiscal year shall be applied to reserved tax credits issued in accordance with section 404A.3 in order of original reservation. The department of cultural affairs shall establish by rule the procedures for the application, review, selection, and awarding of certifications of completion. The departments of cultural affairs and revenue shall each adopt rules to jointly administer this subsection and shall provide by rule for the method to be used to determine for which fiscal year the tax credits are available. With the

exception of tax credits issued pursuant to contracts entered into prior to July 1, 2007, tax credits shall not be reserved for more than three years.

5. Tax credit certificates issued under this chapter may be transferred to any person or entity. Within ninety days of transfer, the transferee must submit the transferred tax credit certificate to the department of revenue along with a statement containing the transferee's name, tax identification number, and address, and the denomination that each replacement tax credit certificate is to carry and any other information required by the department of revenue. Within thirty days of receiving the transferred tax credit certificate and the transferee's statement, the department of revenue shall issue one or more replacement tax credit certificates to the transferee. Each replacement certificate must contain the information required under subsection 2 and must have the same expiration date that appeared in the transferred tax credit certificate. Tax credit certificate amounts of less than the minimum amount established by rule of the state historic preservation office shall not be transferable. A tax credit shall not be claimed by a transferee under this chapter until a replacement tax credit certificate identifying the transferee as the proper holder has been issued.

The transferee may use the amount of the tax credit transferred against the taxes imposed under chapter 422, divisions II, III, and V, and chapter 432 for any tax year the original transferor could have claimed the tax credit. Any consideration received for the transfer of the tax credit shall not be included as income under chapter 422, divisions II, III, and V. Any consideration paid for the transfer of the tax credit shall not be deducted from income under chapter 422, divisions II, III, and V.

2007 Acts, ch 165, §2, 3, 9

2003 amendments to subsection 2 and adding subsection 5 take effect May 16, 2003, and apply retroactively for tax years beginning on or after January 1, 2003; 2003 Acts, ch 133, §4

For future repeal of 2003 amendment to subsection 4 effective June 30, 2010, see 2003 Acts, 1st Ex, ch 2, §93

2007 amendments to subsections 3 and 4 apply to historic preservation and cultural and entertainment district tax credits applied for or reserved prior to July 1, 2007; 2007 Acts, ch 165, §9

For provisions relating to reissuance of certain historic preservation and cultural and entertainment district tax credit certificates and modification of reservation date of reserved credits, see 2007 Acts, ch 165, §8, 9

Subsections 3 and 4 amended

## CHAPTER 411

### RETIREMENT SYSTEM FOR POLICE OFFICERS AND FIRE FIGHTERS

#### 411.7 Management of fund.

1. The board of trustees is the trustee of the fire and police retirement fund created in section 411.8 and shall annually establish an investment policy to govern the investment and reinvestment

of the moneys in the fund, subject to the terms, conditions, limitations, and restrictions imposed by subsection 2 and chapter 12F. Subject to like terms, conditions, limitations, and restrictions the system has full power to hold, purchase, sell, as-

sign, transfer, or dispose of any of the securities and investments in which the fund has been invested, as well as of the proceeds of the investments and any moneys belonging to the fund.

2. The secretary of the board of trustees shall invest, in accordance with the investment policy established by the board of trustees, the portion of the fund established in section 411.8 which in the judgment of the board is not needed for current payment of benefits under this chapter in investments authorized in section 97B.7A for moneys in the Iowa public employees' retirement fund.

3. The secretary of the board of trustees is the custodian of the fire and police retirement fund. All payments from the fund shall be made by the secretary only upon vouchers signed by two persons designated by the board of trustees. The system may select master custodian banks to provide custody of the assets of the retirement system.

4. A member or employee of the board of trustees shall not have any direct interest in the gains or profits of any investment made by the board of

trustees, other than as a member of the system. A trustee shall not receive any pay or emolument for the trustee's services except as secretary. A member or employee of the board of trustees shall not directly or indirectly for the trustee or employee or as an agent in any manner use the assets of the retirement system except to make current and necessary payments as authorized by the board of trustees, nor shall any trustee or employee of the system become an endorser or surety or become in any manner an obligor for moneys loaned by or borrowed from the system.

5. Except as otherwise provided in section 411.36, a member, employee, and the secretary of the board of trustees shall not be personally liable for a loss to the fire and police retirement fund, the loss shall be assessed against the fire and police retirement fund, and moneys are hereby appropriated from the fund in an amount sufficient to cover the losses.

2007 Acts, ch 39, §12  
Subsection 1 amended

## CHAPTER 414

### CITY ZONING

#### 414.32 Home and community-based services waiver recipient residence.

1. A city, city council, or city zoning commission shall consider the residence of the recipient of services under a home and community-based services waiver as a residential use of property for the purposes of zoning and shall treat the use of the residence as a permitted use in all residential zones or districts, including all single-family residential zones or districts, of the city.

2. A city, city council, or city zoning commission shall not require that the recipient, or owner of such residence if other than the recipient, obtain a conditional use permit, special use permit, special exception, or variance. A city, city council, or city zoning commission shall not establish limitations regarding the proximity of one such residence to another.

3. This section applies to the residence of a re-

ipient of services under a home and community-based services waiver if the residence meets any of the following conditions:

a. The residence is a single-family dwelling owned or rented by the recipient.

b. The residence is a multifamily dwelling which does not hold itself out to the public as a community-based residential provider otherwise regulated by law, including but not limited to a residential care facility, and which provides dwelling units to no more than four recipients of services under a home and community-based services waiver at any one time.

4. For the purposes of this section, "home and community-based services waiver" means "waiver" as defined in section 249A.29.

2007 Acts, ch 218, §131, 132  
Similar provision, see §335.34  
NEW section

## CHAPTER 421

### DEPARTMENT OF REVENUE

#### 421.1A Property assessment appeal board.

1. A statewide property assessment appeal board is created for the purpose of establishing a consistent, fair, and equitable property assessment appeal process. The statewide property as-

essment appeal board is established within the department of revenue for administrative and budgetary purposes. The board's principal office shall be in the office of the department of revenue in the capital of the state.

2. a. The property assessment appeal board

shall consist of three members appointed to staggered six-year terms, beginning and ending as provided in section 69.19, by the governor and subject to confirmation by the senate. Subject to confirmation by the senate, the governor shall appoint from the members a chairperson of the board to a two-year term. Vacancies on the board shall be filled for the unexpired portion of the term in the same manner as regular appointments are made. The term of office for the initial board shall begin January 1, 2007.

*b.* Each member of the property assessment appeal board shall be qualified by virtue of at least two years' experience in the area of government, corporate, or private practice relating to property appraisal and property tax administration. One member of the board shall be a certified real estate appraiser or hold a professional appraisal designation, one member shall be an attorney practicing in the area of state and local taxation or property tax appraisals, and one member shall be a professional with experience in the field of accounting or finance and with experience in state and local taxation matters. No more than two members of the board may be from the same political party as that term is defined in section 43.2.

*c.* The property assessment appeal board shall organize by appointing a secretary who shall take the same oath of office as the members of the board. The board may employ additional personnel as it finds necessary. All personnel employed by the board shall be considered state employees and are subject to the merit system provisions of chapter 8A, subchapter IV.

3. At the election of a property owner or aggrieved taxpayer or an appellant described in section 441.42, the property assessment appeal board shall review any final decision, finding, ruling, determination, or order of a local board of review relating to protests of an assessment, valuation, or application of an equalization order.

4. The property assessment appeal board may do all of the following:

*a.* Affirm, reverse, or modify a final decision, finding, ruling, determination, or order of a local board of review.

*b.* Order the payment or refund of property taxes in a matter over which the board has jurisdiction.

*c.* Grant other relief or issue writs, orders, or directives that the board deems necessary or appropriate in the process of disposing of a matter over which the board has jurisdiction.

*d.* Subpoena documents and witnesses and administer oaths.

*e.* Adopt administrative rules pursuant to chapter 17A for the administration and implementation of its powers, including rules for practice and procedure for protests filed with the board, the manner in which hearings on appeals of assessments shall be conducted, filing fees to be imposed by the board, and for the determination

of the correct assessment of property which is the subject of an appeal.

*f.* Adopt administrative rules pursuant to chapter 17A necessary for the preservation of order and the regulation of proceedings before the board, including forms or notice and the service thereof, which rules shall conform as nearly as possible to those in use in the courts of this state.

5. The property assessment appeal board shall employ a competent attorney to serve as its general counsel, and assistants to the general counsel as it finds necessary for the full and efficient discharge of its duties. The general counsel is the attorney for, and legal advisor of, the board. The general counsel or an assistant to the general counsel shall provide the necessary legal advice to the board in all matters and shall represent the board in all actions instituted in a court challenging the validity of a rule or order of the board. The general counsel shall devote full time to the duties of the office. During employment as general counsel to the board, the counsel shall not be a member of a political committee, contribute to a political campaign, participate in a political campaign, or be a candidate for partisan political office. The general counsel and assistants to the general counsel shall be considered state employees and are subject to the merit system provisions of chapter 8A, subchapter IV.

6. The members of the property assessment appeal board shall receive compensation from the state commensurate with the salary of a district judge through December 31, 2013. The members of the board shall be considered state employees for purposes of salary and benefits. The members of the board and any employees of the board, when required to travel in the discharge of official duties, shall be paid their actual and necessary expenses incurred in the performance of duties.

7. *a.* Effective January 1, 2012, a property assessment appeal board review committee is established. Staffing assistance to the committee shall be provided by the department of revenue. The committee shall consist of six members of the general assembly, two appointed by the majority leader of the senate, one appointed by the minority leader of the senate, two appointed by the speaker of the house of representatives, and one appointed by the minority leader of the house of representatives; the director of revenue or the director's designee; a county assessor appointed by the Iowa state association of counties; and a city assessor appointed by the Iowa league of cities.

*b.* The property assessment appeal board review committee shall review the activities of the property assessment appeal board since its inception. The review committee may recommend the revision of any rules, regulations, directives, or forms relating to the activities of the property assessment appeal board.

*c.* The review committee shall report to the general assembly by January 15, 2013. The report

shall include any recommended changes in laws relating to the property assessment appeal board, the reasons for the committee's recommendations, and any other information the committee deems advisable.

2007 Acts, ch 215, §27  
Confirmation, see §2.32  
For future repeal of this section effective July 1, 2013, see 2005 Acts, ch 150, §134  
Subsection 6 amended

#### 421.9 Duties and powers — office.

1. The director of revenue or a designated deputy shall sign on behalf of the department all orders, subpoenas, warrants, and other documents of like character issued by the department.

2. The office of the department shall be maintained at the seat of government in this state. The department shall be deemed to be in continuous session and open for the transaction of business except Saturdays, Sundays, and legal holidays. The director of revenue may hold sessions in conducting investigations any place within the state when necessary to facilitate and render more thorough the performance of the director's duties.

3. The director may make application to the district court or judicial magistrate in the county where the books, records, or assets are located for an administrative search warrant as authorized by section 808.14, to ensure equitable administration of state tax law, if any of the following occurs:

a. A person refuses to allow the director or the director's authorized representative to audit the person's books or records or to inspect or value the person's assets.

b. The director has good and sufficient reason to believe that a person will not allow the department to audit books or records or inspect or value assets or to believe that the person will destroy books or records or secrete or transfer assets.

4. Immediately upon issuance of a distress warrant authorized by section 422.26, the director may make application to the district court or judicial magistrate for an administrative search warrant as authorized by section 808.14 to execute the distress warrant.

2007 Acts, ch 126, §64  
Subsection 3, unnumbered paragraph 2 redesignated as subsection 4

#### 421.17A Administrative levy against accounts.

1. *Definitions.* As used in this section, unless the context otherwise requires:

a. "*Account*" means "account" as defined in section 524.103, "share account or shares" as defined in section 534.102, or the savings or deposits of a member received or being held by a credit union, or certificates of deposit. "*Account*" also includes deposits held by an agent, a broker-dealer, or an issuer as defined in section 502.102. However, "*account*" does not include amounts held by a financial institution as collateral for loans extended by the financial institution.

b. "*Bank*" means "bank", "insured bank", and "state bank" as these are defined in section 524.103.

c. "*Credit union*" means "credit union" as defined in section 533.102.

d. "*Facility*" means the centralized debt collection facility of the department of revenue established pursuant to section 421.17, subsection 27.

e. "*Financial institution*" includes a bank, credit union, or savings and loan association. "*Financial institution*" also includes an institution which holds deposits for an agent, broker-dealer, or an issuer as defined in section 502.102.

f. "*Obligor*" means a person who is indebted to the state or a state agency for any delinquent accounts, charges, fees, loans, taxes, or other indebtedness due the state or indebtedness being collected by the state.

g. "*Savings and loan association*" means "association" as defined in section 534.102.

h. "*Working days*" means Monday through Friday, excluding the holidays specified in section 1C.2, subsections 1 through 9.

##### 2. *Purpose and use.*

a. Notwithstanding other statutory provisions which provide for execution, attachment, garnishment, or levy against accounts, the facility may utilize the process established in this section to collect delinquent accounts, charges, fees, loans, taxes, or other indebtedness due the state or being collected by the state provided that any exemptions or exceptions which specifically apply to enforcement of such obligations also apply to this section. Administrative levy under this section is the equivalent of condemning funds under chapter 642. It is expressly provided that these remedies shall be cumulative and that no action taken by the director or attorney general shall be construed to be an election on the part of the state or any of its officers, employees, or representatives to pursue any other remedy provided by law.

b. An obligor is subject to this section if the obligor's debt is being collected by the facility.

c. Any amount forwarded by a financial institution under this section shall not exceed the delinquent or accrued amount of the obligor's debt being collected by the state.

3. *Notice of intent to obligor.* The facility may proceed under this section only if twenty days' notice has been provided by regular mail to the last known address of the obligor, notifying the obligor that the obligor is subject to this section and of the facility's intention to use the levy process. The twenty days' notice period shall not be required if the facility determines that the collection of past due amounts would be jeopardized.

##### 4. *Verification of accounts and immunity from liability.*

a. The facility may contact a financial institution to obtain verification of the account number, the names and social security numbers listed for



the account, and the account balance of an account held by an obligor. Contact with a financial institution may be by telephone or by written communication. The financial institution may require positive voice recognition and may require the telephone number of the authorized person from the facility before releasing an obligor's account information by telephone.

b. The financial institution is immune from any civil or criminal liability which might otherwise be incurred or imposed for information released by the financial institution to the facility pursuant to this section.

c. The financial institution or the facility is not liable for the cost of any early withdrawal penalty of an obligor's certificate of deposit.

5. *Administrative levy — notice to financial institution.*

a. If an obligor is subject to this section, the facility may initiate an administrative action to levy against an account of the obligor.

b. The facility shall send a notice to the financial institution with which the account is placed, directing that the financial institution forward all or a portion of the moneys in the obligor's account to the facility.

c. The notice to the financial institution shall contain all of the following:

(1) The name and social security number of the obligor.

(2) A statement that the obligor is believed to have an account at the financial institution.

(3) A statement that pursuant to the provisions of this section, the obligor's account is subject to seizure and the financial institution is authorized and required to forward moneys to the facility.

(4) The maximum amount that shall be forwarded by the financial institution, which shall not exceed the delinquent or accrued amount of debt being collected by or owed to the state by the obligor.

(5) The prescribed time frame which the financial institution must meet in forwarding any amounts.

(6) The address of the facility and the account number utilized by the facility for the obligor.

(7) The telephone number of the agent for the facility initiating the action.

6. *Administrative levy — notice of initiation of action to obligor and other account holders.*

a. The facility may administratively initiate an action to seize one or more accounts of an obligor who is subject to this section and section 421.17, subsection 27.

b. The facility shall notify an obligor subject to this section. The notice shall contain all of the following:

(1) The name and social security number of the obligor.

(2) A statement that the obligor is believed to

have an account at the financial institution.

(3) A statement that pursuant to the provisions of this section, the obligor's account is subject to seizure and the financial institution is authorized and required to forward moneys to the facility.

(4) The maximum amount to be forwarded by the financial institution, which shall not exceed the delinquent or accrued amount of debt being collected by or owed to the state by the obligor.

(5) The prescribed time frames the financial institution must meet in forwarding any amounts.

(6) A statement that any challenge to the action must be in writing and must be received by the facility within ten days of the date of the notice to the obligor.

(7) The address of the facility and the account number utilized by the facility for the obligor.

(8) The telephone number of the agent for the facility initiating the action.

c. The facility shall forward the notice of initiation of action to the obligor by regular mail within two working days of sending the notice to the financial institution pursuant to subsection 5, paragraph "b".

d. The facility shall notify any other party known to have an interest in the account. The notice shall contain all of the following:

(1) The name of the obligor.

(2) The name of the financial institution.

(3) A statement that the account in which the other party is known to have an interest is subject to seizure.

(4) A statement that any challenge to the action must be in writing and must be received by the facility within ten days of the date of the notice to the party known to have an interest.

(5) The address of the facility and the name of the obligor who also has an interest in the account.

(6) The telephone number of the agent for the facility initiating the action.

e. The facility shall forward the notice to the other party known to have an interest by regular mail within two working days of sending the notice to the financial institution pursuant to subsection 5, paragraph "b".

7. *Responsibilities of financial institution.* Upon receipt of a notice under subsection 5, paragraph "b", the financial institution shall do all of the following:

a. Immediately encumber funds in any account in which the obligor has an interest to the extent of the debt indicated in the notice from the facility.

b. No sooner than fifteen days, and no later than twenty days from the date the financial institution receives the notice under subsection 5, paragraph "b", unless notified by the facility of a challenge by the obligor or an account holder of interest, forward the moneys encumbered to the facility with the obligor's name and social security

number, the facility's account number for the obligor, and any other information required in the notice.

c. The financial institution may assess a fee against the obligor, not to exceed twenty-five dollars, for forwarding of moneys to the facility. This fee is in addition to the amount owed to or being collected by the state by the obligor. If insufficient moneys are available in the debtor's account to cover the fee and the amount in the notice, the institution may deduct the fee amount prior to forwarding moneys to the facility and the amount credited to the obligor's account with the state shall be reduced by the fee amount.

8. *Challenges to action.*

a. Challenges under this section may be initiated only by an obligor or by an account holder of interest. Reviews by the facility under this section are not subject to chapter 17A.

b. The person challenging the action shall submit a written challenge to the person identified as the agent for the facility in the notice, within ten days of the date of the notice of initiation of the levy.

c. The facility, upon receipt of a written challenge, shall review the facts of the administrative levy with the challenging party within ten days of receipt of the challenge. If the challenging party is not available for the review on the scheduled date, the review shall take place without the challenging party being present. Information in favor of the challenging party shall be considered by the facility in the review. The facility may utilize additional information if such information is available. Only a mistake of fact, including, but not limited to, a mistake in the identity of the obligor or a mistake in the amount owed to or being collected by the state shall be considered as a reason to dismiss or modify the action.

d. If the facility determines that a mistake of fact has occurred, the facility shall proceed as follows:

(1) If a mistake in identity has occurred or the obligor does not have a delinquent or accrued amount being collected by or owed to the state, the facility shall notify the financial institution that the administrative levy has been released. The facility shall provide a copy of the notice to the obligor by regular mail.

(2) If the delinquent or accrued amount being collected by or owed to the state is less than the amount indicated in the notice, the facility shall provide a notice to the financial institution of the revised amount, with a copy of the original notice, and issue a notice to the obligor by regular mail. Upon written receipt of the notice from the facility, the financial institution shall release the funds in excess of the revised amount and forward the revised amount to the facility pursuant to the administrative levy.

e. If the facility finds no mistake of fact, the fa-

cility shall provide a notice to that effect to the challenging party by regular mail and notify the financial institution to forward the moneys pursuant to the administrative levy.

f. The challenging party shall have the right to file an action for wrongful levy in district court within thirty days of the date of the notice in paragraph "e", either in the county where the obligor or the party known to have an interest in the account resides or in Polk county where the facility is located. Actions under this section are in equity and not actions at law.

g. Recovery under this section is limited to restitution of the amount that has been wrongfully encumbered or obtained by the department.

h. A challenge to an administrative action under this subsection cannot be used to extend or reopen the statute of limitations to protest other departmental actions or to contest the amount or validity of the tax. Only issues involving the levy can be raised in a challenge to an administrative action under this subsection.

2007 Acts, ch 174, §93

See also chapter 252I pertaining to collection of child support payments  
Subsection 1, paragraph c amended

#### 421.26 Personal liability for tax due.

If a licensee or other person under section 452A.65, a retailer or purchaser under chapter 423A, 423B, or 423E, or section 423.31 or 423.33, or a retailer or purchaser under section 423.32, a user under section 423.34, or a permit holder or licensee under section 453A.13, 453A.16, or 453A.44 fails to pay a tax under those sections when due, an officer of a corporation or association, notwithstanding sections 490A.601 and 490A.602, a member or manager of a limited liability company, or a partner of a partnership, having control or supervision of or the authority for remitting the tax payments and having a substantial legal or equitable interest in the ownership of the corporation, association, limited liability company, or partnership, who has intentionally failed to pay the tax is personally liable for the payment of the tax, interest, and penalty due and unpaid. However, this section shall not apply to taxes on accounts receivable. The dissolution of a corporation, association, limited liability company, or partnership shall not discharge a person's liability for failure to remit the tax due.

2007 Acts, ch 186, §5

Section amended

#### 421.27 Penalties.

1. *Failure to timely file a return or deposit form.* If a person fails to file with the department on or before the due date a return or deposit form there shall be added to the tax shown due or required to be shown due a penalty of ten percent of the tax shown due or required to be shown due. The penalty, if assessed, shall be waived by the department upon a showing of any of the following

conditions:

*a.* At least ninety percent of the tax required to be shown due has been paid by the due date of the tax.

*b.* Those taxpayers who are required to file quarterly returns, or monthly or semimonthly deposit forms may have one late return or deposit form within a three-year period. The use of any other penalty exception will not count as a late return or deposit form for purposes of this exception.

*c.* The death of a taxpayer, death of a member of the immediate family of the taxpayer, or death of the person directly responsible for filing the return and paying the tax, when the death interferes with timely filing.

*d.* The onset of serious, long-term illness or hospitalization of the taxpayer, of a member of the immediate family of the taxpayer, or of the person directly responsible for filing the return and paying the tax.

*e.* Destruction of records by fire, flood, or other act of God.

*f.* The taxpayer presents proof that the taxpayer relied upon applicable, documented, written advice specifically made to the taxpayer, to the taxpayer's preparer, or to an association representative of the taxpayer from the department, state department of transportation, county treasurer, or federal internal revenue service, whichever is appropriate, that has not been superseded by a court decision, ruling by a quasi-judicial body, or the adoption, amendment, or repeal of a rule or law.

*g.* Reliance upon results in a previous audit was a direct cause for the failure to file where the previous audit expressly and clearly addressed the issue and the previous audit results have not been superseded by a court decision, or the adoption, amendment, or repeal of a rule or law.

*h.* Under rules prescribed by the director, the taxpayer presents documented proof of substantial authority to rely upon a particular position or upon proof that all facts and circumstances are disclosed on a return or deposit form.

*i.* The return, deposit form, or payment is timely, but erroneously, mailed with adequate postage to the internal revenue service, another state agency, or a local government agency and the taxpayer provides proof of timely mailing with adequate postage.

*j.* The tax has been paid by the wrong licensee and the payments were timely remitted to the department for one or more tax periods prior to notification by the department.

*k.* The failure to file was discovered through a sanctioned self-audit program conducted by the department.

*l.* If the availability of funds in payment of tax required to be made through electronic funds transfer is delayed and the delay of availability is due to reasons beyond the control of the taxpayer. "Electronic funds transfer" means any transfer of

funds, other than a transaction originated by check, draft, or similar paper instrument, that is initiated through an electronic terminal telephone, computer, magnetic tape, or similar device for the purpose of ordering, instructing, or authorizing a financial institution to debit or credit an account.

*m.* The failure to file a timely inheritance tax return resulting solely from a disclaimer that required the personal representative to file an inheritance tax return. The penalty shall be waived if such return is filed and any tax due is paid within the later of nine months from the date of death or sixty days from the delivery or filing of the disclaimer pursuant to section 633E.12.

*n.* That an Iowa inheritance tax return is filed for an estate within the later of nine months from the date of death or sixty days from the filing of a disclaimer by the beneficiary of the estate refusing to take the property or right or interest in the property.

*2. Failure to timely pay the tax shown due, or the tax required to be shown due, with the filing of a return or deposit form.* If a person fails to pay the tax shown due or required to be shown due, on a return or deposit form on or before the due date there shall be added to the tax shown due or required to be shown due a penalty of five percent of the tax due. The penalty, if assessed, shall be waived by the department upon a showing of any of the following conditions:

*a.* At least ninety percent of the tax required to be shown due has been paid by the due date of the tax.

*b.* The taxpayer voluntarily files an amended return and pays all tax shown to be due on the return prior to any contact by the department, except under a sanctioned self-audit program conducted by the department.

*c.* The taxpayer provides written notification to the department of a federal audit while it is in progress and voluntarily files an amended return which includes a copy of the federal document showing the final disposition or final federal adjustments within sixty days of the final disposition of the federal government's audit.

*d.* The taxpayer presents proof that the taxpayer relied upon applicable, documented, written advice specifically made to the taxpayer, to the taxpayer's preparer, or to an association representative of the taxpayer from the department, state department of transportation, county treasurer, or federal internal revenue service, whichever is appropriate, that has not been superseded by a court decision, ruling by a quasi-judicial body, or the adoption, amendment, or repeal of a rule or law.

*e.* Reliance upon results in a previous audit was a direct cause for the failure to pay the tax required to be shown due where the previous audit expressly and clearly addressed the issue and the previous audit results have not been superseded

by a court decision, or the adoption, amendment, or repeal of a rule or law.

*f.* Under rules prescribed by the director, the taxpayer presents documented proof of substantial authority to rely upon a particular position or upon proof that all facts and circumstances are disclosed on a return or deposit form.

*g.* The return, deposit form, or payment is timely, but erroneously, mailed with adequate postage to the internal revenue service, another state agency, or a local government agency and the taxpayer provides proof of timely mailing with adequate postage.

*h.* The tax has been paid by the wrong licensee and the payments were timely remitted to the department for one or more tax periods prior to notification by the department.

*i.* That an Iowa inheritance tax return is filed for an estate within the later of nine months from the date of death or sixty days from the filing of a disclaimer by the beneficiary of the estate refusing to take the property or right or interest in the property.

3. *Audit deficiencies.* If any person fails to pay the tax required to be shown due with the filing of a return or deposit and the department discovers the underpayment, there shall be added to the tax required to be shown due a penalty of five percent of the tax required to be shown due. The penalty, if assessed, shall be waived by the department upon a showing of any of the following conditions:

*a.* At least ninety percent of the tax required to be shown due has been paid by the due date.

*b.* The taxpayer presents proof that the taxpayer relied upon applicable, documented, written advice specifically made to the taxpayer, to the taxpayer's preparer, or to an association representative of the taxpayer from the department, state department of transportation, county treasurer, or federal internal revenue service, whichever is appropriate, that has not been superseded by a court decision, ruling by a quasi-judicial body, or the adoption, amendment, or repeal of a rule or law.

*c.* Reliance upon results in a previous audit was a direct cause for the failure to pay the tax shown due or required to be shown due where the previous audit expressly and clearly addressed the issue and the previous audit results have not been superseded by a court decision, or the adoption, amendment, or repeal of a rule or law.

*d.* Under rules prescribed by the director, the taxpayer presents documented proof of substantial authority to rely upon a particular position or upon proof that all facts and circumstances are

disclosed on a return or deposit form.

4. *Willful failure to file or deposit.* In case of willful failure to file a return or deposit form with the intent to evade tax, or in case of willfully filing a false return or deposit form with the intent to evade tax, in lieu of the penalties otherwise provided in this section, a penalty of seventy-five percent shall be added to the amount shown due or required to be shown as tax on the return or deposit form. If penalties are applicable for failure to file a return or deposit form and failure to pay the tax shown due or required to be shown due on the return or deposit form, the penalty provision for failure to file shall be in lieu of the penalty provisions for failure to pay the tax shown due or required to be shown due on the return or deposit form, except in the case of willful failure to file a return or deposit form or willfully filing a false return or deposit form with intent to evade tax.

The penalties imposed under this subsection are not subject to waiver.

5. *Failure to remit on extension.* If a person fails to remit at least ninety percent of the tax required to be shown due by the time an extension for further time to file a return is made, there shall be added to the tax shown due or required to be shown due a penalty of ten percent of the tax due.

6. *Improper receipt of refund or credit.* A person who makes an erroneous application for refund shall be liable for any overpayment received plus interest at the rate in effect under section 421.7. In addition, a person who willfully makes a false or frivolous application for refund with intent to evade tax is guilty of a fraudulent practice and is liable for a penalty equal to seventy-five percent of the refund claimed. Repayments, penalties, and interest due under this subsection may be collected and enforced in the same manner as the tax imposed.

7. *Failure to use required form.* If a person fails to remit payment of taxes in the form required by the rules of the director, there shall be added to the amount of the tax a penalty of five percent of the amount of tax shown due or required to be shown due. The penalty imposed by this subsection shall be waived if the taxpayer did not receive notification of the requirement to remit tax payments electronically or if the electronic transmission of the payment was not in a format or by means specified by the director and the payment was made before the taxpayer was notified of the requirement to remit tax payments electronically.

2007 Acts, ch 134, §1, 28; 2007 Acts, ch 186, §6, 7

2007 amendment adding new paragraph m to subsection 1 applies to estates of decedents dying on or after July 1, 2007; 2007 Acts, ch 134, §28

Subsection 1, NEW paragraphs m and n

Subsection 2, NEW paragraph i

## CHAPTER 421B

## CIGARETTE SALES

**421B.2 Definitions.**

When used in any part of this chapter, the following words, terms and phrases shall have the meaning ascribed to them except where the context clearly indicates a different meaning:

1. *“Basic cost of cigarettes”* shall mean whichever of the two following amounts is lower: (a) the true invoice cost of cigarettes to the wholesaler or retailer, as the case may be, or (b) the lowest replacement cost of cigarettes to the wholesaler or retailer in the quantity last purchased, less, in either case, all trade discounts and customary discounts for cash, plus one-half of the full face value of any stamps which may be required by any cigarette tax act of this state.

2. *“Cigarettes”* shall mean and include any roll for smoking, made wholly or in part of tobacco, irrespective of size or shape and whether or not such tobacco is flavored, adulterated or mixed with any other ingredient, the wrapper or cover of which is made of paper or any other substance or material except tobacco.

3. a. *“Cost to the retailer”* shall mean the basic cost of the cigarettes involved to the retailer plus the cost of doing business by the retailer as defined in this chapter.

b. The cost of doing business by the retailer is presumed to be eight percent of the basic cost of cigarettes in the absence of proof of a lesser or higher cost plus the full face value of any stamps which may be required by any cigarette tax act of this state to the extent not already included in the basic cost of cigarettes.

c. If any retailer in connection with the retailer's purchase of any cigarettes shall receive the discounts ordinarily allowed upon purchases by a retailer and in whole or in part discounts ordinarily allowed upon purchases by a wholesaler, the cost of doing business by the retailer with respect to the said cigarettes shall be, in the absence of proof of a lesser or higher cost of doing business, the sum of the cost of doing business by the retailer and, to the extent that the retailer shall have received the full discounts allowed to a wholesaler, the cost of doing business by a wholesaler as hereinabove defined in subsection 4, paragraph “b”.

4. a. *“Cost to wholesaler”* shall mean the basic cost of the cigarettes plus the cost of doing business by the wholesaler, as defined in this chapter.

b. The cost of doing business by the wholesaler is presumed to be four percent of the basic cost of cigarettes in the absence of proof of a lesser or higher cost, which includes cartage to the retail outlet, plus the full face value of any stamps which may be required by any cigarette tax act of this state to the extent not already included in the ba-

sic cost of cigarettes.

5. *“Person”* shall mean and include any individual, firm, association, company, partnership, corporation, joint stock company, club agency, syndicate, or anyone engaged in the sale of cigarettes.

6. *“Retailer”* means any person who is engaged in this state in the business of selling, or offering to sell, cigarettes at retail.

For purposes of this chapter, a person who does not meet the definition of retailer or wholesaler but who is engaged in the business of selling cigarettes in this state to a retailer or final consumer shall be considered a retailer and subject to the minimum pricing requirements of this chapter.

7. *“Sale”* and *“sell”* shall mean and include any transfer for a consideration, exchange, barter, gift, offer for sale and distribution in any manner or by any means whatsoever.

8. *“Sell at retail”*, *“sale at retail”* and *“retail sales”* shall mean and include any sale or offer for sale for consumption or use made in the ordinary course of trade of the seller's business.

9. *“Sell at wholesale”*, *“sale at wholesale”*, and *“wholesale sales”* shall mean and include any sale or offer for sale made in the course of trade or usual conduct of the wholesaler's business to a retailer for the purpose of resale.

10. *“Wholesaler”* means and includes any person who acquires cigarettes for the purpose of sale to retailers or to other persons for resale, and who maintains an established place of business when any part of the business is the sale of cigarettes at wholesale to persons licensed under this chapter, and where at all times a stock of cigarettes is available to retailers for resale.

2007 Acts, ch 17, §1, 2, 12  
Subsection 3, paragraph b amended  
Subsection 4, paragraph b amended

**421B.3 Sales at less than cost — penalties.**

1. It shall be unlawful for any wholesaler or retailer to offer to sell, or sell, at wholesale or retail, cigarettes at less than cost to such wholesaler or retailer, as the case may be, as defined in this chapter. Any wholesaler or retailer who violates the provisions of this section shall be guilty of a simple misdemeanor.

2. Evidence of advertisement, offering to sell, or sale of cigarettes by any wholesaler or retailer at less than cost to the wholesaler or retailer as defined by this chapter shall be evidence of a violation of this chapter.

3. a. The following civil penalties shall be imposed for a violation of this section:

(1) A two hundred dollar penalty for the first violation.

(2) A five hundred dollar penalty for a second violation within three years of the first violation.

(3) A thousand dollar penalty for a third or subsequent violation within three years of the first violation.

b. Each day the violation occurs counts as a new violation for purposes of this subsection.

c. The civil penalty imposed under this subsection is in addition to the penalty imposed under subsection 1. Penalties collected under this subsection shall be deposited into the general fund of the state.

2007 Acts, ch 186, §32  
NEW subsection 3

## CHAPTER 422

### INDIVIDUAL INCOME, CORPORATE, AND FRANCHISE TAXES

#### 422.3 Definitions controlling chapter.

For the purpose of this chapter and unless otherwise required by the context:

1. “Book”, “list”, “record”, or “schedule” kept by a county auditor, assessor, treasurer, recorder, sheriff, or other county officer means the county system as defined in section 445.1.

2. “Court” means the district court in the county of the taxpayer’s residence.

3. “Department” means the department of revenue.

4. “Director” means the director of revenue.

5. “Internal Revenue Code” means the Internal Revenue Code of 1954, prior to the date of its redesignation as the Internal Revenue Code of 1986 by the Tax Reform Act of 1986, or means the Internal Revenue Code of 1986 as amended to and including January 1, 2007.

6. The word “taxpayer” includes any person, corporation, or fiduciary who is subject to a tax imposed by this chapter.

2007 Acts, ch 12, §3, 7, 8

Internal Revenue Code definition is updated regularly; for applicable definition in a prior tax year, refer to Code for that year

2007 amendment to subsection 5 takes effect March 9, 2007, and applies retroactively to January 1, 2006, for tax years beginning on or after that date; 2007 Acts, ch 12, §7, 8

Subsection 5 amended

#### 422.5 Tax imposed — exclusions — alternative minimum tax.

1. A tax is imposed upon every resident and nonresident of the state which tax shall be levied, collected, and paid annually upon and with respect to the entire taxable income as defined in this division at rates as follows:

a. On all taxable income from zero through one thousand dollars, thirty-six hundredths of one percent.

b. On all taxable income exceeding one thousand dollars but not exceeding two thousand dollars, seventy-two hundredths of one percent.

c. On all taxable income exceeding two thousand dollars but not exceeding four thousand dollars, two and forty-three hundredths percent.

d. On all taxable income exceeding four thousand dollars but not exceeding nine thousand dollars, four and one-half percent.

e. On all taxable income exceeding nine thousand dollars but not exceeding fifteen thousand dollars, six and twelve hundredths percent.

f. On all taxable income exceeding fifteen thousand dollars but not exceeding twenty thousand dollars, six and forty-eight hundredths percent.

g. On all taxable income exceeding twenty thousand dollars but not exceeding thirty thousand dollars, six and eight-tenths percent.

h. On all taxable income exceeding thirty thousand dollars but not exceeding forty-five thousand dollars, seven and ninety-two hundredths percent.

i. On all taxable income exceeding forty-five thousand dollars, eight and ninety-eight hundredths percent.

j. (1) The tax imposed upon the taxable income of a nonresident shall be computed by reducing the amount determined pursuant to paragraphs “a” through “i” by the amounts of nonrefundable credits under this division and by multiplying this resulting amount by a fraction of which the nonresident’s net income allocated to Iowa, as determined in section 422.8, subsection 2, paragraph “a”, is the numerator and the nonresident’s total net income computed under section 422.7 is the denominator. This provision also applies to individuals who are residents of Iowa for less than the entire tax year.

(2) The tax imposed upon the taxable income of a resident shareholder in an S corporation which has in effect for the tax year an election under subchapter S of the Internal Revenue Code and carries on business within and without the state may be computed by reducing the amount determined pursuant to paragraphs “a” through “i” by the amounts of nonrefundable credits under this division and by multiplying this resulting amount by a fraction of which the resident’s net income allocated to Iowa, as determined in section 422.8, subsection 2, paragraph “b”, is the numerator and the resident’s total net income computed under section 422.7 is the denominator. If a resident shareholder has elected to take advantage of this subparagraph, and for the next tax year elects

not to take advantage of this subparagraph, the resident shareholder shall not reelect to take advantage of this subparagraph for the three tax years immediately following the first tax year for which the shareholder elected not to take advantage of this subparagraph, unless the director consents to the reelection. This subparagraph also applies to individuals who are residents of Iowa for less than the entire tax year.

This subparagraph shall not affect the amount of the taxpayer's checkoffs under this division, the credits from tax provided under this division, and the allocation of these credits between spouses if the taxpayers filed separate returns or separately on combined returns.

*k.* There is imposed upon every resident and nonresident of this state, including estates and trusts, the greater of the tax determined in paragraphs "a" through "j" or the state alternative minimum tax equal to seventy-five percent of the maximum state individual income tax rate for the tax year, rounded to the nearest one-tenth of one percent, of the state alternative minimum taxable income of the taxpayer as computed under this paragraph.

The state alternative minimum taxable income of a taxpayer is equal to the taxpayer's state taxable income, as computed with the deductions in section 422.9, with the following adjustments:

(1) Add items of tax preference included in federal alternative minimum taxable income under section 57, except subsections (a)(1), (a)(2), and (a)(5), of the Internal Revenue Code, make the adjustments included in federal alternative minimum taxable income under section 56, except subsections (a)(4), (b)(1)(C)(iii), and (d), of the Internal Revenue Code, and add losses as required by section 58 of the Internal Revenue Code. To the extent that any preference or adjustment is determined by an individual's federal adjusted gross income, the individual's federal adjusted gross income is computed in accordance with section 422.7, subsection 39. In the case of an estate or trust, the items of tax preference, adjustments, and losses shall be apportioned between the estate or trust and the beneficiaries in accordance with rules prescribed by the director.

(2) Subtract the applicable exemption amount as follows:

(a) Seventeen thousand five hundred dollars for a married person who files separately or for an estate or trust.

(b) Twenty-six thousand dollars for a single person or a head of household.

(c) Thirty-five thousand dollars for a married couple which files a joint return.

(d) The exemption amount shall be reduced, but not below zero, by an amount equal to twenty-five percent of the amount by which the alternative minimum taxable income of the taxpayer, computed without regard to the exemption

amount in this subparagraph, exceeds the following:

(i) Seventy-five thousand dollars in the case of a taxpayer described in subparagraph subdivision (a).

(ii) One hundred twelve thousand five hundred dollars in the case of a taxpayer described in subparagraph subdivision (b).

(iii) One hundred fifty thousand dollars in the case of a taxpayer described in subparagraph subdivision (c).

(3) In the case of a net operating loss computed for a tax year beginning after December 31, 1982, which is carried back or carried forward to the current taxable year, the net operating loss shall be reduced by the amount of the items of tax preference arising in such year which was taken into account in computing the net operating loss in section 422.9, subsection 3. The deduction for a net operating loss for a tax year beginning after December 31, 1986, which is carried back or carried forward to the current taxable year shall not exceed ninety percent of the alternative minimum taxable income determined without regard for the net operating loss deduction.

The state alternative minimum tax of a taxpayer whose net capital gain deduction includes the gain or loss from the forfeiture of an installment real estate contract, the transfer of real or personal property securing a debt to a creditor in cancellation of that debt, or from the sale or exchange of property as a result of actual notice of foreclosure, where the fair market value of the taxpayer's assets exceeds the taxpayer's liabilities immediately before such forfeiture, transfer, or sale or exchange, shall not be greater than such excess, including any asset transferred within one hundred twenty days prior to such forfeiture, transfer, or sale or exchange.

In the case of a resident, including a resident estate or trust, the state's apportioned share of the state alternative minimum tax is one hundred percent of the state alternative minimum tax computed in this subsection. In the case of a resident or part-year resident shareholder in an S corporation which has in effect for the tax year an election under subchapter S of the Internal Revenue Code and carries on business within and without the state, a nonresident, including a nonresident estate or trust, or an individual, estate, or trust that is domiciled in the state for less than the entire tax year, the state's apportioned share of the state alternative minimum tax is the amount of tax computed under this subsection, reduced by the applicable credits in sections 422.10 through 422.12 and this result multiplied by a fraction with a numerator of the sum of state net income allocated to Iowa as determined in section 422.8, subsection 2, paragraph "a" or "b" as applicable, plus tax preference items, adjustments, and losses under subparagraph (1) attributable to Iowa and with a de-

nominator of the sum of total net income computed under section 422.7 plus all tax preference items, adjustments, and losses under subparagraph (1). In computing this fraction, those items excludable under subparagraph (1) shall not be used in computing the tax preference items. Married taxpayers electing to file separate returns or separately on a combined return must allocate the minimum tax computed in this subsection in the proportion that each spouse's respective preference items, adjustments, and losses under subparagraph (1) bear to the combined preference items, adjustments, and losses under subparagraph (1) of both spouses.

2. However, the tax shall not be imposed on a resident or nonresident whose net income, as defined in section 422.7, is thirteen thousand five hundred dollars or less in the case of married persons filing jointly or filing separately on a combined return, heads of household, and surviving spouses or nine thousand dollars or less in the case of all other persons; but in the event that the payment of tax under this division would reduce the net income to less than thirteen thousand five hundred dollars or nine thousand dollars as applicable, then the tax shall be reduced to that amount which would result in allowing the taxpayer to retain a net income of thirteen thousand five hundred dollars or nine thousand dollars as applicable. The preceding sentence does not apply to estates or trusts. For the purpose of this subsection, the entire net income, including any part of the net income not allocated to Iowa, shall be taken into account. For purposes of this subsection, net income includes all amounts of pensions or other retirement income received from any source which is not taxable under this division as a result of the government pension exclusions in section 422.7, or any other state law. If the combined net income of a husband and wife exceeds thirteen thousand five hundred dollars, neither of them shall receive the benefit of this subsection, and it is immaterial whether they file a joint return or separate returns. However, if a husband and wife file separate returns and have a combined net income of thirteen thousand five hundred dollars or less, neither spouse shall receive the benefit of this paragraph, if one spouse has a net operating loss and elects to carry back or carry forward the loss as provided in section 422.9, subsection 3. A person who is claimed as a dependent by another person as defined in section 422.12 shall not receive the benefit of this subsection if the person claiming the dependent has net income exceeding thirteen thousand five hundred dollars or nine thousand dollars as applicable or the person claiming the dependent and the person's spouse have combined net income exceeding thirteen thousand five hundred dollars or nine thousand dollars as applicable.

In addition, if the married persons', filing jointly or filing separately on a combined return, head of

household's, or surviving spouse's net income exceeds thirteen thousand five hundred dollars, the regular tax imposed under this division shall be the lesser of the maximum state individual income tax rate times the portion of the net income in excess of thirteen thousand five hundred dollars or the regular tax liability computed without regard to this sentence. Taxpayers electing to file separately shall compute the alternate tax described in this paragraph using the total net income of the husband and wife. The alternate tax described in this paragraph does not apply if one spouse elects to carry back or carry forward the loss as provided in section 422.9, subsection 3.

2A. However, the tax shall not be imposed on a resident or nonresident who is at least sixty-five years old on December 31 of the tax year and whose net income, as defined in section 422.7, is twenty-four thousand dollars or less in the case of married persons filing jointly or filing separately on a combined return, heads of household, and surviving spouses or eighteen thousand dollars or less in the case of all other persons; but in the event that the payment of tax under this division would reduce the net income to less than twenty-four thousand dollars or eighteen thousand dollars as applicable, then the tax shall be reduced to that amount which would result in allowing the taxpayer to retain a net income of twenty-four thousand dollars or eighteen thousand dollars as applicable. The preceding sentence does not apply to estates or trusts. For the purpose of this subsection, the entire net income, including any part of the net income not allocated to Iowa, shall be taken into account. For purposes of this subsection, net income includes all amounts of pensions or other retirement income received from any source which is not taxable under this division as a result of the government pension exclusions in section 422.7, or any other state law. If the combined net income of a husband and wife exceeds twenty-four thousand dollars, neither of them shall receive the benefit of this subsection, and it is immaterial whether they file a joint return or separate returns. However, if a husband and wife file separate returns and have a combined net income of twenty-four thousand dollars or less, neither spouse shall receive the benefit of this paragraph, if one spouse has a net operating loss and elects to carry back or carry forward the loss as provided in section 422.9, subsection 3. A person who is claimed as a dependent by another person as defined in section 422.12 shall not receive the benefit of this subsection if the person claiming the dependent has net income exceeding twenty-four thousand dollars or eighteen thousand dollars as applicable or the person claiming the dependent and the person's spouse have combined net income exceeding twenty-four thousand dollars or eighteen thousand dollars as applicable.

In addition, if the married persons', filing jointly or filing separately on a combined return, head of



household's, or surviving spouse's net income exceeds twenty-four thousand dollars, the regular tax imposed under this division shall be the lesser of the maximum state individual income tax rate times the portion of the net income in excess of twenty-four thousand dollars or the regular tax liability computed without regard to this sentence. Taxpayers electing to file separately shall compute the alternate tax described in this paragraph using the total net income of the husband and wife. The alternate tax described in this paragraph does not apply if one spouse elects to carry back or carry forward the loss as provided in section 422.9, subsection 3.

This subsection applies even though one spouse has not attained the age of sixty-five, if the other spouse is at least sixty-five at the end of the tax year.

This subsection is repealed January 1, 2009.

2B. Reserved.

3. The tax herein levied shall be computed and collected as hereinafter provided.

4. The provisions of this division shall apply to all salaries received by federal officials or employees of the United States government as provided for herein.

5. Upon determination of the latest cumulative inflation factor, the director shall multiply each dollar amount set forth in subsection 1, paragraphs "a" through "i" of this section by this cumulative inflation factor, shall round off the resulting product to the nearest one dollar, and shall incorporate the result into the income tax forms and instructions for each tax year.

6. The state income tax of a taxpayer whose net income includes the gain or loss from the forfeiture of an installment real estate contract, the transfer of real or personal property securing a debt to a creditor in cancellation of that debt, or from the sale or exchange of property as a result of actual notice of foreclosure where the fair market value of the taxpayer's assets exceeds the taxpayer's liabilities immediately before such forfeiture, transfer, or sale or exchange shall not be greater than such excess, including any asset transferred within one hundred twenty days prior to such forfeiture, transfer, or sale or exchange. For purposes of this subsection, in the case of married taxpayers, except in the case of a husband and wife who live apart at all times during the tax year, the assets and liabilities of both spouses shall be considered in determining if the fair market value of the taxpayer's assets exceed the taxpayer's liabilities.

7. In addition to the other taxes imposed by this section, a tax is imposed on the amount of a lump sum distribution for which the taxpayer has elected under section 402(e) of the Internal Revenue Code to be separately taxed for federal income tax purposes for the tax year. The rate of tax is equal to twenty-five percent of the separate federal tax imposed on the amount of the lump sum dis-

tribution. A nonresident is liable for this tax only on that portion of the lump sum distribution allocable to Iowa. The total amount of the lump sum distribution subject to separate federal tax shall be included in net income for purposes of determining eligibility under subsections 2 and 2A or 2B,\* as applicable.

8. In the case of income derived from the sale or exchange of livestock which qualifies under section 451(e) of the Internal Revenue Code because of drought, the taxpayer may elect to include the income in the taxpayer's net income in the tax year following the year of the sale or exchange in accordance with rules prescribed by the director.

9. If an individual's federal income tax was forgiven for a tax year under section 692 of the Internal Revenue Code, because the individual was killed while serving in an area designated by the president of the United States or the United States Congress as a combat zone, the individual was missing in action and presumed dead, or the individual was killed outside the United States in a terroristic or military action while the individual was a military or civilian employee of the United States, the individual's Iowa income tax is also forgiven for the same tax year.

10. If a taxpayer repays in the current tax year certain amounts of income that were subject to tax under this division in a prior year and a tax benefit would be allowed under similar circumstances under section 1341 of the Internal Revenue Code, a tax benefit shall be allowed on the Iowa return. The tax benefit shall be the reduced tax for the current tax year due to the deduction for the repaid income or the reduction in tax for the prior year or years due to exclusion of the repaid income. The reduction in tax shall qualify as a refundable tax credit on the return for the current year pursuant to rules prescribed by the director.

2007 Acts, ch 126, §65

\*Subsection 2B takes effect January 1, 2009; see 2006 Acts, ch 1112, §2, 5; 2007 Acts, ch 126, §112, 116

2003 amendment to subsection 1, paragraph k, subparagraph (1), takes effect May 21, 2003, and applies retroactively to tax years beginning on or after September 10, 2001; 2003 Acts, ch 139, §11, 12

Subsection 2A takes effect January 1, 2007, and applies to tax years beginning on or after that date but before January 1, 2009; 2006 Acts, ch 1112, §5

For future text of subsection 2B effective January 1, 2009, see 2006 Acts, ch 1112, §2, 5; 2007 Acts, ch 126, §112, 116

2006 amendment to subsection 7 takes effect January 1, 2007, for tax years beginning on or after that date; 2006 Acts, ch 1112, §5

Subsection 2A, unnumbered paragraphs 1 and 2 amended

#### **422.7 "Net income" — how computed.**

The term "*net income*" means the adjusted gross income before the net operating loss deduction as properly computed for federal income tax purposes under the Internal Revenue Code, with the following adjustments:

1. Subtract interest and dividends from federal securities.
2. Add interest and dividends from foreign securities and from securities of state and other political subdivisions exempt from federal income

tax under the Internal Revenue Code.

3. Where the adjusted gross income includes capital gains or losses, or gains or losses from property other than capital assets, and such gains or losses have been determined by using a basis established prior to January 1, 1934, an adjustment may be made, under rules prescribed by the director, to reflect the difference resulting from the use of a basis of cost or January 1, 1934, fair market value, less depreciation allowed or allowable, whichever is higher. Provided that the basis shall be fair market value as of January 1, 1955, less depreciation allowed or allowable, in the case of property acquired prior to that date if use of a prior basis is declared to be invalid.

4. Subtract payments received by a beneficiary under an annuity which was purchased under an employee's pension or retirement plan when the commuted value of the installments has been included as a part of the decedent employee's estate for Iowa inheritance tax purposes.

5. Individual taxpayers and married taxpayers who file a joint federal income tax return and who elect to file a joint return, separate returns, or separate filing on a combined return for Iowa income tax purposes, may avail themselves of the disability income exclusion and shall compute the amount of the disability income exclusion subject to the limitations for joint federal income tax return filers provided by section 105(d) of the Internal Revenue Code. The disability income exclusion provided in section 105(d) of the Internal Revenue Code, as amended up to and including December 31, 1982, continues to apply for state income tax purposes for tax years beginning on or after January 1, 1984.

6. Reserved.

7. Married taxpayers who file a joint federal income tax return and who elect to file separate returns or separate filing on a combined return for Iowa income tax purposes, may avail themselves of the expensing of business assets and capital loss provisions of sections 179(a) and 1211(b) respectively of the Internal Revenue Code and shall compute the amount of expensing of business assets and capital loss subject to the limitations for joint federal income tax return filers provided by sections 179(b) and 1211(b) respectively of the Internal Revenue Code.

8. Subtract the amount of the work opportunity tax credit allowable for the tax year under section 51 of the Internal Revenue Code to the extent that the credit increased federal adjusted gross income.

9. Subtract the amount of the alcohol fuel credit allowable for the tax year under section 40 of the Internal Revenue Code to the extent that the credit increased federal adjusted gross income.

10. Notwithstanding the method for computing the amount of travel expenses that may be deducted under section 162(h) of the Internal Revenue

Code, for tax years beginning on or after January 1, 1987, a member of the general assembly whose place of residence within the legislative district is greater than fifty miles from the capitol building of the state may deduct the total amount per day determined under section 162(h)(1)(B) of the Internal Revenue Code and a member of the general assembly whose place of residence within the legislative district is fifty or fewer miles from the capitol building of the state may deduct fifty dollars per day. This subsection does not apply to a member of the general assembly who elects to itemize for state tax purposes the member's travel expenses.

11. Add the amounts deducted and subtract the amounts included as income as a result of the treatment provided sale-leaseback agreements under section 168(f)(8) of the Internal Revenue Code for property placed in service by the transferee prior to January 1, 1986, to the extent that the amounts deducted and the amounts included in income are not otherwise deductible or included in income under the Internal Revenue Code as amended to and including December 31, 1985. Entitlement to depreciation on any property included in a sale-leaseback agreement which is placed in service by the transferee prior to January 1, 1986, shall be determined under the Internal Revenue Code as amended to and including December 31, 1985, excluding section 168(f)(8) in making the determination.

12. If the adjusted gross income includes income or loss from a small business operated by the taxpayer, an additional deduction shall be allowed in computing the income or loss from the small business if the small business hired for employment in the state during its annual accounting period ending with or during the taxpayer's tax year any of the following:

*a.* An individual with a disability domiciled in this state at the time of the hiring who meets any of the following conditions:

(1) Has a physical or mental impairment which substantially limits one or more major life activities.

(2) Has a record of that impairment.

(3) Is regarded as having that impairment.

*b.* An individual domiciled in this state at the time of the hiring who meets any of the following conditions:

(1) Has been convicted of a felony in this or any other state or the District of Columbia.

(2) Is on parole pursuant to chapter 906.

(3) Is on probation pursuant to chapter 907, for an offense other than a simple misdemeanor.

(4) Is in a work release program pursuant to chapter 904, division IX.

*c.* An individual, whether or not domiciled in this state at the time of the hiring, who is on parole or probation and to whom the interstate probation and parole compact under section 907A.1, Code 2001, applies, or to whom the interstate compact

for adult offender supervision under chapter 907B applies.

The amount of the additional deduction is equal to sixty-five percent of the wages paid to individuals, but shall not exceed twenty thousand dollars per individual, named in paragraphs "a", "b", and "c" who were hired for the first time by that business during the annual accounting period for work done in the state. This additional deduction is allowed for the wages paid to those individuals successfully completing a probationary period during the twelve months following the date of first employment by the business and shall be deducted at the close of the annual accounting period.

The additional deduction shall not be allowed for wages paid to an individual who was hired to replace an individual whose employment was terminated within the twelve-month period preceding the date of first employment. However, if the individual being replaced left employment voluntarily without good cause attributable to the employer or if the individual was discharged for misconduct in connection with the individual's employment as determined by the department of workforce development, the additional deduction shall be allowed.

A taxpayer who is a partner of a partnership or a shareholder of a subchapter S corporation, may deduct that portion of wages qualified under this subsection paid by the partnership or subchapter S corporation based on the taxpayer's pro rata share of the profits or losses from the partnership or subchapter S corporation.

For purposes of this subsection, "physical or mental impairment" means any physiological disorder or condition, cosmetic disfigurement, or anatomical loss affecting one or more of the body systems or any mental or psychological disorder, including mental retardation, organic brain syndrome, emotional or mental illness and specific learning disabilities.

For purposes of this subsection, "small business" means a profit or nonprofit business, including but not limited to an individual, partnership, corporation, joint venture, association, or cooperative, to which the following apply:

- (1) It is not an affiliate or subsidiary of a business dominant in its field of operation.
- (2) It has twenty or fewer full-time equivalent positions and not more than the equivalent of three million dollars in annual gross revenues as computed for the preceding fiscal year or as the average of the three preceding fiscal years.
- (3) It does not include the practice of a profession.

"Small business" includes an employee-owned business which has been an employee-owned business for less than three years or which meets the conditions of subparagraphs (1) through (3).

For purposes of this definition, "dominant in its field of operation" means having more than twenty full-time equivalent positions and more than

three million dollars in annual gross revenues, and "affiliate or subsidiary of a business dominant in its field of operation" means a business which is at least twenty percent owned by a business dominant in its field of operation, or by partners, officers, directors, majority stockholders, or their equivalents, of a business dominant in that field of operation.

The department may, by resolution, waive any or all of the requirements of paragraph "b"\* in connection with a loan to a small business, as defined under applicable federal law and regulations that have been enacted or adopted by April 1, 1983, in which federal assistance, insurance, or guaranties are sought.

12A. If the adjusted gross income includes income or loss from a business operated by the taxpayer, and if the business does not qualify for the adjustment under subsection 12, an additional deduction shall be allowed in computing the income or loss from the business if the business hired for employment in the state during its annual accounting period ending with or during the taxpayer's tax year either of the following:

a. An individual domiciled in this state at the time of the hiring who meets any of the following conditions:

- (1) Has been convicted of a felony in this or any other state or the District of Columbia.
- (2) Is on parole pursuant to chapter 906.
- (3) Is on probation pursuant to chapter 907, for an offense other than a simple misdemeanor.
- (4) Is in a work release program pursuant to chapter 904, division IX.

b. An individual, whether or not domiciled in this state at the time of the hiring, who is on parole or probation and to whom the interstate probation and parole compact under section 907A.1, Code 2001, applies, or to whom the interstate compact for adult offender supervision under chapter 907B applies.

The amount of the additional deduction is equal to sixty-five percent of the wages paid to individuals, but shall not exceed twenty thousand dollars per individual, named in paragraphs "a" and "b" who were hired for the first time by that business during the annual accounting period for work done in the state. This additional deduction is allowed for the wages paid to those individuals successfully completing a probationary period during the twelve months following the date of first employment by the business and shall be deducted at the close of the annual accounting period.

The additional deduction shall not be allowed for wages paid to an individual who was hired to replace an individual whose employment was terminated within the twelve-month period preceding the date of first employment. However, if the individual being replaced left employment voluntarily without good cause attributable to the employer or if the individual was discharged for misconduct in connection with the individual's em-

ployment as determined by the department of workforce development, the additional deduction shall be allowed.

A taxpayer who is a partner of a partnership or a shareholder of a subchapter S corporation, may deduct that portion of wages qualified under this subsection paid by the partnership or subchapter S corporation based on the taxpayer's pro rata share of the profits or losses from the partnership or subchapter S corporation.

The department shall develop and distribute information concerning the deduction available for businesses employing persons named in paragraphs "a" and "b".

13. *a.* Subtract, to the extent included, the amount of additional social security benefits taxable under the Internal Revenue Code for tax years beginning on or after January 1, 1994, but before January 1, 2014. The amount of social security benefits taxable as provided in section 86 of the Internal Revenue Code, as amended up to and including January 1, 1993, continues to apply for state income tax purposes for tax years beginning on or after January 1, 1994, but before January 1, 2014.

*b.* (1) For tax years beginning in the 2007 calendar year, subtract, to the extent included, thirty-two percent of taxable social security benefits remaining after the subtraction in paragraph "a".

(2) For tax years beginning in the 2008 calendar year, subtract, to the extent included, thirty-two percent of taxable social security benefits remaining after the subtraction in paragraph "a".

(3) For tax years beginning in the 2009 calendar year, subtract, to the extent included, forty-three percent of taxable social security benefits remaining after the subtraction in paragraph "a".

(4) For tax years beginning in the 2010 calendar year, subtract, to the extent included, fifty-five percent of taxable social security benefits remaining after the subtraction in paragraph "a".

(5) For tax years beginning in the 2011 calendar year, subtract, to the extent included, sixty-seven percent of taxable social security benefits remaining after the subtraction in paragraph "a".

(6) For tax years beginning in the 2012 calendar year, subtract, to the extent included, seventy-seven percent of taxable social security benefits remaining after the subtraction in paragraph "a".

(7) For tax years beginning in the 2013 calendar year, subtract, to the extent included, eighty-nine percent of taxable social security benefits remaining after the subtraction in paragraph "a".

*c.* Married taxpayers, who file a joint federal income tax return and who elect to file separate returns or who elect separate filing on a combined return for state income tax purposes, shall allocate between the spouses the amount of benefits subtracted under paragraphs "a" and "b" from net income in the ratio of the social security benefits received by each spouse to the total of these bene-

fits received by both spouses.

*d.* For tax years beginning on or after January 1, 2014, subtract, to the extent included, the amount of social security benefits taxable under section 86 of the Internal Revenue Code.

14. Add the amount of intangible drilling and development costs optionally deducted in the year paid or incurred as described in section 57(a)(2) of the Internal Revenue Code. This amount may be recovered through cost depletion or depreciation, as appropriate under rules prescribed by the director.

15. Add the percentage depletion amount determined with respect to an oil, gas, or geothermal well as described in section 57(a)(1) of the Internal Revenue Code.

16. Subtract the income resulting from the forfeiture of an installment real estate contract, the transfer of real or personal property securing a debt to a creditor in cancellation of that debt, or from the sale or exchange of property as a result of actual notice of foreclosure if all of the following conditions are met:

*a.* The forfeiture, transfer, or sale or exchange was done for the purpose of establishing a positive cash flow.

*b.* Immediately before the forfeiture, transfer, or sale or exchange, the taxpayer's debt to asset ratio exceeded ninety percent as computed under generally accepted accounting practices.

*c.* The taxpayer's net worth at the end of the tax year is less than seventy-five thousand dollars. In determining a taxpayer's net worth at the end of the tax year a taxpayer shall include any asset transferred within one hundred twenty days prior to the end of the tax year without adequate and full consideration in money or money's worth. In determining the taxpayer's debt to asset ratio, the taxpayer shall include any asset transferred within one hundred twenty days prior to such forfeiture, transfer, or sale or exchange without adequate and full consideration in money or money's worth. For purposes of this subsection, actual notice of foreclosure includes, but is not limited to, bankruptcy or written notice from a creditor of the creditor's intent to foreclose where there is a reasonable belief that the creditor can force a sale of the asset. For purposes of this subsection, in the case of married taxpayers, except in the case of a husband and wife who live apart at all times during the tax year, the assets and liabilities of both spouses shall be considered for purposes of determining the taxpayer's net worth or the taxpayer's debt to asset ratio.

17. Add interest and dividends from regulated investment companies exempt from federal income tax under the Internal Revenue Code and subtract the loss on the sale or exchange of a share of a regulated investment company held for six months or less to the extent the loss was disallowed under section 852(b)(4)(B) of the Internal Revenue Code.

18. Reserved.

19. Subtract interest earned on bonds and notes issued by the agricultural development authority as provided in section 175.17, subsection 10.

20. Subtract, to the extent included, the proceeds received pursuant to a judgment in or settlement of a lawsuit against the manufacturer or distributor of a Vietnam herbicide for damages resulting from exposure to the herbicide. This subsection applies to proceeds received by a taxpayer who is a disabled veteran or who is a beneficiary of a disabled veteran.

For purposes of this subsection:

*a.* “*Vietnam herbicide*” means a herbicide, defoliant or other causative agent containing dioxin, including, but not limited to, Agent Orange, used in the Vietnam Conflict beginning December 22, 1961, and ending May 7, 1975, inclusive.

*b.* “*Agent Orange*” means the herbicide composed of trichlorophenoxyacetic acid and dichlorophenoxyacetic acid and the contaminant dioxin (TCDD).

21. Subtract the net capital gain from the following:

*a.* (1) Net capital gain from the sale of real property used in a business, in which the taxpayer materially participated for ten years, as defined in section 469(h) of the Internal Revenue Code, and which has been held for a minimum of ten years, or from the sale of a business, as defined in section 423.1, in which the taxpayer materially participated for ten years, as defined in section 469(h) of the Internal Revenue Code, and which has been held for a minimum of ten years. The sale of a business means the sale of all or substantially all of the tangible personal property or service of the business.

However, where the business is sold to individuals who are all lineal descendants of the taxpayer, the taxpayer does not have to have materially participated in the business in order for the net capital gain from the sale to be excluded from taxation.

However, in lieu of the net capital gain deduction in this paragraph and paragraphs “*b*”, “*c*”, and “*d*”, where the business is sold to individuals who are all lineal descendants of the taxpayer, the amount of capital gain from each capital asset may be subtracted in determining net income.

(2) For purposes of this paragraph, “*lineal descendant*” means children of the taxpayer, including legally adopted children and biological children, stepchildren, grandchildren, great-grandchildren, and any other lineal descendants of the taxpayer.

*b.* Net capital gain from the sale of cattle or horses held by the taxpayer for breeding, draft, dairy, or sporting purposes for a period of twenty-four months or more from the date of acquisition; but only if the taxpayer received more than one-half of the taxpayer’s gross income from farming or ranching operations during the tax year.

*c.* Net capital gain from the sale of breeding livestock, other than cattle or horses, if the livestock is held by the taxpayer for a period of twelve months or more from the date of acquisition; but only if the taxpayer received more than one-half of the taxpayer’s gross income from farming or ranching operations during the tax year.

*d.* Net capital gain from the sale of timber as defined in section 631(a) of the Internal Revenue Code.

However, to the extent otherwise allowed, the deduction provided in this subsection is not allowed for purposes of computation of a net operating loss in section 422.9, subsection 3, and in computing the income for the taxable year or years for which a net operating loss is deducted.

For purposes of this subsection, the term “*held*” shall be determined with reference to the holding period provisions of section 1223 of the Internal Revenue Code and the federal regulations adopted pursuant thereto.

22. Subtract, to the extent included, the amounts paid to an eligible individual under section 105 of the Civil Liberties Act of 1988, Pub. L. No. 100-383, Title I, as satisfaction for a claim against the United States arising out of the confinement, holding in custody, relocation, or other deprivation of liberty or property of an individual of Japanese ancestry.

23. Reserved.

24. Subtract, to the extent included, active duty pay received by a person in the national guard or armed forces military reserve for services performed on or after August 2, 1990, pursuant to military orders related to the Persian Gulf Conflict.

25. Subtract, to the extent included, active duty pay received by a person in the national guard or armed forces military reserve for service performed on or after November 21, 1995, pursuant to military orders related to peacekeeping in Bosnia-Herzegovina.

26. Add depreciation taken for federal income tax purposes on a speculative shell building defined in section 427.1, subsection 27, which is owned by a for-profit entity and the for-profit entity is receiving the proper tax exemption. Subtract depreciation computed as if the speculative shell building were classified as fifteen-year property under the accelerated cost recovery system of the Internal Revenue Code during the period during which it is owned by the for-profit entity and is receiving the property tax exemption. However, this subsection does not apply to a speculative shell building which is used by the for-profit entity, subsidiary of the for-profit entity, or majority owners of the for-profit entity, for other than as a speculative shell building, as defined in section 427.1, subsection 27.

27. Subtract, to the extent included, payments received by an individual providing unskilled in-home health-related care services pursuant to sec-

tion 249.3, subsection 2, paragraph “a”, subparagraph (2), to a member of the individual caregiver’s family. For purposes of this subsection, a member of the individual caregiver’s family includes a spouse, parent, stepparent, child, stepchild, brother, stepbrother, sister, stepsister, lineal ancestor, or lineal descendant, and such persons by marriage or adoption. A health care professional licensed by an examination board designated in section 147.13, subsections 1 through 10, is not eligible for the exemption authorized in this subsection.

28. If the taxpayer is owner of an individual development account certified under chapter 541A at any time during the tax year, deductions of all of the following shall be allowed:

a. Contributions made to the account by persons and entities, other than the taxpayer, as authorized in chapter 541A.

b. The amount of any savings refund authorized under section 541A.3, subsection 1.

c. Earnings from the account.

29. Subtract, to the extent not otherwise deducted in computing adjusted gross income, the amounts paid by the taxpayer for the purchase of health benefits coverage or insurance for the taxpayer or taxpayer’s spouse or dependent.

30. Subtract the amount of the employer social security credit allowable for the tax year under section 45B of the Internal Revenue Code to the extent that the credit increases federal adjusted gross income.

31. For a person who is disabled, or is fifty-five years of age or older, or is the surviving spouse of an individual or a survivor having an insurable interest in an individual who would have qualified for the exemption under this subsection for the tax year, subtract, to the extent included, the total amount of a governmental or other pension or retirement pay, including, but not limited to, defined benefit or defined contribution plans, annuities, individual retirement accounts, plans maintained or contributed to by an employer, or maintained or contributed to by a self-employed person as an employer, and deferred compensation plans or any earnings attributable to the deferred compensation plans, up to a maximum of six thousand dollars for a person, other than a husband or wife, who files a separate state income tax return and up to a maximum of twelve thousand dollars for a husband and wife who file a joint state income tax return. However, a surviving spouse who is not disabled or fifty-five years of age or older can only exclude the amount of pension or retirement pay received as a result of the death of the other spouse. A husband and wife filing separate state income tax returns or separately on a combined state return are allowed a combined maximum exclusion under this subsection of up to twelve thousand dollars. The twelve thousand dollar exclusion shall be allocated to the husband or wife in the proportion that each spouse’s respective pension

and retirement pay received bears to total combined pension and retirement pay received.

32. a. Subtract the maximum contribution that may be deducted for Iowa income tax purposes as a participant in the Iowa educational savings plan trust pursuant to section 12D.3, subsection 1, paragraph “a”.

b. Add the amount resulting from the cancellation of a participation agreement refunded to the taxpayer as a participant in the Iowa educational savings plan trust to the extent previously deducted as a contribution to the trust.

c. Add the amount resulting from a withdrawal made by a taxpayer from the Iowa educational savings plan trust for purposes other than the payment of qualified education expenses to the extent previously deducted as a contribution to the trust.

33. Subtract, to the extent included, income from interest and earnings received from the Iowa educational savings plan trust created in chapter 12D.

34. Reserved.

35. Subtract, to the extent included, the following:

a. Payments made to the taxpayer because of the taxpayer’s status as a victim of persecution for racial, ethnic, or religious reasons by Nazi Germany or any other Axis regime or as an heir of such victim.

b. Items of income attributable to, derived from, or in any way related to assets stolen from, hidden from, or otherwise lost to a victim of persecution for racial, ethnic, or religious reasons by Nazi Germany or any other Axis regime immediately prior to, during, and immediately after World War II, including, but not limited to, interest on the proceeds receivable as insurance under policies issued to a victim of persecution for racial, ethnic, or religious reasons by Nazi Germany or any other Axis regime by European insurance companies immediately prior to and during World War II. However, income from assets acquired with such assets or with the proceeds from the sale of such assets shall not be subtracted. This paragraph shall only apply to a taxpayer who was the first recipient of such assets after recovery of the assets and who is a victim of persecution for racial, ethnic, or religious reasons by Nazi Germany or any other Axis regime or is an heir of such victim.

36. Add, to the extent not already included, income from the sale of obligations of the state and its political subdivisions. Income from the sale of these obligations is exempt from the taxes imposed by this division only if the law authorizing these obligations specifically exempts the income from the sale from the state individual income tax.

37. Notwithstanding the method for computing income from an installment sale under section 453 of the Internal Revenue Code, as defined in section 422.3, the method to be used in computing income from an installment sale shall be the method under section 453 of the Internal Revenue

Code, as amended up to and including January 1, 2000. A taxpayer affected by this subsection shall make adjustments in the adjusted gross income pursuant to rules adopted by the director.

The adjustment to net income provided in this subsection is repealed for tax years beginning on or after January 1, 2002. However, to the extent that a taxpayer using the accrual method of accounting reported the entire capital gain from the sale or exchange of property on the Iowa return for the tax year beginning in the 2001 calendar year and the capital gain was reported on the installment method on the federal income tax return, any additional installment from the capital gain reported for federal income tax purposes is not to be included in net income in tax years beginning on or after January 1, 2002.

38. Subtract, to the extent not otherwise excluded, the amount of withdrawals from qualified retirement plan accounts made during the tax year if the taxpayer or taxpayer's spouse is a member of the Iowa national guard or reserve forces of the United States who is ordered to state military service or federal service or duty. In addition, a penalty for such withdrawals shall not be assessed by the state.

39. *a.* The additional first-year depreciation allowance authorized in section 168(k) of the Internal Revenue Code, as enacted by Pub. L. No. 107-147, section 101, does not apply in computing net income for state tax purposes. If the taxpayer has taken such deduction in computing federal adjusted gross income, the following adjustments shall be made:

(1) Add the total amount of depreciation taken on all property for which the election under section 168(k) of the Internal Revenue Code was made for the tax year.

(2) Subtract an amount equal to depreciation allowed on such property for the tax year using the modified accelerated cost recovery system depreciation method applicable under section 168 of the Internal Revenue Code without regard to section 168(k).

(3) Any other adjustments to gains or losses to reflect the adjustments made in subparagraphs (1) and (2) pursuant to rules adopted by the director.

*b.* A taxpayer may elect to apply the additional first-year depreciation allowance authorized in section 168(k)(4) of the Internal Revenue Code, as enacted by Pub. L. No. 108-27, in computing net income for state tax purposes, for qualified property acquired after May 5, 2003, and before January 1, 2005. If the taxpayer elects to take the additional first-year depreciation allowance authorized in section 168(k)(4) of the Internal Revenue Code for state tax purposes, the deduction may be taken on amended state tax returns, if necessary. If the taxpayer does not elect to take the additional first-year depreciation allowance authorized in section 168(k)(4) of the Internal Revenue Code for state

tax purposes, the following adjustment shall be made:

(1) Add the total amount of depreciation taken on all property for which the election under section 168(k)(4) of the Internal Revenue Code was made for the tax year.

(2) Subtract an amount equal to depreciation allowed on such property for the tax year using the modified accelerated cost recovery system depreciation method applicable under section 168 of the Internal Revenue Code without regard to section 168(k)(4).

(3) Any other adjustments to gains or losses to reflect the adjustments made in subparagraphs (1) and (2) pursuant to rules adopted by the director.

40. Subtract, to the extent included, active duty pay received by a person in the national guard or armed forces military reserve for service performed on or after January 1, 2003, pursuant to military orders related to Operation Iraqi Freedom, Operation Noble Eagle, and Operation Enduring Freedom.

41. Reserved.

42. Subtract, to the extent included, military student loan repayments received by the taxpayer serving on active duty in the national guard or armed forces military reserve or on active duty status in the armed forces.

43. A taxpayer may elect not to take the increased expensing allowance under section 179 of the Internal Revenue Code, as amended by Pub. L. No. 108-27, section 202, in computing state tax purposes. If the taxpayer does not take the increased expensing allowance under section 179 of the Internal Revenue Code for state tax purposes, the following adjustments shall be made:

*a.* Add the total amount of expense deduction taken on section 179 property for federal tax purposes under section 179 of the Internal Revenue Code.

*b.* Subtract the amount of expense deduction on section 179 property allowable for federal tax purposes under section 179 of the Internal Revenue Code prior to enactment of Pub. L. No. 108-27, section 202.

*c.* Any other adjustments to gains and losses to the adjustments made in paragraphs "a" and "b" pursuant to rules adopted by the director.

44. *a.* If the taxpayer, while living, donates one or more of the taxpayer's human organs to another human being for immediate human organ transplantation during the tax year, subtract, to the extent not otherwise excluded, the following unreimbursed expenses incurred by the taxpayer and related to the taxpayer's organ donation:

- (1) Travel expenses.
- (2) Lodging expenses.
- (3) Lost wages.

*b.* The maximum amount that may be deducted under paragraph "a" is ten thousand dollars. A taxpayer shall only take the deduction un-

der this subsection once. If a deduction is taken under this subsection, the amount of expenses shall not be considered medical care expenses under section 213 of the Internal Revenue Code for state tax purposes.

c. For purposes of this subsection, “*human organ*” means all or part of a liver, pancreas, kidney, intestine, lung, or bone marrow.

45. Subtract, to the extent not otherwise deducted, the amount of two thousand dollars for the cost of a clean fuel motor vehicle if the taxpayer was eligible for the alternative motor vehicle credit under section 30B of the Internal Revenue Code for such motor vehicle.

46. Subtract, to the extent included, the amount of any grant provided pursuant to the injured veterans grant program pursuant to section 35A.14.

47. Subtract, to the extent not otherwise deducted in computing adjusted gross income, the amounts paid by the taxpayer to the department of veterans affairs for the purpose of providing grants under the injured veterans grant program established in section 35A.14. Amounts subtracted under this subsection shall not be used by the taxpayer in computing the amount of charitable contributions as defined by section 170 of the Internal Revenue Code.

48. Subtract, to the extent included, income from interest and earnings received from the bonds issued under section 12.91.

49. Subtract, to the extent included, the amount of ordinary or capital gain realized by the taxpayer as a result of the involuntary conversion of property due to eminent domain. However, if the total amount of such realized ordinary or capital gain is not recognized because the converted property is replaced with property that is similar to, or related in use to, the converted property, the amount of such realized ordinary or capital gain shall not be subtracted under this subsection until the remaining realized ordinary or capital gain is subject to federal taxation or until the time of disposition of the replacement property as provided under rules of the director. The subtraction allowed under this subsection shall not alter the basis as established for federal tax purposes of any property owned by the taxpayer.

50. Subtract, to the extent included, the amount of victim compensation awards paid under the victim compensation program, victim restitution payments received pursuant to chapter 910 or 915, and any damages awarded by a court, and received by the taxpayer, in a civil action filed by the victim against the offender, during the tax year.

51. Subtract, to the extent included, the amount of any Vietnam Conflict veterans bonus provided pursuant to section 35A.8, subsection 5.

52. Subtract, to the extent included, an amount equal to any income received from the

sale, rental, or furnishing of tangible personal property or services directly related to the production of a project registered under section 15.393 which meets the criteria of a qualified expenditure under section 15.393, subsection 2, paragraph “a”, subparagraph (2).

2007 Acts, ch 27, §2, 11; 2007 Acts, ch 54, §35; 2007 Acts, ch 162, §4, 13; 2007 Acts, ch 176, §2, 4; 2007 Acts, ch 186, §8

\*Reference to “subparagraph (2)” probably intended; corrective legislation is pending

Subsection 50 applies retroactively to tax years beginning on or after January 1, 2007; 2007 Acts, ch 27, §11

Subsection 51 applies retroactively to tax years beginning on or after January 1, 2007; 2007 Acts, ch 176, §4

Subsection 52 takes effect May 17, 2007, and applies retroactively to tax years beginning on or after January 1, 2007; 2007 Acts, ch 162, §13

Subsection 12, paragraph c, unnumbered paragraph 6 amended

Subsection 32, NEW paragraph c

NEW subsections 50 – 52

#### 422.10 Research activities credit.

1. The taxes imposed under this division shall be reduced by a state tax credit for increasing research activities in this state.

a. For individuals, the credit equals the sum of the following:

(1) Six and one-half percent of the excess of qualified research expenses during the tax year over the base amount for the tax year based upon the state’s apportioned share of the qualifying expenditures for increasing research activities.

(2) Six and one-half percent of the basic research payments determined under section 41(e)(1)(A) of the Internal Revenue Code during the tax year based upon the state’s apportioned share of the qualifying expenditures for increasing research activities.

The state’s apportioned share of the qualifying expenditures for increasing research activities is a percent equal to the ratio of qualified research expenditures in this state to total qualified research expenditures.

b. In lieu of the credit amount computed in paragraph “a”, subparagraph (1), a taxpayer may elect to compute the credit amount for qualified research expenses incurred in this state in a manner consistent with the alternative incremental credit described in section 41(c)(4) of the Internal Revenue Code. The taxpayer may make this election regardless of the method used for the taxpayer’s federal income tax. The election made under this paragraph is for the tax year and the taxpayer may use another or the same method for any subsequent year.

c. For purposes of the alternate credit computation method in paragraph “b”, the credit percentages applicable to qualified research expenses described in clauses (i), (ii), and (iii) of section 41(c)(4)(A) of the Internal Revenue Code are one and sixty-five hundredths percent, two and twenty hundredths percent, and two and seventy-five hundredths percent, respectively.

2. For purposes of this section, an individual may claim a research credit incurred by a partnership, S corporation, limited liability company, es-



tate, or trust electing to have the income taxed directly to the individual. The amount claimed by the individual shall be based upon the pro rata share of the individual's earnings of a partnership, S corporation, limited liability company, estate, or trust.

3. For purposes of this section, "base amount", "basic research payment", and "qualified research expense" mean the same as defined for the federal credit for increasing research activities under section 41 of the Internal Revenue Code, except that for the alternative incremental credit such amounts are for research conducted within this state.

For purposes of this section, "Internal Revenue Code" means the Internal Revenue Code in effect on January 1, 2007.

4. Any credit in excess of the tax liability imposed by section 422.5 less the amounts of nonrefundable credits allowed under this division for the taxable year shall be refunded with interest computed under section 422.25. In lieu of claiming a refund, a taxpayer may elect to have the overpayment shown on the taxpayer's final, completed return credited to the tax liability for the following taxable year.

5. An individual may claim an additional research activities credit authorized pursuant to section 15.335 if the eligible business is a partnership, S corporation, limited liability company, or estate or trust which elects to have the income taxed directly to the individual. The amount of the credit shall be as provided in section 15.335.

2007 Acts, ch 12, §4, 7, 8

Internal Revenue Code definition is updated regularly; for applicable definition in a prior tax year, refer to Iowa Acts and Code for that year

2007 amendment to subsection 3 takes effect March 9, 2007, and applies retroactively to January 1, 2006, for tax years beginning on or after that date; 2007 Acts, ch 12, §7, 8

Subsection 3, unnumbered paragraph 2 amended

#### 422.11 Franchise tax credit.

The taxes imposed under this division, less the credits allowed under section 422.12, shall be reduced by a franchise tax credit. A taxpayer who is a shareholder in a financial institution, as defined in section 581 of the Internal Revenue Code, which has in effect for the tax year an election under subchapter S of the Internal Revenue Code, or is a member of a financial institution organized as a limited liability company under chapter 524 that is taxed as a partnership for federal income tax purposes, shall compute the amount of the tax credit by recomputing the amount of tax under this division by reducing the taxable income of the taxpayer by the taxpayer's pro rata share of the items of income and expense of the financial institution and subtracting the credits allowed under section 422.12. This recomputed tax shall be subtracted from the amount of tax computed under this division after the deduction for credits allowed under section 422.12. The resulting amount, which shall not exceed the taxpayer's pro

rata share of the franchise tax paid by the financial institution, is the amount of the franchise tax credit allowed.

2007 Acts, ch 161, §2, 22

2007 amendment to this section takes effect May 15, 2007, and applies retroactively to January 1, 2007, for tax years beginning on or after that date; 2007 Acts, ch 161, §22

Section amended

#### 422.11A New jobs tax credit.

The taxes imposed under this division, less the credits allowed under section 422.12, shall be reduced by a new jobs tax credit. An industry which has entered into an agreement under chapter 260E and which has increased its base employment level by at least ten percent within the time set in the agreement or, in the case of an industry without a base employment level, adds new jobs within the time set in the agreement is entitled to this new jobs tax credit for the tax year selected by the industry. In determining if the industry has increased its base employment level by ten percent or added new jobs, only those new jobs directly resulting from the project covered by the agreement and those directly related to those new jobs shall be counted. The amount of this credit is equal to the product of six percent of the taxable wages upon which an employer is required to contribute to the state unemployment compensation fund, as defined in section 96.19, subsection 37, times the number of new jobs existing in the tax year that directly result from the project covered by the agreement or new jobs that directly result from those new jobs. The tax year chosen by the industry shall either begin or end during the period beginning with the date of the agreement and ending with the date by which the project is to be completed under the agreement. An individual may claim the new jobs tax credit allowed a partnership, subchapter S corporation, or estate or trust electing to have the income taxed directly to the individual. The amount claimed by the individual shall be based upon the pro rata share of the individual's earnings of the partnership, subchapter S corporation, or estate or trust. Any credit in excess of the tax liability for the tax year may be credited to the tax liability for the following ten tax years or until depleted, whichever is the earlier. For purposes of this section, "agreement", "industry", "new job", and "project" mean the same as defined in section 260E.2 and "base employment level" means the number of full-time jobs an industry employs at the plant site which is covered by an agreement under chapter 260E on the date of that agreement.

2007 Acts, ch 161, §3, 22

2007 amendment to this section takes effect May 15, 2007, and applies retroactively to January 1, 2007, for tax years beginning on or after that date; 2007 Acts, ch 161, §22

Section amended

#### 422.11C Ethanol blended gasoline tax credit.

1. As used in this section, unless the context otherwise requires:

a. “E-85 gasoline”, “ethanol blended gasoline”, “gasoline”, “retail dealer”, and “retail motor fuel site” mean the same as defined in section 214A.1.

b. “Motor fuel pump” means the same as defined in section 214.1.

c. “Sell” means to sell on a retail basis.

d. “Tax credit” means the designated ethanol blended gasoline tax credit as provided in this section.

2. The taxes imposed under this division, less the credits allowed under section 422.12, shall be reduced by an ethanol blended gasoline tax credit for each tax year that the taxpayer is eligible to claim the tax credit under this section. In order to be eligible, all of the following must apply:

a. The taxpayer is a retail dealer.

b. The taxpayer operates at least one retail motor fuel site at which more than sixty percent of the total gallons of gasoline sold and dispensed through one or more motor fuel pumps by the taxpayer in the tax year is ethanol blended gasoline.

c. The taxpayer complies with requirements of the department required to administer this section.

3. The tax credit shall be calculated separately for each retail motor fuel site operated by the taxpayer. The amount of the tax credit for each eligible retail motor fuel site is two and one-half cents multiplied by the total number of gallons of ethanol blended gasoline sold and dispensed through all motor fuel pumps located at that retail motor fuel site during the tax year in excess of sixty percent of all gasoline sold and dispensed through motor fuel pumps at that retail motor fuel site during the tax year.

4. A retail dealer is eligible to claim a designated ethanol blended gasoline tax credit as provided in this section even though the retail dealer claims an E-85 gasoline promotion tax credit pursuant to section 422.11O for the same tax year for the same ethanol gallonage.

5. Any credit in excess of the taxpayer’s tax liability shall be refunded. In lieu of claiming a refund, the taxpayer may elect to have the overpayment shown on the taxpayer’s final, completed return credited to the tax liability for the following tax year.

6. An individual may claim the tax credit allowed a partnership, limited liability company, S corporation, estate, or trust electing to have the income taxed directly to the individual. The amount claimed by the individual shall be based upon the pro rata share of the individual’s earnings of a partnership, limited liability company, S corporation, estate, or trust.

7. This section is repealed on January 1, 2009.

2007 Acts, ch 161, §4, 22

Ethanol blended gasoline tax credit applies beginning January 1, 2002; implementation; refunds; retroactivity; 2001 Acts, ch 123, §6; 2003 Acts, ch 167, §2 – 4

For provisions relating to availability and calculation of an ethanol blended tax credit in calendar year 2008 for a retail dealer whose tax year ends prior to December 31, 2008, see 2006 Acts, ch 1142, §49

2007 amendment to subsection 2 takes effect May 15, 2007, and applies

retroactively to January 1, 2007, for tax years beginning on or after that date; 2007 Acts, ch 161, §22

Subsection 2, unnumbered paragraph 1 amended

**422.11D Historic preservation and cultural and entertainment district tax credit.**

1. The taxes imposed under this division, less the credits allowed under section 422.12, shall be reduced by a historic preservation and cultural and entertainment district tax credit equal to the amount as computed under chapter 404A for rehabilitating eligible property. Any credit in excess of the tax liability shall be refunded or credited to the following year, as provided in section 404A.4, subsection 3.

2. An individual may claim a historic preservation and cultural and entertainment district tax credit allowed a partnership, limited liability company, S corporation, estate, or trust electing to have the income taxed directly to the individual. The amount claimed by the individual shall be based upon the pro rata share of the individual’s earnings of a partnership, limited liability company, S corporation, estate, or trust except when low-income housing tax credits authorized under section 42 of the Internal Revenue Code are used to assist in the financing of the housing development in which case the amount claimed by a partner if the business is a partnership, a shareholder if the business is an S corporation, or a member if the business is a limited liability company shall be based on the amounts designated by the eligible partnership, S corporation, or limited liability company.

3. For purposes of this section, “eligible property” means the same as used in section 404A.1.

2007 Acts, ch 161, §5, 22; 2007 Acts, ch 165, §4, 9

2007 amendment to subsection 1, striking the reference to Code section 422.12B, takes effect May 15, 2007, and applies retroactively to January 1, 2007, for tax years beginning on or after that date; 2007 Acts, ch 161, §22

2007 amendment to subsection 1, allowing a credit to be carried forward, applies to historic preservation and cultural and entertainment district tax credits applied for or reserved prior to July 1, 2007; 2007 Acts, ch 165, §9

See Code editor’s note to §29A.28

Subsection 1 amended

**422.11E Assistive device tax credit — small business.**

1. The taxes imposed under this division, less the credits allowed under section 422.12, shall be reduced by an assistive device tax credit. A small business purchasing, renting, or modifying an assistive device or making workplace modifications for an individual with a disability who is employed or will be employed by the small business is eligible, subject to availability of credits, to receive this assistive device tax credit which is equal to fifty percent of the first five thousand dollars paid during the tax year for the purchase, rental, or modification of the assistive device or for making the workplace modifications. Any credit in excess of the tax liability shall be refunded with interest computed under section 422.25. In lieu of claiming a refund, a taxpayer may elect to have the overpayment shown on the taxpayer’s final, completed

return credited to the tax liability for the following tax year. If the small business elects to take the assistive device tax credit, the small business shall not deduct for Iowa tax purposes any amount of the cost of an assistive device or workplace modifications which is deductible for federal tax purposes.

2. To receive the assistive device tax credit, the eligible small business must submit an application to the department of economic development. If the taxpayer meets the criteria for eligibility, the department of economic development shall issue to the taxpayer a certification of entitlement for the assistive device tax credit. However, the combined amount of tax credits that may be approved for a fiscal year under this section and section 422.33, subsection 9, shall not exceed five hundred thousand dollars. Tax credit certificates shall be issued on an earliest filed basis. The certification shall contain the taxpayer's name, address, tax identification number, the amount of the credit, and tax year for which the certificate applies. The taxpayer must file the tax credit certificate with the taxpayer's individual income tax return in order to claim the tax credit. The departments of economic development and revenue shall each adopt rules to jointly administer this section and shall provide by rule for the method to be used to determine for which fiscal year the tax credits are approved.

3. An individual may claim an assistive device tax credit allowed a partnership, limited liability company, S corporation, estate, or trust electing to have the income taxed directly to the individual. The amount claimed by the individual shall be based upon the pro rata share of the individual's earnings of the partnership, limited liability company, S corporation, estate, or trust.

4. For purposes of this section:

a. "Assistive device" means any item, piece of equipment, or product system which is used to increase, maintain, or improve the functional capabilities of an individual with a disability in the workplace or on the job. "Assistive device" does not mean any medical device, surgical device, or organ implanted or transplanted into or attached directly to an individual. "Assistive device" does not include any device for which a certificate of title is issued by the state department of transportation, but does include any item, piece of equipment, or product system otherwise meeting the definition of "assistive device" that is incorporated, attached, or included as a modification in or to such a device issued a certificate of title.

b. "Disability" means the same as defined in section 15.102, except that it does not include alcoholism.

c. "Small business" means a business that either had gross receipts for its preceding tax year of three million dollars or less or employed not

more than fourteen full-time employees during its preceding tax year.

d. "Workplace modifications" means physical alterations to the work environment.

2007 Acts, ch 161, §6, 22  
2007 amendment to subsection 1 takes effect May 15, 2007, and applies retroactively to January 1, 2007, for tax years beginning on or after that date; 2007 Acts, ch 161, §22  
Subsection 1 amended

#### 422.11F Investment tax credits.

1. The taxes imposed under this division, less the credits allowed under section 422.12, shall be reduced by an investment tax credit authorized pursuant to section 15E.43 for an investment in a qualifying business or a community-based seed capital fund.

2. The taxes imposed under this division, less the credits allowed under section 422.12, shall be reduced by investment tax credits authorized pursuant to sections 15.333 and 15E.193B, subsection 6.

2007 Acts, ch 161, §7, 22  
2007 amendment to this section takes effect May 15, 2007, and applies retroactively to January 1, 2007, for tax years beginning on or after that date; 2007 Acts, ch 161, §22  
Section amended

#### 422.11G Venture capital fund investment tax credit.

The tax imposed under this division, less the credits allowed under section 422.12, shall be reduced by a venture capital fund investment tax credit authorized pursuant to section 15E.51.

2007 Acts, ch 161, §8, 22  
2007 amendment to this section takes effect May 15, 2007, and applies retroactively to January 1, 2007, for tax years beginning on or after that date; 2007 Acts, ch 161, §22  
Section amended

#### 422.11H Endow Iowa tax credit.

The tax imposed under this division, less the credits allowed under section 422.12, shall be reduced by an endow Iowa tax credit authorized pursuant to section 15E.305.

2007 Acts, ch 161, §9, 22  
2007 amendment to this section takes effect May 15, 2007, and applies retroactively to January 1, 2007, for tax years beginning on or after that date; 2007 Acts, ch 161, §22  
2006 strike of 2010 repeal of this section is effective July 1, 2007; 2006 Acts, ch 1151, §7, 8  
Section amended

#### 422.11I Soy-based cutting tool oil tax credit. Repealed by its own terms; 2005 Acts, ch 146, § 1, 3.

With respect to proposed amendment to former §422.11I, see Code editor's note

#### 422.11J Tax credits for wind energy production and renewable energy.

The taxes imposed under this division, less the credits allowed under section 422.12, shall be reduced by tax credits for wind energy production allowed under chapter 476B and for renewable energy allowed under chapter 476C.

2007 Acts, ch 161, §11, 22  
2007 amendment to this section takes effect May 15, 2007, and applies

retroactively to January 1, 2007, for tax years beginning on or after that date; 2007 Acts, ch 161, §22  
Section amended

**422.11K Economic development region revolving fund contribution tax credit.**

The taxes imposed under this division, less the credits allowed under section 422.12, shall be reduced by an economic development region revolving fund contribution tax credit authorized pursuant to section 15E.232.

2007 Acts, ch 161, §12, 22  
2007 amendment to this section takes effect May 15, 2007, and applies retroactively to January 1, 2007, for tax years beginning on or after that date; 2007 Acts, ch 161, §22  
Section amended

**422.11L Wage-benefits tax credit.**

The taxes imposed under this division, less the credits allowed under section 422.12, shall be reduced by a wage-benefits tax credit authorized pursuant to section 15I.2.

2007 Acts, ch 161, §13, 22  
Section is effective June 9, 2005, and applies to qualified new jobs created on or after July 1, 2005; section applies to tax years ending on or after July 1, 2005; 2005 Acts, ch 150, §69  
2007 amendment to this section takes effect May 15, 2007, and applies retroactively to January 1, 2007, for tax years beginning on or after that date; 2007 Acts, ch 161, §22  
Section amended

**422.11M Agricultural assets transferred to beginning farmers.**

The taxes imposed under this division, less the credits allowed under section 422.12, shall be reduced by an agricultural assets transfer tax credit as allowed under section 175.37.

2007 Acts, ch 161, §14, 22  
Section takes effect January 1, 2007, and applies to tax years beginning on or after that date; 2006 Acts, ch 1161, §7  
2007 amendment to this section takes effect May 15, 2007, and applies retroactively to January 1, 2007, for tax years beginning on or after that date; 2007 Acts, ch 161, §22  
Section amended

**422.11N Ethanol promotion tax credit.**

1. As used in this section, unless the context otherwise requires:

- a. "E-85 gasoline", "ethanol", "ethanol blended gasoline", "gasoline", and "retail dealer" mean the same as defined in section 214A.1.
- b. "Flexible fuel vehicle" means the same as defined in section 452A.2.
- c. "Motor fuel" means the same as defined in section 452A.2.
- d. "Motor fuel pump" means the same as defined in section 214.1.
- e. "Sell" means to sell on a retail basis.
- f. "Tax credit" means the ethanol promotion tax credit as provided in this section.

2. The special terms provided in section 452A.31 shall also apply to this section.

3. The taxes imposed under this division, less the credits allowed under section 422.12, shall be reduced by an ethanol promotion tax credit for each tax year that the taxpayer is eligible to claim the tax credit under this section. In order to be eli-

gible, all of the following must apply:

a. The taxpayer is a retail dealer who sells and dispenses ethanol blended gasoline through a motor fuel pump in the tax year in which the tax credit is claimed.

b. The retail dealer complies with requirements of the department to administer this section.

4. In order to receive the tax credit, the retail dealer must calculate all of the following:

a. The retail dealer's biofuel distribution percentage which is the sum of the retail dealer's total ethanol gallonage plus the retail dealer's total biodiesel gallonage expressed as a percentage of the retail dealer's total gasoline gallonage, in the retail dealer's applicable determination period.

b. The retail dealer's biofuel threshold percentage is as follows:

(1) For a retail dealer who sells and dispenses more than two hundred thousand gallons of motor fuel in an applicable determination period, the retail dealer's biofuel threshold percentage is as follows:

(a) Ten percent for the determination period beginning on January 1, 2009, and ending December 31, 2009.

(b) Eleven percent for the determination period beginning on January 1, 2010, and ending December 31, 2010.

(c) Twelve percent for the determination period beginning on January 1, 2011, and ending December 31, 2011.

(d) Thirteen percent for the determination period beginning on January 1, 2012, and ending December 31, 2012.

(e) Fourteen percent for the determination period beginning on January 1, 2013, and ending December 31, 2013.

(f) Fifteen percent for the determination period beginning on January 1, 2014, and ending December 31, 2014.

(g) Seventeen percent for the determination period beginning on January 1, 2015, and ending December 31, 2015.

(h) Nineteen percent for the determination period beginning on January 1, 2016, and ending December 31, 2016.

(i) Twenty-one percent for the determination period beginning on January 1, 2017, and ending December 31, 2017.

(j) Twenty-three percent for the determination period beginning on January 1, 2018, and ending December 31, 2018.

(k) Twenty-five percent for each determination period in the period beginning on January 1, 2019, and ending on December 31, 2020.

(2) For a retail dealer who sells and dispenses two hundred thousand gallons of motor fuel or less in an applicable determination period, the biofuel threshold percentages shall be:

(a) Six percent for the determination period

beginning on January 1, 2009, and ending December 31, 2009.

(b) Six percent for the determination period beginning on January 1, 2010, and ending December 31, 2010.

(c) Ten percent for the determination period beginning on January 1, 2011, and ending December 31, 2011.

(d) Eleven percent for the determination period beginning on January 1, 2012, and ending December 31, 2012.

(e) Twelve percent for the determination period beginning on January 1, 2013, and ending December 31, 2013.

(f) Thirteen percent for the determination period beginning on January 1, 2014, and ending December 31, 2014.

(g) Fourteen percent for the determination period beginning on January 1, 2015, and ending December 31, 2015.

(h) Fifteen percent for the determination period beginning on January 1, 2016, and ending December 31, 2016.

(i) Seventeen percent for the determination period beginning on January 1, 2017, and ending December 31, 2017.

(j) Nineteen percent for the determination period beginning on January 1, 2018, and ending December 31, 2018.

(k) Twenty-one percent for the determination period beginning on January 1, 2019, and ending December 31, 2019.

(l) Twenty-five percent for the determination period beginning on January 1, 2020, and ending December 31, 2020.

(3) Notwithstanding paragraph “a”, the governor may adjust a biofuel threshold percentage for a determination period if the governor finds that exigent circumstances exist. Exigent circumstances exist due to potential substantial economic injury to the state’s economy. Exigent circumstances also exist if it is probable that a substantial number of retail dealers cannot comply with a biofuel threshold percentage during a determination period due to any of the following:

(a) Less than the target number of flexible fuel vehicles are registered under chapter 321. The target numbers of flexible fuel vehicles are as follows:

(i) On January 1, 2011, two hundred fifty thousand.

(ii) On January 1, 2014, three hundred fifty thousand.

(iii) On January 1, 2017, four hundred fifty thousand.

(iv) On January 1, 2019, five hundred fifty thousand.

(b) A shortage in the biofuel feedstock resulting in a dramatic decrease in biofuel inventories.

If the governor finds that exigent circumstances exist, the governor may reduce the applicable biofuel threshold percentage by replacing it with an

adjusted biofuel threshold percentage. The governor shall consult with the department of revenue and the renewable fuels and coproducts advisory committee established pursuant to section 159A.4. The governor shall make the adjustment by giving notice of intent to issue a proclamation which shall take effect not earlier than thirty-five days after publication in the Iowa administrative bulletin of a notice to issue the proclamation. The governor shall provide a period of notice and comment in the same manner as provided in section 17A.4, subsection 1. The adjusted biofuel threshold percentage shall be effective for the following determination period.

c. The retail dealer’s biofuel threshold percentage disparity which is a positive percentage difference obtained by taking the minuend which is the retail dealer’s biofuel threshold percentage and subtracting from it the subtrahend which is the retail dealer’s biofuel distribution percentage, in the retail dealer’s applicable determination period.

d. The tax credit shall be calculated separately for each retail motor fuel site or other permanent or temporary location from which the retail dealer sells and dispenses ethanol blended gasoline.

5. a. For a retail dealer whose tax year is the same as a determination period beginning on January 1 and ending on December 31, the retail dealer’s tax credit is calculated by multiplying the retail dealer’s total ethanol gallonage by a tax credit rate, which may be adjusted based on the retail dealer’s biofuel threshold percentage disparity. The tax credit rate is as follows:

(1) For any tax year in which the retail dealer has attained a biofuel threshold percentage for the determination period, the tax credit rate is six and one-half cents.

(2) For any tax year in which the retail dealer has not attained a biofuel threshold percentage for the determination period, the tax credit rate shall be adjusted based on the retail dealer’s biofuel threshold percentage disparity. The amount of the adjusted tax credit rate is as follows:

(a) If the retail dealer’s biofuel threshold percentage disparity equals two percent or less, the tax credit rate is four and one-half cents.

(b) If the retail dealer’s biofuel threshold percentage disparity equals more than two percent but not more than four percent, the tax credit rate is two and one-half cents.

(c) A retail dealer is not eligible for a tax credit if the retail dealer’s biofuel threshold percentage disparity equals more than four percent.

b. For a retail dealer whose tax year is not the same as a determination period beginning on January 1 and ending on December 31, the retail dealer shall calculate the tax credit as follows:

(1) If a retail dealer has not claimed a tax credit in the retail dealer’s previous tax year, the retail dealer may claim the tax credit in the retail dealer’s current tax year for that period beginning on

January 1 of the retail dealer's previous tax year to the last day of the retail dealer's previous tax year. For that period the retail dealer shall calculate the tax credit in the same manner as a retail dealer who will calculate the tax credit on December 31 of that calendar year as provided in paragraph "a".

(2) (a) For the period beginning on the first day of the retail dealer's tax year until December 31, the retail dealer shall calculate the tax credit in the same manner as a retail dealer who calculates the tax credit on that same December 31 as provided in paragraph "a".

(b) For the period beginning on January 1 to the end of the retail dealer's tax year, the retail dealer shall calculate the tax credit in the same manner as a retail dealer who will calculate the tax credit on the following December 31 as provided in paragraph "a".

6. A retail dealer is eligible to claim an ethanol promotion tax credit as provided in this section even though the retail dealer claims an E-85 gasoline promotion tax credit pursuant to section 422.11O for the same tax year and for the same ethanol gallonage.

7. Any credit in excess of the retail dealer's tax liability shall be refunded. In lieu of claiming a refund, the retail dealer may elect to have the overpayment shown on the retail dealer's final, completed return credited to the tax liability for the following tax year.

8. An individual may claim the tax credit allowed a partnership, limited liability company, S corporation, estate, or trust electing to have the income taxed directly to the individual. The amount claimed by the individual shall be based upon the pro rata share of the individual's earnings of a partnership, limited liability company, S corporation, estate, or trust.

9. This section is repealed on January 1, 2021.

2007 Acts, ch 126, §66; 2007 Acts, ch 161, §15, 22

For provisions relating to availability and calculation of an ethanol promotion tax credit in calendar year 2020 for a retail dealer whose tax year ends prior to December 31, 2020, see 2006 Acts, ch 1142, §49; 2006 Acts, ch 1175, §17

2007 amendment to subsection 3, unnumbered paragraph 1, takes effect May 15, 2007, and applies retroactively to January 1, 2007, for tax years beginning on or after that date; 2007 Acts, ch 161, §22

Subsection 3, unnumbered paragraph 1 amended

Subsection 5, paragraph b, unnumbered paragraph 1 amended

**422.11O E-85 gasoline promotion tax credit.**

1. As used in this section, unless the context otherwise requires:

a. "E-85 gasoline", "ethanol", "gasoline", and "retail dealer" mean the same as defined in section 214A.1.

b. "Motor fuel pump" means the same as defined in section 214.1.

c. "Sell" means to sell on a retail basis.

d. "Tax credit" means the E-85 gasoline promotion tax credit as provided in this section.

2. The taxes imposed under this division, less

the credits allowed under section 422.12, shall be reduced by an E-85 gasoline promotion tax credit for each tax year that the taxpayer is eligible to claim the tax credit under this subsection. In order to be eligible, all of the following must apply:

a. The taxpayer is a retail dealer who sells and dispenses E-85 gasoline through a motor fuel pump in the tax year in which the tax credit is claimed.

b. The retail dealer complies with requirements of the department to administer this section.

3. For a retail dealer whose tax year is on a calendar year basis, the retail dealer shall calculate the amount of the tax credit by multiplying a designated rate by the retail dealer's total E-85 gasoline gallonage as provided in sections 452A.31 and 452A.32. The designated rate is as follows:

a. For calendar year 2006, calendar year 2007, and calendar year 2008, twenty-five cents.

b. For calendar year 2009 and calendar year 2010, twenty cents.

c. For calendar year 2011, ten cents.

d. For calendar year 2012, nine cents.

e. For calendar year 2013, eight cents.

f. For calendar year 2014, seven cents.

g. For calendar year 2015, six cents.

h. For calendar year 2016, five cents.

i. For calendar year 2017, four cents.

j. For calendar year 2018, three cents.

k. For calendar year 2019, two cents.

l. For calendar year 2020, one cent.

4. For a retail dealer whose tax year is not on a calendar year basis, the retail dealer shall calculate the tax credit as follows:

a. If a retail dealer has not claimed a tax credit in the retail dealer's previous tax year, the retail dealer may claim the tax credit in the retail dealer's current tax year for that period beginning on January 1 of the retail dealer's previous tax year to the last day of the retail dealer's previous tax year. For that period the retail dealer shall calculate the tax credit in the same manner as a retail dealer who will calculate the tax credit on December 31 of that calendar year as provided in subsection 3.

b. (1) For the period beginning on the first day of the retail dealer's tax year until December 31, the retail dealer shall calculate the tax credit in the same manner as a retail dealer who calculates the tax credit on that same December 31 as provided in subsection 3.

(2) For the period beginning on January 1 to the end of the retail dealer's tax year, the retail dealer shall calculate the tax credit in the same manner as a retail dealer who will calculate the tax credit on the following December 31 as provided in subsection 3.

5. A retail dealer is eligible to claim an E-85 gasoline promotion tax credit as provided in this section even though the retail dealer claims an

ethanol promotion tax credit pursuant to section 422.11N for the same tax year for the same ethanol gallonage.

6. Any credit in excess of the retail dealer's tax liability shall be refunded. In lieu of claiming a refund, the retail dealer may elect to have the overpayment shown on the retail dealer's final, completed return credited to the tax liability for the following tax year.

7. An individual may claim the tax credit allowed a partnership, limited liability company, S corporation, estate, or trust electing to have the income taxed directly to the individual. The amount claimed by the individual shall be based upon the pro rata share of the individual's earnings of a partnership, limited liability company, S corporation, estate, or trust.

8. This section is repealed on January 1, 2021.

2007 Acts, ch 126, §67; 2007 Acts, ch 161, §16, 22

Section applies retroactively to tax years beginning on or after January 1, 2006; 2006 Acts, ch 1142, §48

For provisions relating to availability and calculation of an E-85 gasoline promotion tax credit in calendar year 2020 for a retail dealer whose tax year ends prior to December 31, 2020, see 2006 Acts, ch 1142, §49

2007 amendment to subsection 2, unnumbered paragraph 1, takes effect May 15, 2007, and applies retroactively to January 1, 2007, for tax years beginning on or after that date; 2007 Acts, ch 161, §22

Subsection 2, unnumbered paragraph 1 amended

Subsection 4, unnumbered paragraph 1 amended

#### **422.11P Biodiesel blended fuel tax credit.**

1. As used in this section, unless the context otherwise requires:

a. "Biodiesel blended fuel", "diesel fuel", and "retail dealer" mean the same as defined in section 214A.1.

b. "Motor fuel pump" means the same as defined in section 214.1.

c. "Sell" means to sell on a retail basis.

d. "Tax credit" means a biodiesel blended fuel tax credit as provided in this section.

2. The taxes imposed under this division, less the credits allowed under section 422.12, shall be reduced by the amount of the biodiesel blended fuel tax credit for each tax year that the taxpayer is eligible to claim a tax credit under this subsection.

a. In order to be eligible, all of the following must apply:

(1) The taxpayer is a retail dealer who sells and dispenses biodiesel blended fuel through a motor fuel pump in the tax year in which the tax credit is claimed.

(2) Of the total gallons of diesel fuel that the retail dealer sells and dispenses through all motor fuel pumps during the retail dealer's tax year, fifty percent or more is biodiesel blended fuel which meets the requirements of this section.

(3) The retail dealer complies with requirements of the department established to administer this section.

b. The tax credit shall apply to biodiesel blended fuel formulated with a minimum percentage of two percent by volume of biodiesel, if the formula-

tion meets the standards provided in section 214A.2.

3. The amount of the tax credit is three cents multiplied by the total number of gallons of biodiesel blended fuel sold and dispensed by the retail dealer through all motor fuel pumps operated by the retail dealer during the retail dealer's tax year.

4. Any credit in excess of the retail dealer's tax liability shall be refunded. In lieu of claiming a refund, the retail dealer may elect to have the overpayment shown on the retail dealer's final, completed return credited to the tax liability for the following tax year.

5. An individual may claim the tax credit allowed a partnership, limited liability company, S corporation, estate, or trust electing to have the income taxed directly to the individual. The amount claimed by the individual shall be based upon the pro rata share of the individual's earnings of the partnership, limited liability company, S corporation, estate, or trust.

6. This section is repealed January 1, 2012.

2007 Acts, ch 161, §17, 22

Section applies retroactively to tax years beginning on or after January 1, 2006; 2006 Acts, ch 1142, §48

For provisions relating to requirements for claiming a biodiesel blended fuel tax credit in calendar year 2006 for a retail dealer whose tax year ends prior to December 31, 2006; and for availability and calculation of the tax credit for calendar year 2011 for a retail dealer whose tax year ends prior to December 31, 2011, see 2006 Acts, ch 1142, §49

2007 amendment to subsection 2 takes effect May 15, 2007, and applies retroactively to January 1, 2007, for tax years beginning on or after that date; 2007 Acts, ch 161, §22

Subsection 2, unnumbered paragraph 1 amended

#### **422.11Q Iowa fund of funds tax credit.**

The taxes imposed under this division, less the credits allowed under section 422.12, shall be reduced by a tax credit authorized pursuant to section 15E.66, if redeemed, for investments in the Iowa fund of funds.

2007 Acts, ch 161, §18, 22

2007 amendment to this section takes effect May 15, 2007, and applies retroactively to January 1, 2007, for tax years beginning on or after that date; 2007 Acts, ch 161, §22

Section amended

#### **422.11R Soy-based transformer fluid tax credit.**

The taxes imposed under this division, less the credits allowed under section 422.12, shall be reduced by a soy-based transformer fluid tax credit allowed under chapter 476D.

This section is repealed December 31, 2008.

2007 Acts, ch 161, §19, 22

2007 amendment to this section takes effect May 15, 2007, and applies retroactively to January 1, 2007, for tax years beginning on or after that date; 2007 Acts, ch 161, §22

Section amended

#### **422.11S School tuition organization tax credit.**

1. The taxes imposed under this division, less the credits allowed under section 422.12, shall be reduced by a school tuition organization tax credit equal to sixty-five percent of the amount of the voluntary cash or noncash contributions made by the taxpayer during the tax year to a school tuition or-

organization, subject to the total dollar value of the organization's tax credit certificates as computed in subsection 7. The tax credit shall be claimed by use of a tax credit certificate as provided in subsection 6.

2. To be eligible for this credit, all of the following shall apply:

*a.* A deduction pursuant to section 170 of the Internal Revenue Code for any amount of the contribution is not taken for state tax purposes.

*b.* The contribution does not designate that any part of the contribution be used for the direct benefit of any dependent of the taxpayer or any other student designated by the taxpayer.

*c.* The value of a noncash contribution shall be appraised pursuant to rules of the director.

3. Any credit in excess of the tax liability is not refundable but the excess for the tax year may be credited to the tax liability for the following five tax years or until depleted, whichever is the earlier.

4. Married taxpayers who file separate returns or file separately on a combined return form must determine the tax credit under subsection 1 based upon their combined net income and allocate the total credit amount to each spouse in the proportion that each spouse's respective net income bears to the total combined net income. Nonresidents or part-year residents of Iowa must determine their tax credit in the ratio of their Iowa source net income to their all source net income. Nonresidents or part-year residents who are married and elect to file separate returns or to file separately on a combined return form must allocate the tax credit between the spouses in the ratio of each spouse's Iowa source net income to the combined Iowa source net income of the taxpayers.

5. For purposes of this section:

*a.* "Eligible student" means a student who is a member of a household whose total annual income during the calendar year before the student receives a tuition grant for purposes of this section does not exceed an amount equal to three times the most recently published federal poverty guidelines in the federal register by the United States department of health and human services.

*b.* "Qualified school" means a nonpublic elementary or secondary school in this state which is accredited under section 256.11 and adheres to the provisions of the federal Civil Rights Act of 1964 and chapter 216.

*c.* "School tuition organization" means a charitable organization in this state that is exempt from federal taxation under section 501(c)(3) of the Internal Revenue Code and that does all of the following:

(1) Allocates at least ninety percent of its annual revenue in tuition grants for children to allow them to attend a qualified school of their parents' choice.

(2) Only awards tuition grants to children who reside in Iowa.

(3) Provides tuition grants to students without limiting availability to only students of one school.

(4) Only provides tuition grants to eligible students.

(5) Prepares an annual reviewed financial statement certified by a public accounting firm.

6. *a.* In order for the taxpayer to claim the school tuition organization tax credit under subsection 1, a tax credit certificate issued by the school tuition organization to which the contribution was made shall be attached to the person's tax return. The tax credit certificate shall contain the taxpayer's name, address, tax identification number, the amount of the contribution, the amount of the credit, and other information required by the department.

*b.* The department shall authorize a school tuition organization to issue tax credit certificates for contributions made to the school tuition organization. The aggregate amount of tax credit certificates that the department shall authorize for a school tuition organization for a tax year shall be determined for that organization pursuant to subsection 7. However, a school tuition organization shall not be authorized to issue tax credit certificates unless the organization is controlled by a board of directors consisting of seven members. The names and addresses of the members shall be provided to the department and shall be made available by the department to the public, notwithstanding any state confidentiality restrictions.

*c.* Pursuant to rules of the department, a school tuition organization shall initially register with the department. The organization's registration shall include proof of section 501(c)(3) status and provide a list of the schools the school tuition organization serves. Once the school tuition organization has registered, it is not required to subsequently register unless the schools it serves changes.

*d.* Each school that is served by a school tuition organization shall submit a participation form annually to the department by November 1 providing the following information:

(1) Certified enrollment as of October 1, or the first Monday in October if October 1 falls on a Saturday or Sunday.

(2) The school tuition organization that represents the school. A school shall only be represented by one school tuition organization.

7. *a.* For purposes of this subsection:

(1) "Certified enrollment" means the enrollment at schools served by school tuition organizations as indicated by participation forms provided to the department each October.

(2) "Total approved tax credits" means for the tax year beginning in the 2006 calendar year, two million five hundred thousand dollars, for the tax year beginning in the 2007 calendar year, five million dollars, and for tax years beginning on or after January 1, 2008, seven million five hundred thou-



sand dollars.

(3) “*Tuition grant*” means grants to students to cover all or part of the tuition at a qualified school.

b. Each year by December 1, the department shall authorize school tuition organizations to issue tax credit certificates for the following tax year. However, for the tax year beginning in the 2006 calendar year only, the department, by September 1, 2006, shall authorize school tuition organizations to issue tax credit certificates for the 2006 calendar tax year. For the tax year beginning in the 2006 calendar year only, each school served by a school tuition organization shall submit a participation form to the department by August 1, 2006, providing the certified enrollment as of the third Friday of September 2005, along with the school tuition organization that represents the school. Tax credit certificates available for issue by each school tuition organization shall be determined in the following manner:

(1) Total the certified enrollment of each participating qualified school to arrive at the total participating certified enrollment.

(2) Determine the per student tax credit available by dividing the total approved tax credits by the total participating certified enrollment.

(3) Multiply the per student tax credit by the total participating certified enrollment of each school tuition organization.

8. A school tuition organization that receives a voluntary cash or noncash contribution pursuant to this section shall report to the department, on a form prescribed by the department, by January 12 of each tax year all of the following information:

a. The name and address of the members and the chairperson of the governing board of the school tuition organization.

b. The total number and dollar value of contributions received and the total number and dollar value of the tax credits approved during the previous tax year.

c. A list of the individual donors for the previous tax year that includes the dollar value of each donation and the dollar value of each approved tax credit.

d. The total number of children utilizing tuition grants for the school year in progress and the total dollar value of the grants.

e. The name and address of each represented school at which tuition grants are currently being utilized, detailing the number of tuition grant students and the total dollar value of grants being utilized at each school served by the school tuition organization.

2007 Acts, ch 161, §20, 22; 2007 Acts, ch 186, §9 – 13, 31; 2007 Acts, ch 215, §111

Section takes effect June 2, 2006, and applies retroactively to January 1, 2006, for tax years beginning on or after that date; 2006 Acts, ch 1163, §2

2007 amendment to subsection 1 striking the subtraction of the earned income tax credit under §422.12B prior to calculating the school tuition tax credit takes effect May 5, 2007, and applies retroactively to tax years beginning on or after January 1, 2007; 2007 Acts, ch 161, §22

2007 amendments to subsections 1, 2, and 8 relating to voluntary non-cash contributions to a school tuition organization apply retroactively to tax

years beginning on or after January 1, 2007; 2007 Acts, ch 186, §31

See Code editor's note to §29A.28

Subsection 1 amended

Subsection 2, NEW paragraph c

Subsection 6, paragraph d amended

Subsection 7, paragraph a, subparagraph (2) amended

Subsection 7, paragraph b, unnumbered paragraph 1 amended

Subsection 8, unnumbered paragraph 1 amended

#### **422.11T Film qualified expenditure tax credit.**

The taxes imposed under this division, less the credits allowed under sections 422.12 and 422.12B,\* shall be reduced by a qualified expenditure tax credit authorized pursuant to section 15.393, subsection 2, paragraph “a”.

2007 Acts, ch 162, §5, 13

\*Reference to §422.12B may not be intended; corrective legislation is pending

Section takes effect May 17, 2007, and applies retroactively to tax years beginning on or after January 1, 2007; 2007 Acts, ch 162, §13

NEW section

#### **422.11U Film investment tax credit.**

The taxes imposed under this division, less the credits allowed under sections 422.12 and 422.12B,\* shall be reduced by an investment tax credit authorized pursuant to section 15.393, subsection 2, paragraph “b”.

2007 Acts, ch 162, §6, 13

\*Reference to §422.12B may not be intended; corrective legislation is pending

Section takes effect May 17, 2007, and applies retroactively to tax years beginning on or after January 1, 2007; 2007 Acts, ch 162, §13

NEW section

#### **422.12 Deductions from computed tax.**

There shall be deducted from but not to exceed the tax, after the same shall have been computed as provided in this division, the following:

1. A personal exemption credit in the following amounts:

a. For an estate or trust, a single individual, or a married person filing a separate return, forty dollars.

b. For a head of household, or a husband and wife filing a joint return, eighty dollars.

c. For each dependent, an additional forty dollars. As used in this section, the term “*dependent*” has the same meaning as provided by the Internal Revenue Code.

d. For a single individual, husband, wife or head of household, an additional exemption of twenty dollars for each of said individuals who has attained the age of sixty-five years before the close of the tax year or on the first day following the end of the tax year.

e. For a single individual, husband, wife or head of household, an additional exemption of twenty dollars for each of said individuals who is blind at the close of the tax year. For the purposes of this paragraph, an individual is blind only if the individual's central visual acuity does not exceed twenty-two hundredths in the better eye with correcting lenses, or if the individual's visual acuity is greater than twenty-two hundredths but is accompanied by a limitation in the fields of vision

such that the widest diameter of the visual field subtends an angle no greater than twenty degrees.

2. A tuition credit equal to twenty-five percent of the first one thousand dollars which the taxpayer has paid to others for each dependent in grades kindergarten through twelve, for tuition and textbooks of each dependent in attending an elementary or secondary school situated in Iowa, which school is accredited or approved under section 256.11, which is not operated for profit, and which adheres to the provisions of the federal Civil Rights Act of 1964 and chapter 216. As used in this subsection, “textbooks” means books and other instructional materials and equipment used in elementary and secondary schools in teaching only those subjects legally and commonly taught in public elementary and secondary schools in this state and does not include instructional books and materials used in the teaching of religious tenets, doctrines, or worship, the purpose of which is to inculcate those tenets, doctrines, or worship. “Textbooks” includes books or materials used for extracurricular activities including sporting events, musical or dramatic events, speech activities, driver’s education, or programs of a similar nature. Notwithstanding any other provision, all other credits allowed under this section shall be deducted before the tuition credit under this subsection. The department, when conducting an audit of a taxpayer’s return, shall also audit the tuition tax credit portion of the tax return.

As used in this subsection, “tuition” means any charges for the expenses of personnel, buildings, equipment and materials other than textbooks, and other expenses of elementary or secondary schools which relate to the teaching only of those subjects legally and commonly taught in public elementary and secondary schools in this state and which do not relate to the teaching of religious tenets, doctrines, or worship, the purpose of which is to inculcate those tenets, doctrines, or worship. “Tuition” includes those expenses which relate to extracurricular activities including sporting events, musical or dramatic events, speech activities, driver’s education, or programs of a similar nature.

3. For the purpose of this section, the determination of whether an individual is married shall be made in accordance with section 7703 of the Internal Revenue Code.

2007 Acts, ch 161, §21, 22  
 2007 amendment to subsection 2, unnumbered paragraph 1, takes effect May 15, 2007, and applies retroactively to January 1, 2007, for tax years beginning on or after that date; 2007 Acts, ch 161, §22  
 Subsection 2, unnumbered paragraph 1 amended

**422.12B Earned income tax credit.**

1. The taxes imposed under this division less the credits allowed under section 422.12 shall be reduced by an earned income credit equal to seven percent of the federal earned income credit provided in section 32 of the Internal Revenue Code. Any credit in excess of the tax liability is refundable.

2. Married taxpayers electing to file separate returns or filing separately on a combined return may avail themselves of the earned income credit by allocating the earned income credit to each spouse in the proportion that each spouse’s respective earned income bears to the total combined earned income. Taxpayers affected by the allocation provisions of section 422.8 shall be permitted a deduction for the credit only in the amount fairly and equitably allocable to Iowa under rules prescribed by the director.

2007 Acts, ch 161, §1, 22  
 2007 amendment to subsection 1 takes effect May 15, 2007, and applies retroactively to January 1, 2007, for tax years beginning on or after that date; 2007 Acts, ch 161, §22  
 Subsection 1 amended

**422.12E Income tax return checkoffs limited.**

1. For tax years beginning on or after January 1, 2004, there shall be allowed no more than four income tax return checkoffs on each income tax return. When the same four income tax return checkoffs have been provided on the income tax return for two consecutive years, the two checkoffs for which the least amount has been contributed, in the aggregate for the first tax year and through March 15 of the second tax year, are repealed. This section does not apply to the income tax return checkoff provided in section 68A.601.

2. If more checkoffs are enacted in the same session of the general assembly than there is space for inclusion on the individual tax return form, the earliest enacted checkoffs for which there is space for inclusion on the return form shall be included on the return form, and all other checkoffs enacted during that session of the general assembly are repealed. If more checkoffs are enacted in the same session of the general assembly than there is space for inclusion on the individual income tax form and the additional checkoffs are enacted on the same day, the director shall determine which checkoffs shall be included on the return form.

2007 Acts, ch 186, §14  
 Checkoff for Iowa state fair foundation; §422.12D  
 Checkoff for fish and game protection fund; §422.12H, 456A.16  
 Joint checkoff for keep Iowa beautiful fund and volunteer fire fighter preparedness fund; §422.12G  
 Checkoff for veterans trust fund; §422.12I  
 Unnumbered paragraph 1 designated as subsection 1  
 Unnumbered paragraph 2 amended and designated as subsection 2

**422.12I Income tax checkoff for veterans trust fund.**

1. A person who files an individual or a joint income tax return with the department of revenue under section 422.13 may designate one dollar or more to be credited to the veterans trust fund created in section 35A.13. If the refund due on the return or the payment remitted with the return is insufficient to pay the additional amount designated by the taxpayer to the veterans trust fund, the amount designated shall be reduced to the remaining amount of the refund or the remaining amount remitted with the return. The designa-

tion of a contribution to the veterans trust fund under this section is irrevocable.

2. The director of revenue shall draft the income tax form to allow the designation of contributions to the veterans trust fund on the tax return. The department of revenue, on or before January 31, shall transfer the total amount designated on the tax return forms due in the preceding calendar year to the veterans trust fund created in section 35A.13. However, before a checkoff pursuant to this section shall be permitted, all liabilities on the books of the department of administrative services and accounts identified as owing under section 8A.504 and the political contribution allowed under section 68A.601 shall be satisfied.

3. The department of revenue shall adopt rules to administer this section.

4. This section is subject to repeal under section 422.12E.

2007 Acts, ch 126, §68  
Section applies retroactively to the tax year beginning January 1, 2006, and is eligible for placement on the income tax return form for that tax year;  
2006 Acts, ch 1110, §4, 5  
Subsection 2 amended

#### **422.13 Return by individual.**

1. Except as provided in subsection 1A, a resident or nonresident of this state shall make a return, signed in accordance with forms and rules prescribed by the director, if any of the following are applicable:

*a.* The individual has net income of nine thousand dollars or more for the tax year from sources taxable under this division.

*b.* The individual is claimed as a dependent on another person's return and has net income of five thousand dollars or more for the tax year from sources taxable under this division.

*c.* However, if that part of the net income of a nonresident which is allocated to Iowa pursuant to section 422.8, subsection 2, is less than one thousand dollars the nonresident is not required to make and sign a return except when the nonresident is subject to the state alternative minimum tax imposed pursuant to section 422.5, subsection 1, paragraph "k".

1A. Notwithstanding any other provision in this section, a resident of this state is not required to make and file a return if the person's net income is equal to or less than the appropriate dollar amount listed in section 422.5, subsection 2, upon which tax is not imposed. A nonresident of this state is not required to make and file a return if the person's total net income in section 422.5, subsection 1, paragraph "j", is equal to or less than the appropriate dollar amount provided in section 422.5, subsection 2, upon which tax is not imposed. For purposes of this subsection, the amount of a lump sum distribution subject to separate federal tax shall be included in net income for purposes of determining if a resident is required to file a return and the portion of the lump sum distribution that is allocable to Iowa is included in total net income

for purposes of determining if a nonresident is required to make and file a return.

2. For purposes of determining the requirement for filing a return under subsection 1, the combined net income of a husband and wife from sources taxable under this division shall be considered.

3. If the taxpayer is unable to make the return, the return shall be made by a duly authorized agent or by a guardian or other person charged with the care of the person or property of the taxpayer.

4. A nonresident taxpayer shall file a copy of the taxpayer's federal income tax return for the current tax year with the return required by this section.

5. Notwithstanding subsections 1 through 4 and sections 422.15 and 422.36, a partnership, a limited liability company whose members are taxed on the company's income under provisions of the Internal Revenue Code, trust, or corporation whose stockholders are taxed on the corporation's income under the provisions of the Internal Revenue Code may, not later than the due date for filing its return for the taxable year, including any extension thereof, elect to file a composite return for the nonresident partners, members, beneficiaries, or shareholders. Nonresident trusts or estates which are partners, members, beneficiaries, or shareholders in partnerships, limited liability companies, trusts, or S corporations may also be included on a composite return. The director may require that a composite return be filed under the conditions deemed appropriate by the director. A partnership, limited liability company, trust, or corporation filing a composite return is liable for tax required to be shown due on the return. All powers of the director and requirements of the director apply to returns filed under this subsection including, but not limited to, the provisions of this division and division VI of this chapter.

2007 Acts, ch 186, §15  
Subsection 5 amended

#### **422.16 Withholding of income tax at source — penalties — interest — declaration of estimated tax — bond.**

1. *a.* Every withholding agent and every employer as defined in this chapter and further defined in the Internal Revenue Code, with respect to income tax collected at source, making payment of wages to a nonresident employee working in Iowa, or to a resident employee, shall deduct and withhold from the wages an amount which will approximate the employee's annual tax liability on a calendar year basis, calculated on the basis of tables to be prepared by the department and schedules or percentage rates, based on the wages, to be prescribed by the department. Every employee or other person shall declare to the employer or withholding agent the number of the employee's or other person's personal exemptions and

dependency exemptions or credits to be used in applying the tables and schedules or percentage rates. However, no greater number of personal or dependency exemptions or credits may be declared by the employee or other person than the number to which the employee or other person is entitled except as allowed under sections 3402(m)(1) and 3402(m)(3) of the Internal Revenue Code and as allowed for the child and dependent care credit provided in section 422.12C. The claiming of exemptions or credits in excess of entitlement is a serious misdemeanor.

b. Nonresidents engaged in any facet of feature film, television, or educational production using the film or videotape disciplines in the state are not subject to Iowa withholding if the employer has applied to the department for exemption from the withholding requirement and the department has determined that any nonresident receiving wages would be entitled to a credit against Iowa income taxes paid.

c. For the purposes of this subsection, state income tax shall be withheld from pensions, annuities, other similar periodic payments, and other income payments of those persons whose primary residence is in Iowa in those circumstances in which those persons have federal income tax withheld from pensions, annuities, other similar periodic payments, and other income payments under sections 3402(o), 3402(p), 3402(s), 3405(a), 3405(b), and 3405(c) of the Internal Revenue Code at a rate to be specified by the department.

d. For the purposes of this subsection, state income tax shall be withheld on winnings in excess of six hundred dollars derived from gambling activities authorized under chapter 99B or 99G. State income tax shall be withheld on winnings in excess of one thousand dollars from gambling activities authorized under chapter 99D. State income tax shall be withheld on winnings in excess of twelve hundred dollars derived from slot machines authorized under chapter 99F.

e. For the purposes of this subsection, state income tax at the rate of six percent shall be withheld from supplemental wages of employees in those circumstances in which the employer treats the supplemental wages as wholly separate from regular wages for purposes of withholding and federal income tax is withheld from the supplemental wages under section 3402(g) of the Internal Revenue Code.

2. a. A withholding agent required to deduct and withhold tax under subsections 1 and 12 shall file a return and remit to the department the amount of tax on or before the last day of the month following the close of the quarterly period on forms prescribed by the director. However, a withholding agent who withholds more than five hundred dollars in any one month and not more than five thousand dollars in a semimonthly period shall deposit with the department the amount withheld, with a monthly deposit form as pre-

scribed by the director. The monthly deposit form is due on or before the fifteenth day of the month following the month of withholding, except that a deposit is not required for the third month of the calendar quarter. The total quarterly amount, less the amounts deposited for the first two months of the quarter, is due with the quarterly return due on or before the last day of the month following the close of the quarterly period on forms prescribed by the director. However, a withholding agent who withholds more than five thousand dollars in a semimonthly period shall deposit with the department the amount withheld, with a semimonthly deposit form as prescribed by the director. The first semimonthly deposit form for the period from the first of the month through the fifteenth of the month is due on the twenty-fifth day of the month in which the withholding occurs. The second semimonthly deposit form for the period from the sixteenth of the month through the end of the month is due on the tenth day of the month following the month in which the withholding occurs. A withholding agent must also file a quarterly return which reconciles the amount of tax withheld for the quarter with the amount of semimonthly deposits. The quarterly return is due on or before the last day of the month following the close of the quarterly period on forms prescribed by the director.

b. Every withholding agent on or before the end of the second month following the close of the calendar year in which the withholding occurs shall make an annual reporting of taxes withheld and other information prescribed by the director and send to the department copies of wage and tax statements with the return. At the discretion of the director, the withholding agent shall not be required to send wage statements and tax statements with the annual reporting return form if the information is available from the internal revenue service or other state or federal agencies.

c. If the director has reason to believe that the collection of the tax provided for in subsections 1 and 12 is in jeopardy, the director may require the employer or withholding agent to make the report and pay the tax at any time, in accordance with section 422.30. The director may authorize incorporated banks, trust companies, or other depositories authorized by law which are depositories or financial agents of the United States or of this state, to receive any tax imposed under this chapter, in the manner, at the times, and under the conditions the director prescribes. The director shall also prescribe the manner, times, and conditions under which the receipt of the tax by those depositories is to be treated as payment of the tax to the department.

d. The director, in cooperation with the department of management, may periodically change the filing and remittance thresholds by administrative rule if in the best interest of the state and the taxpayer.

3. Every withholding agent employing not more than two persons who expects to employ either or both of such persons for the full calendar year may, with respect to such persons, pay with the withholding tax return due for the first calendar quarter of the year the full amount of income taxes required to be withheld from the wages of such persons for the full calendar year. The amount to be paid shall be computed as if the employee were employed for the full calendar year for the same wages and with the same pay periods as prevailed during the first quarter of the year with respect to such employee. No such lump sum payment of withheld income tax shall be made without the written consent of all employees involved. The withholding agent shall be entitled to recover from the employee any part of such lump sum payment that represents an advance to the employee. If a withholding agent pays a lump sum with the first quarterly return the withholding agent shall be excused from filing further quarterly returns for the calendar year involved unless the withholding agent hires other or additional employees.

4. Every withholding agent who fails to withhold or pay to the department any sums required by this chapter to be withheld and paid, shall be personally, individually, and corporately liable therefor to the state of Iowa, and any sum or sums withheld in accordance with the provisions of subsections 1 and 12, shall be deemed to be held in trust for the state of Iowa. Notwithstanding sections 490A.601 and 490A.602, this subsection applies to a member or manager of a limited liability company.

5. In the event a withholding agent fails to withhold and pay over to the department any amount required to be withheld under subsections 1 and 12 of this section, such amount may be assessed against such employer or withholding agent in the same manner as prescribed for the assessment of income tax under the provisions of divisions II and VI of this chapter.

6. Whenever the director determines that any employer or withholding agent has failed to withhold or pay over to the department sums required to be withheld under subsections 1 and 12 of this section the unpaid amount thereof shall be a lien as defined in section 422.26, shall attach to the property of said employer or withholding agent as therein provided, and in all other respects the procedure with respect to such lien shall apply as set forth in said section 422.26.

7. *a.* Every withholding agent required to deduct and withhold a tax under subsections 1 and 12 of this section shall furnish to such employee, nonresident, or other person in respect of the remuneration paid by such employer or withholding agent to such employee, nonresident, or other person during the calendar year, on or before January 31 of the succeeding year, or, in the case of employees, if the employee's employment is terminated

before the close of such calendar year, within thirty days from the day on which the last payment of wages is made, if requested by such employee, but not later than January 31 of the following year, a written statement showing the following:

(1) The name and address of such employer or withholding agent, and the identification number of such employer or withholding agent.

(2) The name of the employee, nonresident, or other person and that person's federal social security account number, together with the last known address of such employee, nonresident, or other person to whom wages have been paid during such period.

(3) The gross amount of wages, or other taxable income, paid to the employee, nonresident, or other person.

(4) The total amount deducted and withheld as tax under the provisions of subsections 1 and 12 of this section.

(5) The total amount of federal income tax withheld.

*b.* The statements required to be furnished by this subsection in respect of any wages or other taxable Iowa income shall be in such form or forms as the director may, by regulation, prescribe.

8. An employer or withholding agent shall be liable for the payment of the tax required to be deducted and withheld or the amount actually deducted, whichever is greater, under subsections 1 and 12 of this section; and any amount deducted and withheld as tax under subsections 1 and 12 of this section during any calendar year upon the wages of any employee, nonresident, or other person shall be allowed as a credit to the employee, nonresident, or other person against the tax imposed by section 422.5, irrespective of whether or not such tax has been, or will be, paid over by the employer or withholding agent to the department as provided by this chapter.

9. The amount of any overpayment of the individual income tax liability of the employee taxpayer, nonresident, or other person which may result from the withholding and payment of withheld tax by the employer or withholding agent to the department under subsections 1 and 12, as compared to the individual income tax liability of the employee taxpayer, nonresident, or other person properly and correctly determined under the provisions of section 422.4, to and including section 422.25, may be credited against any income tax or installment thereof then due the state of Iowa and any balance of one dollar or more shall be refunded to the employee taxpayer, nonresident or other person with interest at the rate in effect under section 421.7 for each month or fraction of a month, the interest to begin to accrue on the first day of the second calendar month following the date the return was due to be filed or was filed, whichever is the later date. Amounts less than one dollar

shall be refunded to the taxpayer, nonresident, or other person only upon written application, in accordance with section 422.73, and only if the application is filed within twelve months after the due date of the return. Refunds in the amount of one dollar or more provided for by this subsection shall be paid by the treasurer of state by warrants drawn by the director of the department of administrative services, or an authorized employee of the department, and the taxpayer's return of income shall constitute a claim for refund for this purpose, except in respect to amounts of less than one dollar. There is appropriated, out of any funds in the state treasury not otherwise appropriated, a sum sufficient to carry out the provisions of this subsection.

10. *a.* An employer or withholding agent required under this chapter to furnish a statement required by this chapter who willfully furnishes a false or fraudulent statement, or who willfully fails to furnish the statement is, for each failure, subject to a civil penalty of five hundred dollars, the penalty to be in addition to any criminal penalty otherwise provided by the Code.

*b.* In addition to the tax or additional tax, any person or withholding agent shall pay a penalty as provided in section 421.27. The taxpayer shall also pay interest on the tax or additional tax at the rate in effect under section 421.7, for each month counting each fraction of a month as an entire month, computed from the date the semimonthly, monthly, or quarterly deposit form was required to be filed. The penalty and interest become a part of the tax due from the withholding agent.

*c.* If any withholding agent, being a domestic or foreign corporation, required under the provisions of this section to withhold on wages or other taxable Iowa income subject to this chapter, fails to withhold the amounts required to be withheld, make the required returns or remit to the department the amounts withheld, the director may, having exhausted all other means of enforcement of the provisions of this chapter, certify such fact or facts to the secretary of state, who shall thereupon cancel the articles of incorporation or certificate of authority (as the case may be) of such corporation, and the rights of such corporation to carry on business in the state of Iowa shall thereupon cease. The secretary of state shall immediately notify by registered mail such domestic or foreign corporation of the action taken by the secretary of state. The provisions of section 422.40, subsection 3, shall be applicable.

*d.* The department shall upon request of any fiduciary furnish said fiduciary with a certificate of acquittance showing that no liability as a withholding agent exists with respect to the estate or trust for which said fiduciary acts, provided the department has determined that there is no such liability.

11. *a.* A person or married couple filing a return shall make estimated tax payments if the

person's or couple's Iowa income tax attributable to income other than wages subject to withholding can reasonably be expected to amount to two hundred dollars or more for the taxable year, except that, in the cases of farmers and fishermen, the exceptions provided in the Internal Revenue Code with respect to making estimated payments apply. The estimated tax shall be paid in quarterly installments. The first installment shall be paid on or before the last day of the fourth month of the taxpayer's tax year for which the estimated payments apply. The other installments shall be paid on or before the last day of the sixth month of the tax year, the last day of the ninth month of the tax year, and the last day of the first month after the tax year. However, at the election of the person or married couple, an installment of the estimated tax may be paid prior to the date prescribed for its payment. If a person or married couple filing a return has reason to believe that the person's or couple's Iowa income tax may increase or decrease, either for purposes of meeting the requirement to make estimated tax payments or for the purpose of increasing or decreasing estimated tax payments, the person or married couple shall increase or decrease any subsequent estimated tax payments accordingly.

*b.* In the case of persons or married couples filing jointly, the total balance of the tax payable after credits for taxes paid through withholding, as provided in subsection 1 of this section, or through payment of estimated tax, or a combination of withholding and estimated tax payments is due and payable on or before April 30 following the close of the calendar year, or if the return is to be made on the basis of a fiscal year, then on or before the last day of the fourth month following the close of the fiscal year.

*c.* If a taxpayer is unable to make the taxpayer's estimated tax payments, the payments may be made by a duly authorized agent, or by the guardian or other person charged with the care of the person or property of the taxpayer.

*d.* Any amount of estimated tax paid is a credit against the amount of tax found payable on a final, completed return, as provided in subsection 9, relating to the credit for the tax withheld against the tax found payable on a return properly and correctly prepared under sections 422.5 through 422.25, and any overpayment of one dollar or more shall be refunded to the taxpayer and the return constitutes a claim for refund for this purpose. Amounts less than one dollar shall not be refunded. The method provided by the Internal Revenue Code for determining what is applicable to the addition to tax for underpayment of the tax payable applies to persons required to make payments of estimated tax under this section except the amount to be added to the tax for underpayment of estimated tax is an amount determined at the rate in effect under section 421.7. This addition to tax specified for underpayment of the tax

payable is not subject to waiver provisions relating to reasonable cause, except as provided in the Internal Revenue Code. Underpayment of estimated tax shall be determined in the same manner as provided under the Internal Revenue Code and the exceptions in the Internal Revenue Code also apply.

*e.* In lieu of claiming a refund, the taxpayer may elect to have the overpayment shown on the taxpayer's final, completed return for the taxable year credited to the taxpayer's tax liability for the following taxable year.

12. *a.* In the case of nonresidents having income subject to taxation by Iowa, but not subject to withholding of such tax under subsection 1 hereof, withholding agents shall withhold from such income at the same rate as provided in subsection 1 hereof, and such withholding agents and such nonresidents shall be subject to the provisions of this section, according to the context, except that such withholding agents may be absolved of such requirement to withhold taxes from such nonresident's income upon receipt of a certificate from the department issued in accordance with the provisions of section 422.17, as hereby amended. In the case of nonresidents having income from a trade or business carried on by them in whole or in part within the state of Iowa, such nonresident shall be considered to be subject to the provisions of this subsection unless such trade or business is of such nature that the business entity itself, as a withholding agent, is required to and does withhold Iowa income tax from the distributions made to such nonresident from such trade or business.

*b.* Notwithstanding this subsection, withholding agents are not required to withhold state income tax from payments subject to taxation made to nonresidents for commodity credit certificates, grain, livestock, domestic fowl, or other agricultural commodities or products sold to the withholding agents by the nonresidents or their representatives, if the withholding agents provide on forms prescribed by the department information relating to the sales required by the department to determine the state income tax liabilities of the nonresidents. However, the withholding agents may elect to make estimated tax payments on behalf of the nonresidents on the basis of the net incomes of the nonresidents from the agricultural commodities or products, if the estimated tax payments are made on or before the last day of the first month after the end of the tax years of the nonresidents.

*c.* Notwithstanding this subsection, withholding agents are not required to withhold state income tax from a partner's pro rata share of income from a publicly traded partnership, as defined in section 7704(b) of the Internal Revenue Code, provided that the publicly traded partnership files with the department an information return that reports the name, address, taxpayer identification

number, and any other information requested by the department for each unit holder with an income in this state from the publicly traded partnership in excess of five hundred dollars.

13. The director shall enter into an agreement with the secretary of the treasury of the United States with respect to withholding of income tax as provided by this chapter, pursuant to an Act of Congress, section 1207 of the Tax Reform Act of 1976, Pub. L. No. 94-455, amending 5 U.S.C. § 5517.

14. *a.* The director may, when necessary and advisable in order to secure the collection of the tax required to be deducted and withheld or the amount actually deducted, whichever is greater, require an employer or withholding agent to file with the director a bond, issued by a surety company authorized to conduct business in this state and approved by the insurance commissioner as to solvency and responsibility, in an amount as the director may fix, to secure the payment of the tax and penalty due or which may become due. In lieu of the bond, securities shall be kept in the custody of the department and may be sold by the director at public or private sale, without notice to the depositor, if it becomes necessary to do so in order to recover any tax and penalty due. Upon a sale, any surplus above the amounts due under this section shall be returned to the employer or withholding agent who deposited the securities.

*b.* If the withholding agent fails to file the bond as requested by the director to secure collection of the tax, the withholding agent is subject to penalty for failure to file the bond. The penalty is equal to fifteen percent of the tax the withholding agent is required to withhold on an annual basis. However, the penalty shall not exceed five thousand dollars.

2007 Acts, ch 185, §3; 2007 Acts, ch 186, §16

2005 amendment to subsection 2, paragraph a, takes effect June 3, 2005, and applies to calendar quarters ending on or after that date for income taxes withheld for tax years beginning on or after January 1, 2005; 2005 Acts, ch 140, §73

Subsection 1, unnumbered paragraph 1 amended and editorially designated as paragraph a

Subsection 1, unnumbered paragraphs 2 – 5 editorially designated as paragraphs b – e

Subsection 2, unnumbered paragraphs 1 – 4 editorially designated as paragraphs a – d

Subsection 7, unnumbered paragraph 1, paragraphs a – e, and unnumbered paragraph 2, editorially redesignated as paragraph a, subparagraphs (1) – (5), and paragraph b respectively

Subsection 12, unnumbered paragraphs 1 and 2 editorially designated as paragraphs a and b

Subsection 12, NEW paragraph c

Subsection 14, unnumbered paragraphs 1 and 2 editorially designated as paragraphs a and b

#### 422.32 Definitions.

For the purpose of this division and unless otherwise required by the context:

1. The term "*affiliated group*" means a group of corporations as defined in section 1504(a) of the Internal Revenue Code.

2. "*Business income*" means income arising from transactions and activity in the regular course of the taxpayer's trade or business; or in-

come from tangible and intangible property if the acquisition, management, and disposition of the property constitute integral parts of the taxpayer's regular trade or business operations; or gain or loss resulting from the sale, exchange, or other disposition of real property or of tangible or intangible personal property, if the property while owned by the taxpayer was operationally related to the taxpayer's trade or business carried on in Iowa or operationally related to sources within Iowa, or the property was operationally related to sources outside this state and to the taxpayer's trade or business carried on in Iowa; or gain or loss resulting from the sale, exchange, or other disposition of stock in another corporation if the activities of the other corporation were operationally related to the taxpayer's trade or business carried on in Iowa while the stock was owned by the taxpayer. A taxpayer may have more than one regular trade or business in determining whether income is business income.

It is the intent of the general assembly to treat as apportionable business income all income that may be treated as apportionable business income under the Constitution of the United States.

The filing of an Iowa income tax return on a combined report basis is neither allowed nor required by this subsection.

3. "*Commercial domicile*" means the principal place from which the trade of business of the taxpayer is directed or managed.

4. "*Corporation*" includes joint stock companies, and associations organized for pecuniary profit, and partnerships and limited liability companies taxed as corporations under the Internal Revenue Code.

5. The words "*domestic corporation*" mean any corporation organized under the laws of this state.

6. The words "*foreign corporation*" mean any corporation other than a domestic corporation.

7. "*Internal Revenue Code*" means the Internal Revenue Code of 1954, prior to the date of its resignation as the Internal Revenue Code of 1986 by the Tax Reform Act of 1986, or means the Internal Revenue Code of 1986 as amended to and including January 1, 2007.

8. "*Nonbusiness income*" means all income other than business income.

9. "*State*" means any state of the United States, the District of Columbia, the Commonwealth of Puerto Rico, any territory or possession of the United States, and any foreign country or political subdivision thereof.

10. "*Taxable in another state*". For purposes of allocation and apportionment of income under this division, a taxpayer is taxable in another state if:

a. In that state the taxpayer is subject to a net income tax, a franchise tax measured by net income, a franchise tax for the privilege of doing business, or a corporate stock tax; or

b. That state has jurisdiction to subject the taxpayer to a net income tax regardless of whether, in fact, the state does or does not.

11. The term "*unitary business*" means a business carried on partly within and partly without a state where the portion of the business carried on within the state depends on or contributes to the business outside the state.

The words, terms, and phrases defined in division II, section 422.4, subsections 4 to 6, 8, 9, 13, and 15 to 17, when used in this division, shall have the meanings ascribed to them in said section except where the context clearly indicates a different meaning.

2007 Acts, ch 12, §5, 7, 8  
Internal Revenue Code definition is updated regularly; for applicable definition in a prior tax year, refer to Iowa Acts and Code for that year  
2007 amendment to subsection 7 takes effect March 9, 2007, and applies retroactively to January 1, 2006, for tax years beginning on or after that date; 2007 Acts, ch 12, §7, 8  
Subsection 7 amended

### 422.33 Corporate tax imposed — credit.

1. A tax is imposed annually upon each corporation doing business in this state, or deriving income from sources within this state, in an amount computed by applying the following rates of taxation to the net income received by the corporation during the income year:

a. On the first twenty-five thousand dollars of taxable income, or any part thereof, the rate of six percent.

b. On taxable income between twenty-five thousand dollars and one hundred thousand dollars or any part thereof, the rate of eight percent.

c. On taxable income between one hundred thousand dollars and two hundred fifty thousand dollars or any part thereof, the rate of ten percent.

d. On taxable income of two hundred fifty thousand dollars or more, the rate of twelve percent.

"*Income from sources within this state*" means income from real, tangible, or intangible property located or having a situs in this state.

1A. There is imposed upon each corporation exempt from the general business tax on corporations by section 422.34, subsection 2, a tax at the rates in subsection 1 upon the state's apportioned share computed in accordance with subsections 2 and 3 of the unrelated business income computed in accordance with the Internal Revenue Code and with the adjustments set forth in section 422.35.

2. If the trade or business of the corporation is carried on entirely within the state, the tax shall be imposed on the entire net income, but if the trade or business is carried on partly within and partly without the state or if income is derived from sources partly within and partly without the state, or if income is derived from trade or business and sources, all of which are not entirely in the state, the tax shall be imposed only on the portion of the net income reasonably attributable to the trade or business or sources within the state,



with the net income attributable to the state to be determined as follows:

*a.* Nonbusiness interest, dividends, rents and royalties, less related expenses, shall be allocated within and without the state in the following manner:

(1) Nonbusiness interest, dividends, and royalties from patents and copyrights shall be allocable to this state if the taxpayer's commercial domicile is in this state.

(2) Nonbusiness rents and royalties received from real property located in this state are allocable to this state.

(3) Nonbusiness rents and royalties received from tangible personal property are allocable to this state to the extent that the property is utilized in this state; or in their entirety if the taxpayer's commercial domicile is in this state and the taxpayer is not taxable in the state in which the property is utilized. The extent of utilization of tangible personal property in a state is determined by multiplying the rents and royalties by a fraction, the numerator of which is the number of days of physical location of the property in the state during the rental or royalty period in the taxable year and the denominator of which is the number of days of physical location of the property everywhere during all rental or royalty periods in the taxable year. If the physical location of the property during the rental or royalty period is unknown, or unascertainable by the taxpayer tangible personal property is utilized in the state in which the property was located at the time the rental or royalty payor obtained possession.

(4) Nonbusiness capital gains and losses from the sale or other disposition of assets shall be allocated as follows:

Gains and losses from the sale or other disposition of real property located in this state are allocable to this state.

Gains and losses from the sale or other disposition of tangible personal property are allocable to this state if the property had a situs in this state at the time of the sale or disposition or if the taxpayer's commercial domicile is in this state and the taxpayer is not taxable in the state in which the property had a situs.

Gains and losses from the sale or disposition of intangible personal property are allocable to this state if the taxpayer's commercial domicile is in this state.

*b.* Net nonbusiness income of the above class having been separately allocated and deducted as above provided, the remaining net business income of the taxpayer shall be allocated and apportioned as follows:

(1) Business interest, dividends, rents, and royalties shall be reasonably apportioned within and without the state under rules adopted by the director.

(2) Capital gains and losses from the sale or other disposition of assets shall be apportioned to

the state based upon the business activity ratio applicable to the year the gain or loss is determined if the corporation determines Iowa taxable income by a sales, gross receipts or other business activity ratio. If the corporation has only allocable income, capital gains and losses from the sale or other disposition of assets shall be allocated in accordance with paragraph "a", subparagraph (4).

(3) Where income is derived from business other than the manufacture or sale of tangible personal property, the income shall be specifically allocated or equitably apportioned within and without the state under rules of the director.

(4) Where income is derived from the manufacture or sale of tangible personal property, the part attributable to business within the state shall be in that proportion which the gross sales made within the state bear to the total gross sales.

(5) Where income consists of more than one class of income as provided in subparagraphs (1) to (4) of this paragraph, it shall be reasonably apportioned by the business activity ratio provided in rules adopted by the director.

(6) The gross sales of the corporation within the state shall be taken to be the gross sales from goods delivered or shipped to a purchaser within the state regardless of the F.O.B. point or other conditions of the sale, excluding deliveries for transportation out of the state.

For the purpose of this section, the word "sale" shall include exchange, and the word "manufacture" shall include the extraction and recovery of natural resources and all processes of fabricating and curing. The words "tangible personal property" shall be taken to mean corporeal personal property, such as machinery, tools, implements, goods, wares, and merchandise, and shall not be taken to mean money deposits in banks, shares of stock, bonds, notes, credits, or evidence of an interest in property and evidences of debt.

3. If any taxpayer believes that the method of allocation and apportionment hereinbefore prescribed, as administered by the director and applied to the taxpayer's business, has operated or will so operate as to subject the taxpayer to taxation on a greater portion of the taxpayer's net income than is reasonably attributable to business or sources within the state, the taxpayer shall be entitled to file with the director a statement of the taxpayer's objections and of such alternative method of allocation and apportionment as the taxpayer believes to be proper under the circumstances with such detail and proof and within such time as the director may reasonably prescribe; and if the director shall conclude that the method of allocation and apportionment theretofore employed is in fact inapplicable and inequitable, the director shall redetermine the taxable income by such other method of allocation and apportionment as seems best calculated to assign to the state for taxation the portion of the income reasonably attributable to business and sources within the

state, not exceeding, however, the amount which would be arrived at by application of the statutory rules for apportionment.

4. In addition to all taxes imposed under this division, there is imposed upon each corporation doing business within the state the greater of the tax determined in subsection 1, paragraphs "a" through "d" or the state alternative minimum tax equal to sixty percent of the maximum state corporate income tax rate, rounded to the nearest one-tenth of one percent, of the state alternative minimum taxable income of the taxpayer computed under this subsection.

The state alternative minimum taxable income of a taxpayer is equal to the taxpayer's state taxable income as computed with the adjustments in section 422.35 and with the following adjustments:

a. Add items of tax preference included in federal alternative minimum taxable income under section 57, except subsections (a)(1) and (a)(5), of the Internal Revenue Code, make the adjustments included in federal alternative minimum taxable income under section 56, except subsections (a)(4) and (d), of the Internal Revenue Code, and add losses as required by section 58 of the Internal Revenue Code. In making the adjustment under section 56(c)(1) of the Internal Revenue Code, interest and dividends from federal securities and interest and dividends from state and other political subdivisions and from regulated investment companies exempt from federal income tax under the Internal Revenue Code, net of amortization of any discount or premium, shall be subtracted.

b. Apply the allocation and apportionment provisions of subsection 2.

c. Subtract an exemption amount of forty thousand dollars. This exemption amount shall be reduced, but not below zero, by an amount equal to twenty-five percent of the amount by which the alternative minimum taxable income of the taxpayer, computed without regard to the exemption amount in this paragraph, exceeds one hundred fifty thousand dollars.

d. In the case of a net operating loss computed for a tax year beginning after December 31, 1986, which is carried back or carried forward to the current taxable year, the net operating loss shall be reduced by the amount of items of tax preference and adjustments arising in the tax year which is taken into account in computing the net operating loss in section 422.35, subsection 11. The deduction for a net operating loss for a tax year beginning after December 31, 1986, which is carried back or carried forward to the current taxable year shall not exceed ninety percent of the alternative minimum taxable income determined without regard for the net operating loss deduction.

5. a. The taxes imposed under this division shall be reduced by a state tax credit for increasing research activities in this state equal to the sum of the following:

(1) Six and one-half percent of the excess of qualified research expenses during the tax year over the base amount for the tax year based upon the state's apportioned share of the qualifying expenditures for increasing research activities.

(2) Six and one-half percent of the basic research payments determined under section 41(e)(1)(A) of the Internal Revenue Code during the tax year based upon the state's apportioned share of the qualifying expenditures for increasing research activities.

The state's apportioned share of the qualifying expenditures for increasing research activities is a percent equal to the ratio of qualified research expenditures in this state to the total qualified research expenditures.

b. In lieu of the credit amount computed in paragraph "a", subparagraph (1), a corporation may elect to compute the credit amount for qualified research expenses incurred in this state in a manner consistent with the alternative incremental credit described in section 41(c)(4) of the Internal Revenue Code. The taxpayer may make this election regardless of the method used for the taxpayer's federal income tax. The election made under this paragraph is for the tax year and the taxpayer may use another or the same method for any subsequent year.

c. For purposes of the alternate credit computation method in paragraph "b", the credit percentages applicable to qualified research expenses described in clauses (i), (ii), and (iii) of section 41(c)(4)(A) of the Internal Revenue Code are one and sixty-five hundredths percent, two and twenty hundredths percent, and two and seventy-five hundredths percent, respectively.

d. For purposes of this subsection, "base amount", "basic research payment", and "qualified research expense" mean the same as defined for the federal credit for increasing research activities under section 41 of the Internal Revenue Code, except that for the alternative incremental credit such amounts are for research conducted within this state.

For purposes of this subsection, "Internal Revenue Code" means the Internal Revenue Code in effect on January 1, 2007.

e. Any credit in excess of the tax liability for the taxable year shall be refunded with interest computed under section 422.25. In lieu of claiming a refund, a taxpayer may elect to have the overpayment shown on its final, completed return credited to the tax liability for the following taxable year.

f. A corporation which is a primary business or a supporting business in a quality jobs enterprise zone may claim the research activities credit authorized pursuant to section 15A.9, subsection 8, in lieu of the credit computed in paragraph "a" or "b".

g. A corporation which is an eligible business may claim an additional research activities credit

authorized pursuant to section 15.335.

6. The taxes imposed under this division shall be reduced by a new jobs tax credit. An industry which has entered into an agreement under chapter 260E and which has increased its base employment level by at least ten percent within the time set in the agreement or, in the case of an industry without a base employment level, adds new jobs within the time set in the agreement is entitled to this new jobs tax credit for the tax year selected by the industry. In determining if the industry has increased its base employment level by ten percent or added new jobs, only those new jobs directly resulting from the project covered by the agreement and those directly related to those new jobs shall be counted. The amount of this credit is equal to the product of six percent of the taxable wages upon which an employer is required to contribute to the state unemployment compensation fund, as defined in section 96.19, subsection 37, times the number of new jobs existing in the tax year that directly result from the project covered by the agreement or new jobs that directly result from those new jobs. The tax year chosen by the industry shall either begin or end during the period beginning with the date of the agreement and ending with the date by which the project is to be completed under the agreement. Any credit in excess of the tax liability for the tax year may be credited to the tax liability for the following ten tax years or until depleted in less than the ten years. For purposes of this section, "agreement", "industry", "new job" and "project" mean the same as defined in section 260E.2 and "base employment level" means the number of full-time jobs an industry employs at the plant site which is covered by an agreement under chapter 260E on the date of that agreement.

7. *a.* There is allowed as a credit against the tax determined in subsection 1 for a tax year an amount equal to the minimum tax credit for that tax year.

The minimum tax credit for a tax year is the excess, if any, of the net minimum tax imposed for all prior tax years beginning on or after January 1, 1987, over the amount allowable as a credit under this subsection for those prior tax years.

*b.* The allowable credit under paragraph "a" for a tax year shall not exceed the excess, if any, of the tax determined in subsection 1 over the state alternative minimum tax as determined in subsection 4.

The net minimum tax for a tax year is the excess, if any, of the tax determined in subsection 4 for the tax year over the tax determined in subsection 1 for the tax year.

8. The taxes imposed under this division shall be reduced by a franchise tax credit. A taxpayer who is a shareholder in a financial institution, as defined in section 581 of the Internal Revenue Code, which has in effect for the tax year an election under subchapter S of the Internal Revenue

Code shall compute the amount of the tax credit by recomputing the amount of tax under this division by reducing the taxable income of the taxpayer by the taxpayer's pro rata share of the items of income and expense of the financial institution. This recomputed tax shall be subtracted from the tax computed under this division and the resulting amount, which shall not exceed the taxpayer's pro rata share of franchise tax paid by the financial institution, is the amount of the franchise tax credit allowed.

9. *a.* The taxes imposed under this division shall be reduced by an assistive device tax credit. A small business purchasing, renting, or modifying an assistive device or making workplace modifications for an individual with a disability who is employed or will be employed by the small business is eligible, subject to availability of credits, to receive this assistive device tax credit which is equal to fifty percent of the first five thousand dollars paid during the tax year for the purchase, rental, or modification of the assistive device or for making the workplace modifications. Any credit in excess of the tax liability shall be refunded with interest computed under section 422.25. In lieu of claiming a refund, a taxpayer may elect to have the overpayment shown on the taxpayer's final, completed return credited to the tax liability for the following tax year. If the small business elects to take the assistive device tax credit, the small business shall not deduct for Iowa tax purposes any amount of the cost of an assistive device or workplace modifications which is deductible for federal income tax purposes.

*b.* To receive the assistive device tax credit, the eligible small business must submit an application to the department of economic development. If the taxpayer meets the criteria for eligibility, the department of economic development shall issue to the taxpayer a certification of entitlement for the assistive device tax credit. However, the combined amount of tax credits that may be approved for a fiscal year under this subsection and section 422.11E shall not exceed five hundred thousand dollars. Tax credit certificates shall be issued on an earliest filed basis. The certification shall contain the taxpayer's name, address, tax identification number, the amount of the credit, and tax year for which the certificate applies. The taxpayer must file the tax credit certificate with the taxpayer's corporate income tax return in order to claim the tax credit. The departments of economic development and revenue shall each adopt rules to jointly administer this subsection and shall provide by rule for the method to be used to determine for which fiscal year the tax credits are approved.

*c.* For purposes of this subsection:

(1) "Assistive device" means any item, piece of equipment, or product system which is used to increase, maintain, or improve the functional capabilities of an individual with a disability in the workplace or on the job. "Assistive device" does not

mean any medical device, surgical device, or organ implanted or transplanted into or attached directly to an individual. “*Assistive device*” does not include any device for which a certificate of title is issued by the state department of transportation, but does include any item, piece of equipment, or product system otherwise meeting the definition of “*assistive device*” that is incorporated, attached, or included as a modification in or to such a device issued a certificate of title.

(2) “*Disability*” means the same as defined in section 15.102, except that it does not include alcoholism.

(3) “*Small business*” means a business that either had gross receipts for its preceding tax year of three million dollars or less or employed not more than fourteen full-time employees during its preceding tax year.

(4) “*Workplace modifications*” means physical alterations to the work environment.

10. *a.* The taxes imposed under this division shall be reduced by a historic preservation and cultural and entertainment district tax credit equal to the amount as computed under chapter 404A for rehabilitating eligible property. Any credit in excess of the tax liability shall be refunded or credited to the following year, as provided in section 404A.4, subsection 3.

*b.* For purposes of this subsection, “*eligible property*” means the same as used in section 404A.1.

11. *a.* As used in this subsection, unless the context otherwise requires:

(1) “*E-85 gasoline*”, “*ethanol blended gasoline*”, “*gasoline*”, “*motor fuel pump*”, “*retail dealer*”, “*retail motor fuel site*”, and “*sell*” mean the same as defined in section 422.11C.

(2) “*Tax credit*” means the designated ethanol blended gasoline tax credit as provided in this subsection.

*b.* The taxes imposed under this division shall be reduced by an ethanol blended gasoline tax credit for each tax year that the taxpayer is eligible to claim the tax credit under this subsection. In order to be eligible, all of the following must apply:

(1) The taxpayer is a retail dealer.

(2) The taxpayer operates at least one retail motor fuel site at which more than sixty percent of the total gallons of gasoline sold and dispensed through one or more motor fuel pumps by the taxpayer is ethanol blended gasoline.

(3) The taxpayer complies with requirements of the department required to administer this subsection.

*c.* (1) The tax credit shall be calculated separately for each retail motor fuel site operated by the taxpayer.

(2) The amount of the tax credit for each eligible retail motor fuel site is two and one-half cents multiplied by the total number of gallons of ethanol blended gasoline sold and dispensed through

all motor fuel pumps located at that retail motor fuel site during the tax year in excess of sixty percent of all gasoline sold and dispensed through motor fuel pumps at that retail motor fuel site during the tax year.

*d.* Any credit in excess of the taxpayer’s tax liability shall be refunded. In lieu of claiming a refund, the taxpayer may elect to have the overpayment shown on the taxpayer’s final, completed return credited to the tax liability for the following tax year.

*e.* This subsection is repealed on January 1, 2009.

11A. The taxes imposed under this division shall be reduced by an ethanol promotion tax credit for each tax year that the taxpayer is eligible to claim the tax credit under this subsection.

*a.* The taxpayer shall claim the tax credit in the same manner as provided in section 422.11N. The taxpayer may claim the tax credit according to the same requirements, for the same amount, and calculated in the same manner, as provided for the ethanol promotion tax credit pursuant to section 422.11N.

*b.* Any ethanol promotion tax credit which is in excess of the taxpayer’s tax liability shall be refunded or may be shown on the taxpayer’s final, completed return credited to the tax liability for the following tax year in the same manner as provided in section 422.11N.

*c.* This subsection is repealed on January 1, 2021.

11B. The taxes imposed under this division shall be reduced by an E-85 gasoline promotion tax credit for each tax year that the taxpayer is eligible to claim the tax credit under this subsection.

*a.* The taxpayer shall claim the tax credit in the same manner as provided in section 422.11O. The taxpayer may claim the tax credit according to the same requirements, for the same amount, and calculated in the same manner, as provided for the E-85 gasoline promotion tax credit pursuant to section 422.11O.

*b.* Any E-85 gasoline promotion tax credit which is in excess of the taxpayer’s tax liability shall be refunded or may be shown on the taxpayer’s final, completed return credited to the tax liability for the following tax year in the same manner as provided in section 422.11O.

*c.* This subsection is repealed on January 1, 2021.

11C. The taxes imposed under this division shall be reduced by a biodiesel blended fuel tax credit for each tax year that the taxpayer is eligible to claim the tax credit under this subsection.

*a.* The taxpayer may claim the biodiesel blended fuel tax credit according to the same requirements, for the same amount, and calculated in the same manner, as provided for the biodiesel blended fuel tax credit pursuant to section 422.11P.

*b.* Any biodiesel blended fuel tax credit which is in excess of the taxpayer’s tax liability shall be

refunded or may be shown on the taxpayer's final, completed return credited to the tax liability for the following tax year in the same manner as provided in section 422.11P.

c. This subsection is repealed on January 1, 2012.

12. a. The taxes imposed under this division shall be reduced by an investment tax credit authorized pursuant to section 15E.43 for an investment in a qualifying business or a community-based seed capital fund.

b. The taxes imposed under this division shall be reduced by investment tax credits authorized pursuant to sections 15.333, 15A.9, subsection 4, and section 15E.193B, subsection 6.

13. The taxes imposed under this division shall be reduced by a venture capital fund investment tax credit authorized pursuant to section 15E.51.

14. The taxes imposed under this division shall be reduced by an endow Iowa tax credit authorized pursuant to section 15E.305.

15. Reserved.

16. The taxes imposed under this division shall be reduced by tax credits for wind energy production allowed under chapter 476B and for renewable energy allowed under chapter 476C.

17. The taxes imposed under this division shall be reduced by an economic development region revolving fund contribution tax credit authorized pursuant to section 15E.232.

18. The taxes imposed under this division shall be reduced by a wage-benefits tax credit authorized pursuant to section 15I.2.

19. The taxes imposed under this division shall be reduced by a corporate tax credit authorized pursuant to section 15.331C for certain sales taxes paid by a third-party developer.

20. The taxes imposed under this division shall be reduced by a tax credit authorized pursuant to section 15E.66, if redeemed, for investments in the Iowa fund of funds.

21. The taxes imposed under this division shall be reduced by an agricultural assets transfer tax credit as allowed under section 175.37.

22. The taxes imposed under this division shall be reduced by a soy-based transformer fluid tax credit allowed under chapter 476D.

This subsection is repealed December 31, 2008.

23. The taxes imposed under this division shall be reduced by a qualified expenditure tax credit authorized pursuant to section 15.393, subsection 2, paragraph "a".

24. The taxes imposed under this division shall be reduced by an investment tax credit authorized pursuant to section 15.393, subsection 2, paragraph "b".

2007 Acts, ch 12, §6 – 8; 2007 Acts, ch 162, §7, 13; 2007 Acts, ch 165, §9

Internal Revenue Code definition is updated regularly; for applicable definition in a prior tax year, refer to Iowa Acts and Code for that year  
Subsection 18 takes effect June 9, 2005, and applies to qualified new jobs

created and to tax years ending on or after July 1, 2005; 2005 Acts, ch 150, §69

Subsection 19 applies to tax years ending after June 30, 2005, and beginning before January 1, 2007; 2005 Acts, ch 146, §3

For provisions relating to availability and calculation of an ethanol blended gasoline tax credit under subsection 11 in calendar year 2008 for a retail dealer whose tax year ends prior to December 31, 2008, see 2006 Acts, ch 1142, §49

For provisions relating to availability and calculation of an ethanol promotion tax credit under subsection 11A in calendar year 2020 for a retail dealer whose tax year ends prior to December 31, 2020, see 2006 Acts, ch 1142, §49; 2006 Acts, ch 1175, §17

Subsection 11B applies retroactively to tax years beginning on or after January 1, 2006; 2006 Acts, ch 1142, §48; for provisions relating to availability and calculation of an E-85 gasoline promotion tax credit in calendar year 2020 for a retail dealer whose tax year ends prior to December 31, 2020, see 2006 Acts, ch 1142, §49

Subsection 11C applies retroactively to tax years beginning on or after January 1, 2006; 2006 Acts, ch 1142, §48; for provisions relating to requirements for claiming a biodiesel blended fuel tax credit in calendar year 2006 for a retail dealer whose tax year ends before December 31, 2006, and for availability and calculation of the tax credit for calendar year 2011 for a retail dealer whose tax year ends prior to December 31, 2011, see 2006 Acts, ch 1142, §49

Subsection 21 takes effect January 1, 2007, and applies to tax years beginning on or after that date; 2006 Acts, ch 1161, §7

2007 amendment to subsection 10, paragraph a, applies to historic preservation and cultural and entertainment district tax credits applied for or reserved prior to July 1, 2007; 2007 Acts, ch 165, §9

2007 amendments adding subsections 23 and 24 take effect May 17, 2007, and apply retroactively to January 1, 2007, for tax years beginning on or after that date; 2007 Acts, ch 162, §13

2007 amendment to subsection 5, paragraph d, takes effect March 9, 2007, and applies retroactively to January 1, 2006, for tax years beginning on or after that date; 2007 Acts, ch 12, §7, 8

2006 strike of 2010 repeal of subsection 14 is effective July 1, 2007; 2006 Acts, ch 1151, §7, 8

Subsection 19 stricken effective December 31, 2007, pursuant to its own terms

Subsection 5, paragraph d, unnumbered paragraph 2 amended

Subsection 10, paragraph a amended

Subsection 19 stricken and former subsections 20 – 23 renumbered as 19 – 22

NEW subsections 23 and 24

### 422.35 Net income of corporation — how computed.

The term "net income" means the taxable income before the net operating loss deduction, as properly computed for federal income tax purposes under the Internal Revenue Code, with the following adjustments:

1. Subtract interest and dividends from federal securities.

2. Add interest and dividends from foreign securities, from securities of state and other political subdivisions, and from regulated investment companies exempt from federal income tax under the Internal Revenue Code.

3. Where the net income includes capital gains or losses, or gains or losses from property other than capital assets, and such gains or losses have been determined by using a basis established prior to January 1, 1934, an adjustment may be made, under rules and regulations prescribed by the director, to reflect the difference resulting from the use of a basis of cost or January 1, 1934, fair market value, less depreciation allowed or allowable, whichever is higher. Provided that the basis shall be fair market value as of January 1, 1955, less depreciation allowed or allowable, in the case of property acquired prior to that date if use of a prior basis is declared to be invalid.

4. Subtract fifty percent of the federal income taxes paid or accrued, as the case may be, during the tax year, adjusted by any federal income tax refunds; and add the Iowa income tax deducted in computing said taxable income.

5. Subtract the amount of the work opportunity tax credit allowable for the tax year under section 51 of the Internal Revenue Code to the extent that the credit increased federal taxable income.

6. If the taxpayer is a small business corporation, subtract an amount equal to sixty-five percent of the wages paid to individuals, but not to exceed twenty thousand dollars per individual, named in paragraphs “a”, “b”, and “c” who were hired for the first time by the taxpayer during the tax year for work done in this state:

a. An individual with a disability domiciled in this state at the time of the hiring who meets any of the following conditions:

(1) Has a physical or mental impairment which substantially limits one or more major life activities.

(2) Has a record of that impairment.

(3) Is regarded as having that impairment.

b. An individual domiciled in this state at the time of the hiring who meets any of the following conditions:

(1) Has been convicted of a felony in this or any other state or the District of Columbia.

(2) Is on parole pursuant to chapter 906.

(3) Is on probation pursuant to chapter 907, for an offense other than a simple misdemeanor.

(4) Is in a work release program pursuant to chapter 904, division IX.

c. An individual, whether or not domiciled in this state at the time of the hiring, who is on parole or probation and to whom the interstate probation and parole compact under section 907A.1, Code 2001, applies, or to whom the interstate compact for adult offender supervision under chapter 907B applies.

This deduction is allowed for the wages paid to the individuals successfully completing a probationary period named in paragraphs “a”, “b”, and “c” during the twelve months following the date of first employment by the taxpayer and shall be deducted in the tax years when paid.

For purposes of this subsection, “*physical or mental impairment*” means any physiological disorder or condition, cosmetic disfigurement, or anatomical loss affecting one or more of the body systems or any mental or psychological disorder, including mental retardation, organic brain syndrome, emotional or mental illness, and specific learning disabilities.

For purposes of this subsection, “*small business*” means a profit or nonprofit business, including but not limited to an individual, partnership, corporation, joint venture, association, or cooperative, to which the following apply:

(1) It is not an affiliate or subsidiary of a business dominant in its field of operation.

(2) It has either twenty or fewer full-time equivalent positions or not more than the equivalent of three million dollars in annual gross revenues as computed for the preceding fiscal year or as the average of the three preceding fiscal years.

(3) It does not include the practice of a profession.

“*Small business*” includes an employee-owned business which has been an employee-owned business for less than three years or which meets the conditions of subparagraphs (1) through (3).

For purposes of this definition, “*dominant in its field of operation*” means having more than twenty full-time equivalent positions and more than three million dollars in annual gross revenues, and “*affiliate or subsidiary of a business dominant in its field of operation*” means a business which is at least twenty percent owned by a business dominant in its field of operation, or by partners, officers, directors, majority stockholders, or their equivalents, of a business dominant in that field of operation.

The department may, by resolution, waive any or all of the requirements of paragraph “b”\* in connection with a loan to a small business, as defined under applicable federal law and regulations that have been enacted or adopted by April 1, 1983, in which federal assistance, insurance, or guaranties are sought.

6A. If the taxpayer is a business corporation and does not qualify for the adjustment under subsection 6, subtract an amount equal to sixty-five percent of the wages paid to individuals, but shall not exceed twenty thousand dollars per individual, named in paragraphs “a” and “b” who were hired for the first time by the taxpayer during the tax year for work done in this state:

a. An individual domiciled in this state at the time of the hiring who meets any of the following conditions:

(1) Has been convicted of a felony in this or any other state or the District of Columbia.

(2) Is on parole pursuant to chapter 906.

(3) Is on probation pursuant to chapter 907, for an offense other than a simple misdemeanor.

(4) Is in a work release program pursuant to chapter 904, division IX.

b. An individual, whether or not domiciled in this state at the time of the hiring, who is on parole or probation and to whom the interstate probation and parole compact under section 907A.1, Code 2001, applies, or to whom the interstate compact for adult offender supervision under chapter 907B applies.

This deduction is allowed for the wages paid to the individuals successfully completing a probationary period named in paragraphs “a” and “b” during the twelve months following the date of first employment by the taxpayer and shall be deducted in the tax years when paid.

The department shall develop and distribute information concerning the deduction available for

businesses employing persons named in paragraphs "a" and "b".

7. Subtract the amount of the alcohol fuel credit allowable for the tax year under section 40 of the Internal Revenue Code to the extent that the credit increased federal taxable income.

8. Add the amounts deducted and subtract the amounts included in income as a result of the treatment provided sale-leaseback agreements under section 168(f)(8) of the Internal Revenue Code for property placed in service by the transferee prior to January 1, 1986, to the extent that the amounts deducted and the amounts included in income are not otherwise deductible or included in income under the other provisions of the Internal Revenue Code as amended to and including December 31, 1985. Entitlement to depreciation on any property involved in a sale-leaseback agreement which is placed in service by the transferee prior to January 1, 1986, shall be determined under the Internal Revenue Code as amended to and including December 31, 1985, excluding section 168(f)(8) in making the determination.

9. Reserved.

10. Add the percentage depletion amount determined with respect to an oil, gas, or geothermal well using methods in section 613 of the Internal Revenue Code that is in excess of the cost depletion amount determined under section 611 of the Internal Revenue Code.

11. If after applying all of the adjustments provided for in this section and the allocation and apportionment provisions of section 422.33, the Iowa taxable income results in a net operating loss, such net operating loss shall be deducted as follows:

a. The Iowa net operating loss shall be carried back three taxable years for a net operating loss incurred in a presidentially declared disaster area by a taxpayer engaged in a small business or in the trade or business of farming. For all other Iowa net operating losses, the net operating loss shall be carried back two taxable years or to the taxable year in which the corporation first commenced doing business in this state, whichever is later.

b. The Iowa net operating loss remaining after being carried back as required in paragraph "a" or "f" or if not required to be carried back shall be carried forward twenty taxable years.

c. If the election under section 172(b)(3) of the Internal Revenue Code is made, the Iowa net operating loss shall be carried forward twenty taxable years.

d. No portion of a net operating loss which was sustained from that portion of the trade or business carried on outside the state of Iowa shall be deducted.

e. The limitations on net operating loss carryback and carryforward under sections 172(b)(1)(E) and 172(h) of the Internal Revenue Code shall apply.

f. Notwithstanding paragraph "a", for a tax-

payer who is engaged in the trade or business of farming as defined in section 263A(e)(4) of the Internal Revenue Code and has a loss from farming as defined in section 172(b)(1)(F) of the Internal Revenue Code including modifications prescribed by rule by the director, the Iowa loss from the trade or business of farming is a net operating loss which may be carried back five taxable years prior to the taxable year of the loss.

Provided, however, that a corporation affected by the allocation provisions of section 422.33 shall be permitted to deduct only such portion of the deductions for net operating loss and federal income taxes as is fairly and equitably allocable to Iowa, under rules prescribed by the director.

12. Subtract the loss on the sale or exchange of a share of a regulated investment company held for six months or less to the extent the loss was disallowed under section 852(b)(4)(B) of the Internal Revenue Code.

13. Subtract the interest earned from bonds and notes issued by the agricultural development authority as provided in section 175.17, subsection 10.

14. Reserved.

15. Reserved.

16. Add depreciation taken for federal income tax purposes on a speculative shell building defined in section 427.1, subsection 27, which is owned by a for-profit entity and the for-profit entity is receiving the proper tax exemption. Subtract depreciation computed as if the speculative shell building were classified as fifteen-year property during the period during which it is owned by the taxpayer and is receiving the property tax exemption. However, this subsection does not apply to a speculative shell building which is used by the taxpayer, subsidiary of the taxpayer, or majority owners of the taxpayer, for other than as a speculative shell building, as defined in section 427.1, subsection 27.

17. Subtract the amount of the employer social security credit allowable for the tax year under section 45B of the Internal Revenue Code to the extent that the credit increases federal taxable income.

18. Add, to the extent not already included, income from the sale of obligations of the state and its political subdivisions. Income from the sale of these obligations is exempt from the taxes imposed by this division only if the law authorizing these obligations specifically exempts the income from the sale from the state corporate income tax.

19. a. The additional first-year depreciation allowance authorized in section 168(k) of the Internal Revenue Code, as enacted by Pub. L. No. 107-147, section 101, does not apply in computing net income for state tax purposes. If the taxpayer has taken such deduction in computing taxable income, the following adjustments shall be made:

(1) Add the total amount of depreciation taken on all property for which the election under section

168(k) of the Internal Revenue Code was made for the tax year.

(2) Subtract an amount equal to depreciation allowed on such property for the tax year using the modified accelerated cost recovery system depreciation method applicable under section 168 of the Internal Revenue Code without regard to section 168(k).

(3) Any other adjustments to gains or losses to reflect the adjustments made in subparagraphs (1) and (2) pursuant to rules adopted by the director.

b. A taxpayer may elect to apply the additional first-year depreciation allowance authorized in section 168(k)(4) of the Internal Revenue Code, as enacted by Pub. L. No. 108-27, in computing net income for state tax purposes, for qualified property acquired after May 5, 2003, and before January 1, 2005. If the taxpayer elects to take the additional first-year depreciation allowance authorized in section 168(k)(4) of the Internal Revenue Code for state tax purposes, the deduction may be taken on amended state tax returns, if necessary. If the taxpayer does not elect to take the additional first-year depreciation allowance authorized in section 168(k)(4) of the Internal Revenue Code for state tax purposes, the following adjustment shall be made:

(1) Add the total amount of depreciation taken on all property for which the election under section 168(k)(4) of the Internal Revenue Code was made for the tax year.

(2) Subtract an amount equal to depreciation allowed on such property for the tax year using the modified accelerated cost recovery system depreciation method applicable under section 168 of the Internal Revenue Code without regard to section 168(k)(4).

(3) Any other adjustments to gains or losses to reflect the adjustments made in subparagraphs (1) and (2) pursuant to rules adopted by the director.

20. A taxpayer may elect not to take the increased expensing allowance under section 179 of the Internal Revenue Code, as amended by Pub. L. No. 108-27, section 202, in computing state tax purposes. If the taxpayer does not take the increased expensing allowance under section 179 of the Internal Revenue Code for state tax purposes, the following adjustments shall be made:

a. Add the total amount of expense deduction taken on section 179 property for federal tax purposes under section 179 of the Internal Revenue Code.

b. Subtract the amount of expense deduction on section 179 property allowable for federal tax purposes under section 179 of the Internal Revenue Code prior to enactment of Pub. L. No. 108-27, section 202.

c. Any other adjustments to gains and losses to the adjustments made in paragraphs "a" and "b" pursuant to rules adopted by the director.

21. Subtract the amount of foreign dividend income, including subpart F income as defined in section 952 of the Internal Revenue Code, based upon the percentage of ownership as set forth in section 243 of the Internal Revenue Code.

22. Subtract, to the extent included, the amount of ordinary or capital gain realized by the taxpayer as a result of the involuntary conversion of property due to eminent domain. However, if the total amount of such realized ordinary or capital gain is not recognized because the converted property is replaced with property that is similar to, or related in use to, the converted property, the amount of such realized ordinary or capital gain shall not be subtracted under this subsection until the remaining realized ordinary or capital gain is subject to federal taxation or until the time of disposition of the replacement property as provided under rules of the director. The subtraction allowed under this subsection shall not alter the basis as established for federal tax purposes of any property owned by the taxpayer.

23. Subtract, to the extent included, an amount equal to any income received from the sale, rental, or furnishing of tangible personal property or services directly related to the production of a project registered under section 15.393 which meets the criteria of a qualified expenditure under section 15.393, subsection 2, paragraph "a", subparagraph (2).

2007 Acts, ch 54, §36; 2007 Acts, ch 162, §8, 13; 2007 Acts, ch 186, §17  
\*Reference to "subparagraph (2)" probably intended; corrective legislation is pending

Subsection 23 takes effect May 17, 2007, and applies retroactively to tax years beginning on or after January 1, 2007; 2007 Acts, ch 162, §13

Subsection 6, paragraph c, unnumbered paragraph 4 amended

Subsection 17 amended

NEW subsection 23

**422.60 Imposition of tax — credit.**

1. A franchise tax according to and measured by net income is imposed on financial institutions for the privilege of doing business in this state as financial institutions.

2. In addition to all taxes imposed under this division, there is imposed upon each financial institution doing business within the state the greater of the tax determined in section 422.63 or the state alternative minimum tax equal to sixty percent of the maximum state franchise tax rate, rounded to the nearest one-tenth of one percent, of the state alternative minimum taxable income of the taxpayer computed under this subsection.

The state alternative minimum taxable income of a taxpayer is equal to the taxpayer's state taxable income as computed with the adjustments in section 422.61, subsection 3, and with the following adjustments:

a. Add items of tax preference included in federal alternative minimum taxable income under section 57, except subsections (a)(1) and (a)(5), of the Internal Revenue Code, make the adjustments included in federal alternative minimum taxable income under section 56, except subsections (a)(4),



(c)(1), (d), and (g), of the Internal Revenue Code, and add losses as required by section 58 of the Internal Revenue Code.

b. Make the adjustments provided in section 56(c)(1) of the Internal Revenue Code, except that in making the calculation under section 56(g)(1) of the Internal Revenue Code the state alternative minimum taxable income, computed without regard to the adjustments made by this paragraph, the exemption provided for in paragraph “d”, and the state alternative tax net operating loss described in paragraph “e”, shall be substituted for the items described in section 56(g)(1)(B) of the Internal Revenue Code.

c. Apply the allocation and apportionment provisions of section 422.63.

d. Subtract an exemption amount of forty thousand dollars. This exemption amount shall be reduced, but not below zero, by an amount equal to twenty-five percent of the amount by which the alternative minimum taxable income of the taxpayer, computed without regard to the exemption amount in this paragraph, exceeds one hundred fifty thousand dollars.

e. In the case of a net operating loss beginning after December 31, 1986, which is carried back or carried forward to the current taxable year, the net operating loss shall be reduced by the amount of items of tax preference and adjustments arising in the tax year which was taken into account in computing the net operating loss in section 422.35, subsection 11. The deduction for a net operating loss for a tax year beginning after December 31, 1986, which is carried back or carried forward to the current taxable year shall not exceed ninety percent of the alternative minimum taxable income determined without regard for the net operating loss deduction.

3. a. There is allowed as a credit against the tax determined in section 422.63 for a tax year an amount equal to the minimum tax credit for that tax year.

The minimum tax credit for a tax year is the excess, if any, of the net minimum tax imposed for all prior tax years beginning on or after January 1, 1987, over the amount allowable as a credit under this subsection for those prior tax years.

b. The allowable credit under paragraph “a” for a tax year shall not exceed the excess, if any, of the tax determined in section 422.63 over the state alternative minimum tax as determined in subsection 2.

The net minimum tax for a tax year is the excess, if any, of the tax determined in subsection 2 for the tax year over the tax determined in section 422.63 for the tax year.

4. a. The taxes imposed under this division shall be reduced by a historic preservation and cultural and entertainment district tax credit equal to the amount as computed under chapter 404A for rehabilitating eligible property. Any credit in ex-

cess of the tax liability shall be refunded or credited to the following year, as provided in section 404A.4, subsection 3.

b. For purposes of this subsection, “eligible property” means the same as used in section 404A.1.

5. a. The taxes imposed under this division shall be reduced by an investment tax credit authorized pursuant to section 15E.43 for an investment in a qualifying business or a community-based seed capital fund.

b. The taxes imposed under this division shall be reduced by investment tax credits authorized pursuant to sections 15.333 and 15E.193B, subsection 6.

6. The taxes imposed under this division shall be reduced by a venture capital fund investment tax credit authorized pursuant to section 15E.51.

7. The taxes imposed under this division shall be reduced by an endow Iowa tax credit authorized pursuant to section 15E.305.

8. The taxes imposed under this division shall be reduced by tax credits for wind energy production allowed under chapter 476B and for renewable energy allowed under chapter 476C.

9. The taxes imposed under this division shall be reduced by an economic development region revolving fund contribution tax credit authorized pursuant to section 15E.232.

10. The taxes imposed under this division shall be reduced by a wage-benefits tax credit authorized pursuant to section 15L.2.

11. The taxes imposed under this division shall be reduced by a corporate tax credit authorized pursuant to section 15.331C for certain sales taxes paid by a third-party developer.

12. The taxes imposed under this division shall be reduced by a tax credit authorized pursuant to section 15E.66, if redeemed, for investments in the Iowa fund of funds.

13. The taxes imposed under this division shall be reduced by a qualified expenditure tax credit authorized pursuant to section 15.393, subsection 2, paragraph “a”.

14. The taxes imposed under this division shall be reduced by an investment tax credit authorized pursuant to section 15.393, subsection 2, paragraph “b”.

2007 Acts, ch 162, §9, 13; 2007 Acts, ch 165, §6, 9

2007 amendment to subsection 4, paragraph a, applies to historic preservation and cultural and entertainment district tax credits applied for or reserved prior to July 1, 2007; 2007 Acts, ch 165, §9

Subsections 13 and 14 take effect May 17, 2007, and apply retroactively to January 1, 2007, for tax years beginning on or after that date; 2007 Acts, ch 162, §13

2006 strike of 2010 repeal of subsection 7 is effective July 1, 2007; 2006 Acts, ch 1151, §7, 8

Subsection 4, paragraph a amended

NEW subsections 13 and 14

#### **422.61 Definitions.**

In this division, unless the context otherwise requires:

1. “Financial institution” means a state bank

as defined in section 524.103, subsection 39, a state bank chartered under the laws of any other state, a national banking association, a trust company, a federally chartered savings and loan association, an out-of-state state chartered savings bank, a financial institution chartered by the federal home loan bank board, a non-Iowa chartered savings and loan association, an association incorporated or authorized to do business under chapter 534, or a production credit association.

2. “*Investment subsidiary*” means an affiliate that is owned, capitalized, or utilized by a financial institution with one of its purposes being to make, hold, or manage, for and on behalf of the financial institution, investments in securities which the financial institution would be permitted by applicable law to make for its own account.

3. “*Net income*” means the net income of the financial institution computed in accordance with section 422.35, with the following adjustments:

a. Federal income taxes paid or accrued shall not be subtracted.

b. Notwithstanding sections 262.41 and 262.51, or any other provisions of law, income from obligations of the state and its political subdivisions and franchise taxes paid or accrued under this division during the taxable year shall be added. Income from sales of obligations of the state and its political subdivisions and interest and dividend income from these obligations are exempt from the taxes imposed by this division only if the law authorizing the obligations specifically exempts the income from the sale and interest and dividend income from the state franchise tax.

c. Interest and dividends from federal securities shall not be subtracted.

d. Interest and dividends derived from obligations of United States possessions, agencies, and instrumentalities, including bonds which were purchased after January 1, 1991, and issued by the governments of Puerto Rico, Guam, and the Virgin Islands shall be added, to the extent they were not included in computing federal taxable income.

e. A deduction disallowed under section 265(b) or section 291(e)(1)(B) of the Internal Revenue Code shall be subtracted.

f. A deduction shall not be allowed for that portion of the taxpayer’s expenses computed under this paragraph which is allocable to an investment in an investment subsidiary. The portion of the taxpayer’s expenses which is allocable to an investment in an investment subsidiary is an amount which bears the same ratio to the taxpayer’s expenses as the taxpayer’s average adjusted basis, as computed pursuant to section 1016 of the Internal Revenue Code, of investment in that investment subsidiary bears to the average adjusted basis for all assets of the taxpayer. The portion of the taxpayer’s expenses that is computed and dis-

allowed under this paragraph shall be added.

g. Where a financial institution as defined in section 581 of the Internal Revenue Code is not subject to income tax and the shareholders of the financial institution are taxed on the financial institution’s income under the provisions of the Internal Revenue Code, such tax treatment shall be disregarded and the financial institution shall compute its net income for franchise tax purposes in the same manner under this subsection as a financial institution that is subject to or liable for federal income tax under the Internal Revenue Code in effect for the applicable year.

4. “*Taxable year*” means the calendar year or the fiscal year ending during a calendar year, for which the tax is payable. “*Fiscal year*” includes a tax period of less than twelve months if, under the Internal Revenue Code, a corporation is required to file a tax return covering a tax period of less than twelve months.

5. “*Taxpayer*” means a financial institution subject to any tax imposed by this division.

Section not amended; internal reference change applied

#### **422.73 Correction of errors — refunds, credits, and carrybacks.**

1. If it appears that an amount of tax, penalty, or interest has been paid which was not due under division II, III or V of this chapter, then that amount shall be credited against any tax due on the books of the department by the person who made the excessive payment, or that amount shall be refunded to the person or with the person’s approval, credited to tax to become due. A claim for refund or credit that has not been filed with the department within three years after the return upon which a refund or credit claimed became due, or within one year after the payment of the tax upon which a refund or credit is claimed was made, whichever time is the later, shall not be allowed by the director. If, as a result of a carryback of a net operating loss or a net capital loss, the amount of tax in a prior period is reduced and an overpayment results, the claim for refund or credit of the overpayment shall be filed with the department within the three years after the return for the taxable year of the net operating loss or net capital loss became due. Notwithstanding the period of limitation specified, the taxpayer shall have six months from the day of final disposition of any income tax matter between the taxpayer and the internal revenue service with respect to the particular tax year to claim an income tax refund or credit.

The department shall enter into an agreement with the internal revenue service for the transmission of federal income tax reports on individuals required to file an Iowa income tax return who have been involved in an income tax matter with the internal revenue service. After final disposi-

tion of the income tax matter between the taxpayer and the internal revenue service, the department shall determine whether the individual is due a state income tax refund as a result of final disposition of such income tax matter. If the individual is due a state income tax refund, the department shall notify the individual within thirty days and request the individual to file a claim for refund or credit with the department.

2. Notwithstanding subsection 1, a claim for credit or refund of the income tax paid is considered timely if the claim is filed with the department on or before June 30, 1999, if the taxpayer's federal income tax was refunded due to a provision in the federal Taxpayer Relief Act of 1997, Pub. L. No. 105-34, which affected the federal adjusted gross incomes of individuals or estates and trusts,

or affected the taxable incomes of corporate taxpayers.

2007 Acts, ch 186, §18  
Subsection 3 stricken

#### 422.75 Statistics — publication.

The department shall prepare and publish an annual report which shall include statistics reasonably available, with respect to the operation of this chapter, including amounts collected, classification of taxpayers, and such other facts as are deemed pertinent and valuable. The annual report shall also include the reports and information required pursuant to section 421.17, subsection 13, and section 421.60, subsection 2, paragraphs “i” and “l”.

2007 Acts, ch 186, §19  
Section amended

## CHAPTER 423

### SALES AND USE TAXES

#### 423.1 Definitions.

As used in this chapter the following words, terms, and phrases have the meanings ascribed to them by this section, except where the context clearly indicates that a different meaning is intended:

1. “*Agent*” means a person appointed by a seller to represent the seller before the member states.

2. “*Agreement*” means the streamlined sales and use tax agreement authorized by subchapter IV of this chapter to provide a mechanism for establishing and maintaining a cooperative, simplified system for the application and administration of sales and use taxes.

3. “*Agricultural production*” includes the production of flowering, ornamental, or vegetable plants in commercial greenhouses or otherwise, and production from aquaculture. “*Agricultural products*” includes flowering, ornamental, or vegetable plants and those products of aquaculture.

4. “*Business*” includes any activity engaged in by any person or caused to be engaged in by the person with the object of gain, benefit, or advantage, either direct or indirect.

5. “*Certificate of title*” means a certificate of title issued for a vehicle or for manufactured housing under chapter 321.

6. “*Certified automated system*” means software certified under the agreement to calculate the tax imposed by each jurisdiction on a transaction, determine the amount of tax to remit to the appropriate state, and maintain a record of the transaction.

7. “*Certified service provider*” means an agent certified under the agreement to perform all of a seller's sales or use tax functions, other than the

seller's obligation to remit tax on its own purchases.

8. “*Computer*” means an electronic device that accepts information in digital or similar form and manipulates the information for a result based on a sequence of instructions.

9. “*Computer software*” means a set of coded instructions designed to cause a computer or automatic data processing equipment to perform a task.

10. “*Delivered electronically*” means delivered to the purchaser by means other than tangible storage media.

11. “*Delivery charges*” means charges assessed by a seller of personal property or services for preparation and delivery to a location designated by the purchaser of personal property or services including, but not limited to, transportation, shipping, postage, handling, crating, and packing charges.

12. “*Department*” means the department of revenue.

13. “*Direct mail*” means printed material delivered or distributed by United States mail or other delivery service to a mass audience or to addressees on a mailing list provided by the purchaser or at the direction of the purchaser when the cost of the items is not billed directly to the recipients. “*Direct mail*” includes tangible personal property supplied directly or indirectly by the purchaser to the direct mail seller for inclusion in the package containing the printed material. “*Direct mail*” does not include multiple items of printed material delivered to a single address.

14. “*Director*” means the director of revenue.

15. “*Electronic*” means relating to technology having electrical, digital, magnetic, wireless, opti-

cal, electromagnetic, or similar capabilities.

16. “*Farm deer*” means the same as defined in section 170.1.

17. “*Farm machinery and equipment*” means machinery and equipment used in agricultural production.

18. “*First use of a service*”. A “*first use of a service*” occurs, for the purposes of this chapter, when a service is rendered, furnished, or performed in Iowa or if rendered, furnished, or performed outside of Iowa, when the product or result of the service is used in Iowa.

19. “*Goods, wares, or merchandise*” means the same as tangible personal property.

20. “*Governing board*” means the group comprised of representatives of the member states of the agreement which is created by the agreement to be responsible for the agreement’s administration and operation.

21. “*Installed purchase price*” is the amount charged, valued in money whether paid in money or otherwise, by a building contractor to convert manufactured housing from tangible personal property into realty. “*Installed purchase price*” includes, but is not limited to, amounts charged for installing a foundation and electrical and plumbing hookups. “*Installed purchase price*” excludes any amount charged for landscaping in connection with the conversion.

22. “*Lease or rental*”.

a. “*Lease or rental*” means any transfer of possession or control of tangible personal property for a fixed or indeterminate term for consideration. A “*lease or rental*” may include future options to purchase or extend.

b. “*Lease or rental*” includes agreements covering motor vehicles and trailers when the amount of consideration may be increased or decreased by reference to the amount realized upon sale or disposition of the property as defined in 26 U.S.C. § 7701(h)(1).

c. “*Lease or rental*” does not include any of the following:

(1) A transfer of possession or control of property under a security agreement or deferred payment plan that requires the transfer of title upon completion of the required payments.

(2) A transfer of possession or control of property under an agreement that requires the transfer of title upon completion of required payments, and payment of any option price does not exceed the greater of one hundred dollars or one percent of the total required payments.

(3) Providing tangible personal property along with an operator for a fixed or indeterminate period of time. A condition of this exclusion is that the operator is necessary for the equipment to perform as designed. For the purpose of this subparagraph, an operator must do more than maintain, inspect, or set up the tangible personal property.

d. This definition shall be used for sales and use tax purposes regardless of whether a transac-

tion is characterized as a lease or rental under generally accepted accounting principles; the Internal Revenue Code; the uniform commercial code, chapter 554; or other provisions of federal, state, or local law.

23. “*Livestock*” includes but is not limited to an animal classified as an ostrich, rhea, emu, bison, or farm deer.

24. “*Manufactured housing*” means “*manufactured home*” as defined in section 321.1.

25. “*Member state*” is any state which has signed the agreement.

26. “*Mobile home*” means “*manufactured or mobile home*” as defined in section 321.1.

27. “*Model 1 seller*” is a seller that has selected a certified service provider as its agent to perform all the seller’s sales and use tax functions, other than the seller’s obligation to remit tax on its own purchases.

28. “*Model 2 seller*” is a seller that has selected a certified automated system to perform part of its sales and use tax functions, but retains responsibility for remitting the tax.

29. “*Model 3 seller*” is a seller that has sales in at least five member states, has total annual sales revenue of at least five hundred million dollars, has a proprietary system that calculates the amount of tax due each jurisdiction, and has entered into a performance agreement with the member states that establishes a tax performance standard for the seller. As used in this definition, a “*seller*” includes an affiliated group of sellers using the same proprietary system.

30. “*Nonresidential commercial operations*” means industrial, commercial, mining, or agricultural operations, whether for profit or not, but does not include apartment complexes, manufactured home communities, or mobile home parks.

31. “*Not registered under the agreement*” means lack of registration by a seller with the member states under the central registration system referenced in section 423.11, subsection 4.

32. “*Person*” means an individual, trust, estate, fiduciary, partnership, limited liability company, limited liability partnership, corporation, or any other legal entity.

33. “*Place of business*” means any warehouse, store, place, office, building, or structure where goods, wares, or merchandise are offered for sale at retail or where any taxable amusement is conducted, or each office where gas, water, heat, communication, or electric services are offered for sale at retail.

When a retailer or amusement operator sells merchandise by means of vending machines or operates music or amusement devices by coin-operated machines at more than one location within the state, the office, building, or place where the books, papers, and records of the taxpayer are kept shall be deemed to be the taxpayer’s place of business.

34. “*Prewritten computer software*” includes

software designed and developed by the author or other creator to the specifications of a specific purchaser when it is sold to a person other than the purchaser. The combining of two or more prewritten computer software programs or prewritten portions of prewritten programs does not cause the combination to be other than prewritten computer software. *“Prewritten computer software”* also means computer software, including prewritten upgrades, which is not designed and developed by the author or other creator to the specifications of a specific purchaser.

When a person modifies or enhances computer software of which the person is not the author or creator, the person shall be deemed to be the author or creator only of such person’s modifications or enhancements. Prewritten computer software or a prewritten portion of the prewritten software that is modified or enhanced to any degree, when such modification or enhancement is designed and developed to the specifications of a specific purchaser, remains prewritten computer software. However, when there is a reasonable, separately stated charge or an invoice or other statement of the price given to the purchaser for such modification or enhancement, such modification or enhancement shall not constitute prewritten computer software.

35. *“Property purchased for resale in connection with the performance of a service”* means property which is purchased for resale in connection with the rendition, furnishing, or performance of a service by a person who renders, furnishes, or performs the service if all of the following occur:

- a. The provider and user of the service intend that a sale of the property will occur.
- b. The property is transferred to the user of the service in connection with the performance of the service in a form or quantity capable of a fixed or definite price value.
- c. The sale is evidenced by a separate charge for the identifiable piece of property.

36. *“Purchase”* means any transfer, exchange, or barter, conditional or otherwise, in any manner or by any means whatsoever, for a consideration.

37. *“Purchase price”* means the same as *“sales price”* as defined in this section.

38. *“Purchaser”* is a person to whom a sale of personal property is made or to whom a service is furnished.

39. *“Receive”* and *“receipt”* mean any of the following:

- a. Taking possession of tangible personal property.
- b. Making first use of a service.
- c. Taking possession or making first use of digital goods, whichever comes first.

*“Receive”* and *“receipt”* do not include possession by a shipping company on behalf of a purchaser.

40. *“Registered under the agreement”* means registration by a seller under the central registra-

tion system referenced in section 423.11, subsection 4.

41. *“Relief agency”* means the state, any county, city and county, city, or district thereof, or any agency engaged in actual relief work.

42. *“Retailer”* means and includes every person engaged in the business of selling tangible personal property or taxable services at retail, or the furnishing of gas, electricity, water, or communication service, and tickets or admissions to places of amusement and athletic events or operating amusement devices or other forms of commercial amusement from which revenues are derived. However, when in the opinion of the director it is necessary for the efficient administration of this chapter to regard any salespersons, representatives, truckers, peddlers, or canvassers as agents of the dealers, distributors, supervisors, employers, or persons under whom they operate or from whom they obtain tangible personal property sold by them irrespective of whether or not they are making sales on their own behalf or on behalf of such dealers, distributors, supervisors, employers, or persons, the director may so regard them, and may regard such dealers, distributors, supervisors, employers, or persons as retailers for the purposes of this chapter. *“Retailer”* includes a seller obligated to collect sales or use tax.

43. *“Retailer maintaining a place of business in this state”* or any like term includes any retailer having or maintaining within this state, directly or by a subsidiary, an office, distribution house, sales house, warehouse, or other place of business, or any representative operating within this state under the authority of the retailer or its subsidiary, irrespective of whether that place of business or representative is located here permanently or temporarily, or whether the retailer or subsidiary is admitted to do business within this state pursuant to chapter 490.

44. *“Retailers who are not model sellers”* means all retailers other than model 1, model 2, or model 3 sellers.

45. *“Retail sale”* or *“sale at retail”* means any sale, lease, or rental for any purpose other than resale, sublease, or subrent.

46. *“Sales”* or *“sale”* means any transfer, exchange, or barter, conditional or otherwise, in any manner or by any means whatsoever, for consideration.

47. *“Sales price”* applies to the measure subject to sales tax.

a. *“Sales price”* means the total amount of consideration, including cash, credit, property, and services, for which personal property or services are sold, leased, or rented, valued in money, whether received in money or otherwise, without any deduction for any of the following:

- (1) The seller’s cost of the property sold.
- (2) The cost of materials used, labor or service cost, interest, losses, all costs of transportation to

the seller, all taxes imposed on the seller, and any other expenses of the seller.

(3) Charges by the seller for any services necessary to complete the sale, other than delivery and installation charges.

(4) Delivery charges.

(5) Installation charges.

(6) The value of exempt personal property given to the purchaser where taxable and exempt personal property have been bundled together and sold by the seller as a single product or piece of merchandise.

(7) Credit for any trade-in authorized by section 423.3, subsection 59.

b. "Sales price" does not include:

(1) Discounts, including cash, term, or coupons that are not reimbursed by a third party that are allowed by a seller and taken by a purchaser on a sale.

(2) Interest, financing, and carrying charges from credit extended on the sale of personal property or services, if the amount is separately stated on the invoice, bill of sale, or similar document given to the purchaser.

(3) Any taxes legally imposed directly on the consumer that are separately stated on the invoice, bill of sale, or similar document given to the purchaser.

(4) Trade discounts given or allowed by manufacturers, distributors, or wholesalers to retailers or by manufacturers or distributors to wholesalers and payments made by manufacturers, distributors, or wholesalers directly to retailers or by manufacturers or distributors to wholesalers to reduce the sales price of the manufacturer's, distributor's, or wholesaler's product or to promote the sale or recognition of the manufacturer's, distributor's, or wholesaler's product. This subparagraph does not apply to coupons issued by manufacturers, distributors, or wholesalers to consumers.

c. The sales price does not include and the sales tax shall not apply to amounts received for charges included in paragraph "a", subparagraphs (3) through (7), if they are separately contracted for, separately stated on the invoice, billing, or similar document given to the purchaser, and the amounts represent charges which are not the sales price of a taxable sale or of the furnishing of a taxable service.

d. For purposes of this definition, the sales price from a rental or lease includes rent, royalties, and copyright and license fees.

48. "Sales tax" means the tax levied under subchapter II of this chapter.

49. "Seller" means any person making sales, leases, or rentals of personal property or services.

50. "Services" means all acts or services rendered, furnished, or performed, other than services used in processing of tangible personal property for use in retail sales or services, for an employer who pays the wages of an employee for a valuable consideration by any person engaged in any busi-

ness or occupation specifically enumerated in section 423.2. The tax shall be due and collectible when the service is rendered, furnished, or performed for the ultimate user of the service.

51. "Services used in the processing of tangible personal property" includes the reconditioning or repairing of tangible personal property of the type normally sold in the regular course of the retailer's business and which is held for sale.

52. "State" means any state of the United States, the District of Columbia, and Puerto Rico.

53. "System" means the central electronic registration system maintained by Iowa and other states which are signatories to the agreement.

54. "Tangible personal property" means personal property that can be seen, weighed, measured, felt, or touched, or that is in any other manner perceptible to the senses. "Tangible personal property" includes electricity, water, gas, steam, and prewritten computer software.

55. "Taxpayer" includes any person who is subject to a tax imposed by this chapter, whether acting on the person's own behalf or as a fiduciary.

56. "Trailer" shall mean every trailer, as is now or may be hereafter so defined by chapter 321, which is required to be registered or is subject only to the issuance of a certificate of title under chapter 321.

57. "Use" means and includes the exercise by any person of any right or power over tangible personal property incident to the ownership of that property. A retailer's or building contractor's sale of manufactured housing for use in this state, whether in the form of tangible personal property or of realty, is a use of that property for the purposes of this chapter.

58. "Use tax" means the tax levied under subchapter III of this chapter for which the retailer collects and remits tax to the department.

59. "User" means the immediate recipient of the services who is entitled to exercise a right of power over the product of such services.

60. "Value of services" means the price to the user exclusive of any direct tax imposed by the federal government or by this chapter.

61. "Vehicles subject to registration" means any vehicle subject to registration pursuant to section 321.18.

2007 Acts, ch 179, §1  
Subsection 52 amended

#### 423.2 Tax imposed.

1. There is imposed a tax of five percent upon the sales price of all sales of tangible personal property, consisting of goods, wares, or merchandise, sold at retail in the state to consumers or users except as otherwise provided in this subchapter.

a. For the purposes of this subchapter, sales of the following services are treated as if they were sales of tangible personal property:

(1) Sales of engraving, photography, retouch-

ing, printing, and binding services.

(2) Sales of vulcanizing, recapping, and re-treading services.

(3) Sales of prepaid telephone calling cards and prepaid authorization numbers.

(4) Sales of optional service or warranty contracts, except residential service contracts regulated under chapter 523C, which provide for the furnishing of labor and materials and require the furnishing of any taxable service enumerated under this section. The sales price is subject to tax even if some of the services furnished are not enumerated under this section. Additional sales, services, or use taxes shall not be levied on services, parts, or labor provided under optional service or warranty contracts which are subject to tax under this subsection.

If the optional service or warranty contract is a computer software maintenance or support service contract and there is no separately stated fee for the taxable personal property or for the non-taxable service, the tax imposed by this subsection shall be imposed on fifty percent of the sales price from the sale of such contract. If the contract provides for technical support services only, no tax shall be imposed under this subsection. The provisions of this subparagraph (4) also apply to the use tax.

b. Sales of building materials, supplies, and equipment to owners, contractors, subcontractors, or builders for the erection of buildings or the alteration, repair, or improvement of real property are retail sales of tangible personal property in whatever quantity sold. Where the owner, contractor, subcontractor, or builder is also a retailer holding a retail sales tax permit and transacting retail sales of building materials, supplies, and equipment, the person shall purchase such items of tangible personal property without liability for the tax if such property will be subject to the tax at the time of resale or at the time it is withdrawn from inventory for construction purposes. The sales tax shall be due in the reporting period when the materials, supplies, and equipment are withdrawn from inventory for construction purposes or when sold at retail. The tax shall not be due when materials are withdrawn from inventory for use in construction outside of Iowa and the tax shall not apply to tangible personal property purchased and consumed by the manufacturer as building materials in the performance by the manufacturer or its subcontractor of construction outside of Iowa. The sale of carpeting is not a sale of building materials. The sale of carpeting to owners, contractors, subcontractors, or builders shall be treated as the sale of ordinary tangible personal property and subject to the tax imposed under this subsection and the use tax.

c. The use within this state of tangible personal property by the manufacturer thereof, as building materials, supplies, or equipment, in the performance of construction contracts in Iowa, shall,

for the purpose of this subchapter, be construed as a sale at retail of tangible personal property by the manufacturer who shall be deemed to be the consumer of such tangible personal property. The tax shall be computed upon the cost to the manufacturer of the fabrication or production of the tangible personal property.

2. A tax of five percent is imposed upon the sales price of the sale or furnishing of gas, electricity, water, heat, pay television service, and communication service, including the sales price from such sales by any municipal corporation or joint water utility furnishing gas, electricity, water, heat, pay television service, and communication service to the public in its proprietary capacity, except as otherwise provided in this subchapter, when sold at retail in the state to consumers or users.

3. A tax of five percent is imposed upon the sales price of all sales of tickets or admissions to places of amusement, fairs, and athletic events except those of elementary and secondary educational institutions. A tax of five percent is imposed on the sales price of an entry fee or like charge imposed solely for the privilege of participating in an activity at a place of amusement, fair, or athletic event unless the sales price of tickets or admissions charges for observing the same activity are taxable under this subchapter. A tax of five percent is imposed upon that part of private club membership fees or charges paid for the privilege of participating in any athletic sports provided club members.

4. A tax of five percent is imposed upon the sales price derived from the operation of all forms of amusement devices and games of skill, games of chance, raffles, and bingo games as defined in chapter 99B, and card game tournaments conducted under section 99B.7B, that are operated or conducted within the state, the tax to be collected from the operator in the same manner as for the collection of taxes upon the sales price of tickets or admission as provided in this section. Nothing in this subsection shall legalize any games of skill or chance or slot-operated devices which are now prohibited by law.

The tax imposed under this subsection covers the total amount from the operation of games of skill, games of chance, raffles, and bingo games as defined in chapter 99B, card game tournaments conducted under section 99B.7B, and musical devices, weighing machines, shooting galleries, billiard and pool tables, bowling alleys, pinball machines, slot-operated devices selling merchandise not subject to the general sales taxes and on the total amount from devices or systems where prizes are in any manner awarded to patrons and upon the receipts from fees charged for participation in any game or other form of amusement, and generally upon the sales price from any source of amusement operated for profit, not specified in this section, and upon the sales price from which tax is not

collected for tickets or admission, but tax shall not be imposed upon any activity exempt from sales tax under section 423.3, subsection 78. Every person receiving any sales price from the sources described in this section is subject to all provisions of this subchapter relating to retail sales tax and other provisions of this chapter as applicable.

5. There is imposed a tax of five percent upon the sales price from the furnishing of services as defined in section 423.1.

6. The sales price of any of the following enumerated services is subject to the tax imposed by subsection 5: alteration and garment repair; armored car; vehicle repair; battery, tire, and allied; investment counseling; service charges of all financial institutions; barber and beauty; boat repair; vehicle wash and wax; campgrounds; carpentry; roof, shingle, and glass repair; dance schools and dance studios; dating services; dry cleaning, pressing, dyeing, and laundering; electrical and electronic repair and installation; excavating and grading; farm implement repair of all kinds; flying service; furniture, rug, carpet, and upholstery repair and cleaning; fur storage and repair; golf and country clubs and all commercial recreation; gun and camera repair; house and building moving; household appliance, television, and radio repair; janitorial and building maintenance or cleaning; jewelry and watch repair; lawn care, landscaping, and tree trimming and removal; limousine service, including driver; machine operator; machine repair of all kinds; motor repair; motorcycle, scooter, and bicycle repair; oilers and lubricators; office and business machine repair; painting, papering, and interior decorating; parking facilities; pay television; pet grooming; pipe fitting and plumbing; wood preparation; executive search agencies; private employment agencies, excluding services for placing a person in employment where the principal place of employment of that person is to be located outside of the state; reflexology; security and detective services; sewage services for non-residential commercial operations; sewing and stitching; shoe repair and shoeshine; sign construction and installation; storage of household goods, mini-storage, and warehousing of raw agricultural products; swimming pool cleaning and maintenance; tanning beds or salons; taxidermy services; telephone answering service; test laboratories, including mobile testing laboratories and field testing by testing laboratories, and excluding tests on humans or animals; termite, bug, roach, and pest eradicators; tin and sheet metal repair; transportation service consisting of the rental of recreational vehicles or recreational boats, or the rental of motor vehicles subject to registration which are registered for a gross weight of thirteen tons or less for a period of sixty days or less, or the rental of aircraft for a period of sixty days or less; Turkish baths, massage, and reducing salons, excluding services provided by massage therapists licensed under chapter 152C; water conditioning

and softening; weighing; welding; well drilling; wrapping, packing, and packaging of merchandise other than processed meat, fish, fowl, and vegetables; wrecking service; wrecker and towing.

For the purposes of this subsection, “*financial institutions*” means all national banks, federally chartered savings banks, federally chartered credit unions, banks organized under chapter 524, savings and loan associations and savings banks organized under chapter 534, credit unions organized under chapter 533, and all banks, savings banks, credit unions, and savings and loan associations chartered or otherwise created under the laws of any state and doing business in Iowa.

7. *a.* A tax of five percent is imposed upon the sales price from the sales, furnishing, or service of solid waste collection and disposal service.

For purposes of this subsection, “*solid waste*” means garbage, refuse, sludge from a water supply treatment plant or air contaminant treatment facility, and other discarded waste materials and sludges, in solid, semisolid, liquid, or contained gaseous form, resulting from nonresidential commercial operations, but does not include auto hulks; street sweepings; ash; construction debris; mining waste; trees; tires; lead acid batteries; used oil; hazardous waste; animal waste used as fertilizer; earthen fill, boulders, or rock; foundry sand used for daily cover at a sanitary landfill; sewage sludge; solid or dissolved material in domestic sewage or other common pollutants in water resources, such as silt, dissolved or suspended solids in industrial wastewater effluents or discharges which are point sources subject to permits under section 402 of the federal Water Pollution Control Act, or dissolved materials in irrigation return flows; or source, special nuclear, or by-product material defined by the federal Atomic Energy Act of 1954.

A recycling facility that separates or processes recyclable materials and that reduces the volume of the waste by at least eighty-five percent is exempt from the tax imposed by this subsection if the waste exempted is collected and disposed of separately from other solid waste.

*b.* A person who transports solid waste generated by that person or another person without compensation shall pay the tax imposed by this subsection at the collection or disposal facility based on the disposal charge or tipping fee. However, the costs of a service or portion of a service to collect and manage recyclable materials separated from solid waste by the waste generator are exempt from the tax imposed by this subsection.

8. *a.* A tax of five percent is imposed on the sales price from sales of bundled transactions. For the purposes of this subsection, a “*bundled transaction*” is the retail sale of two or more distinct and identifiable products, except real property and services to real property, which are sold for one nonitemized price. A “*bundled transaction*” does



not include the sale of any products in which the sales price varies, or is negotiable, based on the selection by the purchaser of the products included in the transaction.

b. “*Distinct and identifiable products*” does not include any of the following:

(1) Packaging or other materials that accompany the retail sale of the products and are incidental or immaterial to the retail sale of the products.

(2) A product provided free of charge with the required purchase of another product. A product is “*provided free of charge*” if the sales price of the product purchased does not vary depending on the inclusion of the product which is provided free of charge.

(3) Items included in the definition of “*sales price*” pursuant to section 423.1.

c. “*One nonitemized price*” does not include a price that is separately identified by product on binding sales or other supporting sales-related documentation made available to the customer in paper or electronic form.

9. A tax of five percent is imposed upon the sales price from any mobile telecommunications service which this state is allowed to tax by the provisions of the federal Mobile Telecommunications Sourcing Act, Pub. L. No. 106-252, 4 U.S.C. § 116 et seq. For purposes of this subsection, taxes on mobile telecommunications service, as defined under the federal Mobile Telecommunications Sourcing Act that are deemed to be provided by the customer’s home service provider, shall be paid to the taxing jurisdiction whose territorial limits encompass the customer’s place of primary use, regardless of where the mobile telecommunications service originates, terminates, or passes through and shall in all other respects be taxed in conformity with the federal Mobile Telecommunications Sourcing Act. All other provisions of the federal Mobile Telecommunications Sourcing Act are adopted by the state of Iowa and incorporated into this subsection by reference. With respect to mobile telecommunications service under the federal Mobile Telecommunications Sourcing Act, the director shall, if requested, enter into agreements consistent with the provisions of the federal Act.

10. Any person or that person’s affiliate, which is a retailer in this state or a retailer maintaining a business in this state under this chapter, that enters into a contract with an agency of this state must register, collect, and remit Iowa sales tax under this chapter on all sales of tangible personal property and enumerated services. Every bid submitted and each contract executed by a state agency shall contain a certification by the bidder or contractor stating that the bidder or contractor is registered with the department and will collect and remit Iowa sales tax due under this chapter. In the certification, the bidder or contractor shall also acknowledge that the state agency may declare the

contract or bid void if the certification is false. Fraudulent certification, by act or omission, may result in the state agency or its representative filing for damages for breach of contract.

For the purposes of this subsection, the following definitions apply:

a. “*Affiliate*” means any entity to which any of the following applies:

(1) Directly, indirectly, or constructively controls another entity.

(2) Is directly, indirectly, or constructively controlled by another entity.

(3) Is subject to the control of a common entity. A common entity is one which owns directly or individually more than ten percent of the voting securities of the entity.

b. “*State agency*” means an authority, board, commission, department, instrumentality, or other administrative office or unit of this state, or any other state entity reported in the Iowa comprehensive annual financial report, including public institutions of higher education.

c. “*Voting security*” means a security to which any of the following applies:

(1) Confers upon the holder the right to vote for the election of members of the board of directors or similar governing body of the entity.

(2) Is convertible into, or entitles the holder to receive upon its exercise, a security that confers such a right to vote.

(3) Is a general partnership interest.

11. All revenues arising under the operation of the provisions of this section shall be deposited into the general fund of the state.

12. All taxes collected under this chapter by a retailer or any individual are deemed to be held in trust for the state of Iowa.

2006 Acts, ch 1158, §70, 80; 2007 Acts, ch 119, §6; 2007 Acts, ch 186, §20  
Local sales and services tax, §423B.5 et seq.  
2006 amendment to subsection 8 takes effect January 1, 2008; 2006 Acts,  
ch 1158, §80

Subsection 4 amended

Subsection 6, unnumbered paragraph 2 amended

Subsection 8 stricken and rewritten

### 423.3 Exemptions.

There is exempted from the provisions of this subchapter and from the computation of the amount of tax imposed by it the following:

1. The sales price from sales of tangible personal property and services furnished which this state is prohibited from taxing under the Constitution or laws of the United States or under the Constitution of this state.

2. The sales price of sales for resale of tangible personal property or taxable services, or for resale of tangible personal property in connection with the furnishing of taxable services except for sales, other than leases or rentals, which are sales of machinery, equipment, attachments, and replacement parts specifically enumerated in subsection 37 and used in the manner described in subsection 37 or the purchase of tangible personal property,

the leasing or rental of which is exempted from tax by subsection 49.

3. The sales price of agricultural breeding livestock and domesticated fowl.

4. The sales price of commercial fertilizer.

5. *a.* The sales price of agricultural limestone, herbicide, pesticide, insecticide, including adjuvants, surfactants, and other products directly related to the application enhancement of those products, food, medication, or agricultural drain tile, including installation of agricultural drain tile, any of which are to be used in disease control, weed control, insect control, or health promotion of plants or livestock produced as part of agricultural production for market.

*b.* The following enumerated materials associated with the installation of agricultural drain tile which is exempt pursuant to paragraph “*a*” shall also be exempt under paragraph “*a*”:

- (1) Tile intakes.
- (2) Outlet pipes and guards.
- (3) Aluminum and gabion structures.
- (4) Erosion control fabric.
- (5) Water control structures.
- (6) Miscellaneous tile fittings.

6. The sales price of tangible personal property which will be consumed as fuel in creating heat, power, or steam for grain drying, or for providing heat or cooling for livestock buildings or for greenhouses or buildings or parts of buildings dedicated to the production of flowering, ornamental, or vegetable plants intended for sale in the ordinary course of business, or for use in cultivation of agricultural products by aquaculture, or in implements of husbandry engaged in agricultural production.

7. The sales price of services furnished by specialized flying implements of husbandry used for agricultural aerial spraying.

8. The sales price exclusive of services of farm machinery and equipment, including auxiliary attachments which improve the performance, safety, operation, or efficiency of the machinery and equipment and replacement parts, if the following conditions are met:

*a.* The farm machinery and equipment shall be directly and primarily used in production of agricultural products.

*b.* The farm machinery and equipment shall constitute self-propelled implements or implements customarily drawn or attached to self-propelled implements or the farm machinery or equipment is a grain dryer.

*c.* The replacement part is essential to any repair or reconstruction necessary to the farm machinery’s or equipment’s exempt use in the production of agricultural products.

Vehicles subject to registration, as defined in section 423.1, or replacement parts for such vehicles, are not eligible for this exemption.

9. The sales price of wood chips, sawdust, hay, straw, paper, or other materials used for bedding

in the production of agricultural livestock or fowl.

10. The sales price of gas, electricity, water, or heat to be used in implements of husbandry engaged in agricultural production.

11. The sales price exclusive of services of farm machinery and equipment, including auxiliary attachments which improve the performance, safety, operation, or efficiency of the machinery and equipment, and including auger systems, curtains and curtain systems, drip systems, fan and fan systems, shutters, inlets and shutter or inlet systems, and refrigerators, and replacement parts, if all of the following conditions are met:

*a.* The implement, machinery, or equipment is directly and primarily used in livestock or dairy production, aquaculture production, or the production of flowering, ornamental, or vegetable plants.

*b.* The implement is not a self-propelled implement or implement customarily drawn or attached to self-propelled implements.

*c.* The replacement part is essential to any repair or reconstruction necessary to the farm machinery’s or equipment’s exempt use in livestock or dairy production, aquaculture production, or the production of flowering, ornamental, or vegetable plants.

12. The sales price, exclusive of services, from sales of irrigation equipment used in farming operations.

13. The sales price from the sale or rental of irrigation equipment, whether installed above or below ground, to a contractor or farmer if the equipment will be primarily used in agricultural operations.

14. The sales price from the sales of horses, commonly known as draft horses, when purchased for use and so used as draft horses.

15. The sales price from the sale of property which is a container, label, carton, pallet, packing case, wrapping, baling wire, twine, bag, bottle, shipping case, or other similar article or receptacle sold for use in agricultural, livestock, or dairy production.

16. The sales price from the sale of feed and feed supplements and additives when used for consumption by farm deer or bison.

17. The sales price of all goods, wares, or merchandise, or services, used for educational purposes sold to any private nonprofit educational institution in this state. For the purpose of this subsection, “*educational institution*” means an institution which primarily functions as a school, college, or university with students, faculty, and an established curriculum. The faculty of an educational institution must be associated with the institution and the curriculum must include basic courses which are offered every year. “*Educational institution*” includes an institution primarily functioning as a library.

18. The sales price of tangible personal property sold, or of services furnished, to the following

nonprofit corporations:

*a.* Residential care facilities and intermediate care facilities for persons with mental retardation and residential care facilities for persons with mental illness licensed by the department of inspections and appeals under chapter 135C.

*b.* Residential facilities licensed by the department of human services pursuant to chapter 237, other than those maintained by individuals as defined in section 237.1, subsection 7.

*c.* Rehabilitation facilities that provide accredited rehabilitation services to persons with disabilities which are accredited by the commission on accreditation of rehabilitation facilities or the accreditation council for services for persons with mental retardation and other persons with developmental disabilities and adult day care services approved for reimbursement by the state department of human services.

*d.* Community mental health centers accredited by the department of human services pursuant to chapter 225C.

*e.* Community health centers as defined in 42 U.S.C. § 254(c) and migrant health centers as defined in 42 U.S.C. § 254(b).

*f.* Home and community-based services providers certified to offer Medicaid waiver services by the department of human services that are any of the following:

(1) Ill and handicapped waiver service providers, described in 441 IAC 77.30.

(2) Hospice providers, described in 441 IAC 77.32.

(3) Elderly waiver service providers, described in 441 IAC 77.33.

(4) AIDS/HIV waiver service providers, described in 441 IAC 77.34.

(5) Federally qualified health centers, described in 441 IAC 77.35.

(6) MR waiver service providers, described in 441 IAC 77.37.

(7) Brain injury waiver service providers, described in 441 IAC 77.39.

19. The sales price of tangible personal property sold to a nonprofit organization which was organized for the purpose of lending the tangible personal property to the general public for use by them for nonprofit purposes.

20. The sales price of tangible personal property sold, or of services furnished, to nonprofit legal aid organizations.

21. The sales price of goods, wares, or merchandise, or of services, used for educational, scientific, historic preservation, or aesthetic purpose sold to a nonprofit private museum.

22. The sales price from sales of goods, wares, or merchandise, or from services furnished, to a nonprofit private art center to be used in the operation of the art center.

23. The sales price of tangible personal property sold, or of services furnished, by a fair organized

under chapter 174.

24. The sales price from services furnished by the notification center established pursuant to section 480.3, and the vendor selected pursuant to section 480.3 to provide the notification service.

25. The sales price of food and beverages sold for human consumption by a nonprofit organization which principally promotes a food or beverage product for human consumption produced, grown, or raised in this state and whose income is exempt from federal taxation under section 501(c) of the Internal Revenue Code.

26. The sales price of tangible personal property sold, or of services furnished, to a statewide nonprofit organ procurement organization, as defined in section 142C.2.

27. The sales price of tangible personal property sold, or of services furnished, to a nonprofit hospital licensed pursuant to chapter 135B to be used in the operation of the hospital.

28. The sales price of tangible personal property sold, or of services furnished, to a freestanding nonprofit hospice facility which operates a hospice program as defined in 42 C.F.R., ch. IV, § 418.3, which property or services are to be used in the hospice program.

29. The sales price of all goods, wares, or merchandise sold, or of services furnished, which are used in the fulfillment of a written construction contract with a nonprofit hospital licensed pursuant to chapter 135B if all of the following apply:

*a.* The sales and delivery of the goods, wares, or merchandise, or the services furnished occurred between July 1, 1998, and December 31, 2001.

*b.* The written construction contract was entered into prior to December 31, 1999, or bonds to fund the construction were issued prior to December 31, 1999.

*c.* The sales or services were purchased by a contractor as the agent for the hospital or were purchased directly by the hospital.

30. The sales price of livestock ear tags sold by a nonprofit organization whose income is exempt from federal taxation under section 501(c)(6) of the Internal Revenue Code where the proceeds are used in bovine research programs selected or approved by such organization.

31. The sales price of goods, wares, or merchandise sold to and of services furnished, and used for public purposes sold to a tax-certifying or tax-levying body of the state or a governmental subdivision of the state, including regional transit systems, as defined in section 324A.1, the state board of regents, department of human services, state department of transportation, any municipally owned solid waste facility which sells all or part of its processed waste as fuel to a municipally owned public utility, and all divisions, boards, commissions, agencies, or instrumentalities of state, federal, county, or municipal government

which have no earnings going to the benefit of an equity investor or stockholder, except any of the following:

a. The sales price of goods, wares, or merchandise sold to, or of services furnished, and used by or in connection with the operation of any municipally owned public utility engaged in selling gas, electricity, heat, pay television service, or communication service to the general public.

b. The sales price of furnishing of sewage services to a county or municipality on behalf of non-residential commercial operations.

c. The furnishing of solid waste collection and disposal service to a county or municipality on behalf of nonresidential commercial operations located within the county or municipality.

The exemption provided by this subsection shall also apply to all such sales of goods, wares, or merchandise or of services furnished and subject to use tax.

32. The sales price of tangible personal property sold, or of services furnished, by a county or city. This exemption does not apply to any of the following:

a. The tax specifically imposed under section 423.2 on the sales price from sales or furnishing of gas, electricity, water, heat, pay television service, or communication service to the public by a municipal corporation in its proprietary capacity.

b. The sale or furnishing of solid waste collection and disposal service to nonresidential commercial operations.

c. The sale or furnishing of sewage service for nonresidential commercial operations.

d. Fees paid to cities and counties for the privilege of participating in any athletic sports.

33. a. The sales price of mementos and other items relating to Iowa history and historic sites, the general assembly, and the state capitol, sold by the legislative services agency and its legislative information office on the premises of property under the control of the legislative council, at the state capitol, and on other state property.

b. The legislative services agency is not a retailer under this chapter and the sale of items or provision of services by the legislative services agency is not a retail sale under this chapter and is exempt from the sales tax.

34. The sales price from sales of mementos and other items relating to Iowa history and historic sites by the department of cultural affairs on the premises of property under its control and at the state capitol.

35. The sales price from sales or services furnished by the state fair organized under chapter 173.

36. The sales price from sales of tangible personal property or of the sale or furnishing of electrical energy, natural or artificial gas, or communication service to another state or political subdivision of another state if the other state provides a similar reciprocal exemption for this state and

political subdivision of this state.

37. The sales price of services on or connected with new construction, reconstruction, alteration, expansion, remodeling, or the services of a general building contractor, architect, or engineer. The exemption in this subsection also applies to the sales price on the lease or rental of all machinery, equipment, and replacement parts directly and primarily used by owners, contractors, subcontractors, and builders for new construction, reconstruction, alteration, expansion, or remodeling of real property or structures and of all machinery, equipment, and replacement parts which improve the performance, safety, operation, or efficiency of the machinery, equipment, and replacement parts so used.

38. The sales price from the sale of building materials, supplies, or equipment sold to rural water districts organized under chapter 504 as provided in chapter 357A and used for the construction of facilities of a rural water district.

39. The sales price from “casual sales”.

“Casual sales” means:

a. Sales of tangible personal property, or the furnishing of services, of a nonrecurring nature, by the owner, if the seller, at the time of the sale, is not engaged for profit in the business of selling tangible personal property or services taxed under section 423.2.

b. The sale of all or substantially all of the tangible personal property or services held or used by a seller in the course of the seller’s trade or business for which the seller is required to hold a sales tax permit when the seller sells or otherwise transfers the trade or business to another person who shall engage in a similar trade or business.

c. Notwithstanding paragraph “a”, the sale, furnishing, or performance of a service that is of a recurring nature by the owner if, at the time of the sale, all of the following apply:

(1) The seller is not engaged for profit in the business of the selling, furnishing, or performance of services taxed under section 423.2. For purposes of this subparagraph, the fact of the recurring nature of selling, furnishing, or performance of services does not constitute by itself engaging for profit in the business of selling, furnishing, or performance of services.

(2) The owner of the business is the only person performing the service.

(3) The owner of the business is a full-time student.

(4) The total gross receipts from the sales, furnishing, or performance of services during the calendar year does not exceed five thousand dollars.

The exemption under this subsection does not apply to vehicles subject to registration, aircraft, or commercial or pleasure watercraft or water vessels.

40. The sales price from the sale of automotive fluids to a retailer to be used either in providing a service which includes the installation or applica-

tion of the fluids in or on a motor vehicle, which service is subject to section 423.2, subsection 6, or to be installed in or applied to a motor vehicle which the retailer intends to sell, which sale is subject to section 423.26. For purposes of this subsection, automotive fluids are all those which are refined, manufactured, or otherwise processed and packaged for sale prior to their installation in or application to a motor vehicle. They include but are not limited to motor oil and other lubricants, hydraulic fluids, brake fluid, transmission fluid, sealants, undercoatings, antifreeze, and gasoline additives.

41. The sales price from the rental of motion picture films, video and audio tapes, video and audio discs, records, photos, copy, scripts, or other media used for the purpose of transmitting that which can be seen, heard, or read, if either of the following conditions are met:

a. The lessee imposes a charge for the viewing of such media and the charge for the viewing is subject to taxation under this subchapter or is subject to use tax.

b. The lessee broadcasts the contents of such media for public viewing or listening.

42. The sales price from the sale of tangible personal property consisting of advertising material including paper to a person in Iowa if that person or that person's agent will, subsequent to the sale, send that advertising material outside this state and the material is subsequently used solely outside of Iowa. For the purpose of this subsection, "advertising material" means any brochure, catalog, leaflet, flyer, order form, return envelope, or similar item used to promote sales of property or services.

43. The sales price from the sale of property or of services performed on property which the retailer transfers to a carrier for shipment to a point outside of Iowa, places in the United States mail or parcel post directed to a point outside of Iowa, or transports to a point outside of Iowa by means of the retailer's own vehicles, and which is not thereafter returned to a point within Iowa, except solely in the course of interstate commerce or transportation. This exemption shall not apply if the purchaser, consumer, or their agent, other than a carrier, takes physical possession of the property in Iowa.

44. The sales price from the sale of wine which is shipped from outside Iowa and which meets the requirements for sales and use tax exemption pursuant to section 123.187.

45. The sales price from the sale of property which is a container, label, carton, pallet, packing case, wrapping paper, twine, bag, bottle, shipping case, or other similar article or receptacle sold to retailers or manufacturers for the purpose of packaging or facilitating the transportation of tangible personal property sold at retail or transferred in association with the maintenance or repair of fabric or clothing.

46. The sales price from sales or rentals to a printer or publisher of the following: acetate; anti-halation backing; antistatic spray; back lining; base material used as a carrier for light sensitive emulsions; blankets; blow-ups; bronze powder; carbon tissue; codas; color filters; color separations; contacts; continuous tone separations; creative art; custom dies and die cutting materials; dampener sleeves; dampening solution; design and styling; diazo coating; dot etching; dot etching solutions; drawings; drawsheets; driers; duplicate films or prints; electronically digitized images; electrotypes; end product of image modulation; engravings; etch solutions; film; finished art or final art; fix; fixative spray; flats; flying pasters; foils; goldenrod paper; gum; halftones; illustrations; ink; ink paste; keylines; lacquer; laser images; layouts; lettering; line negatives and positives; linotypes; lithographic offset plates; magnesium and zinc etchings; masking paper; masks; masters; mats; mat service; metal toner; models and modeling; mylar; negatives; nonoffset spray; opaque film process paper; opaquing; padding compound; paper stock; photographic materials: acids, plastic film, desensitizer emulsion, exposure chemicals, fix, developers, and paper; photography, day rate; photopolymer coating; photographs; photostats; photo-display tape; phototypesetter materials; ph-indicator sticks; positives; press pack; printing cylinders; printing plates, all types; process lettering; proof paper; proofs and proof processes, all types; pumice powder; purchased author alterations; purchased composition; purchased phototypesetting; purchased stripping and pasteups; red litho tape; reducers; roller covering; screen tints; sketches; stepped plates; stereotypes; strip types; substrate; tints; tissue overlays; toners; transparencies; tympan; typesetting; typography; varnishes; veloxes; wood mounts; and any other items used in a like capacity to any of the above enumerated items by the printer or publisher to complete a finished product for sale at retail. Expendable tools and supplies which are not enumerated in this subsection are excluded from the exemption. "Printer" means that portion of a person's business engaged in printing that completes a finished product for ultimate sale at retail or means that portion of a person's business used to complete a finished printed packaging material used to package a product for ultimate sale at retail. "Printer" does not mean an in-house printer who prints or copyrights its own materials.

47. a. The sales price from the sale or rental of computers, machinery, and equipment, including replacement parts, and materials used to construct or self-construct computers, machinery, and equipment if such items are any of the following:

(1) Directly and primarily used in processing by a manufacturer.

(2) Directly and primarily used to maintain

the integrity of the product or to maintain unique environmental conditions required for either the product or the computers, machinery, and equipment used in processing by a manufacturer, including test equipment used to control quality and specifications of the product.

(3) Directly and primarily used in research and development of new products or processes of processing.

(4) Computers used in processing or storage of data or information by an insurance company, financial institution, or commercial enterprise.

(5) Directly and primarily used in recycling or reprocessing of waste products.

(6) Pollution-control equipment used by a manufacturer, including but not limited to that required or certified by an agency of this state or of the United States government.

b. The sales price from the sale of fuel used in creating heat, power, steam, or for generating electrical current, or from the sale of electricity, consumed by computers, machinery, or equipment used in an exempt manner described in paragraph “a”, subparagraph (1), (2), (3), (5), or (6).

c. The sales price from the sale or rental of the following shall not be exempt from the tax imposed by this subchapter:

(1) Hand tools.

(2) Point-of-sale equipment and computers.

(3) Industrial machinery, equipment, and computers, including pollution-control equipment within the scope of section 427A.1, subsection 1, paragraphs “h” and “i”.

(4) Vehicles subject to registration, except vehicles subject to registration which are directly and primarily used in recycling or reprocessing of waste products.

d. As used in this subsection:

(1) “*Commercial enterprise*” includes businesses and manufacturers conducted for profit and centers for data processing services to insurance companies, financial institutions, businesses, and manufacturers, but excludes professions and occupations and nonprofit organizations.

(2) “*Financial institution*” means as defined in section 527.2.

(3) “*Insurance company*” means an insurer organized or operating under chapter 508, 514, 515, 518, 518A, 519, or 520, or authorized to do business in Iowa as an insurer or an insurance producer under chapter 522B.

(4) “*Manufacturer*” means as defined in section 428.20, but also includes contract manufacturers. A contract manufacturer is a manufacturer that otherwise falls within the definition of manufacturer under section 428.20, except that a contract manufacturer does not sell the tangible personal property the contract manufacturer processes on behalf of other manufacturers. A business engaged in activities subsequent to the extractive process of quarrying or mining, such as crushing, washing, sizing, or blending of aggregate materials, is a manufacturer with respect to these activities.

gate materials, is a manufacturer with respect to these activities.

(5) “*Processing*” means a series of operations in which materials are manufactured, refined, purified, created, combined, or transformed by a manufacturer, ultimately into tangible personal property. Processing encompasses all activities commencing with the receipt or producing of raw materials by the manufacturer and ending at the point products are delivered for shipment or transferred from the manufacturer. Processing includes but is not limited to refinement or purification of materials; treatment of materials to change their form, context, or condition; maintenance of the quality or integrity of materials, components, or products; maintenance of environmental conditions necessary for materials, components, or products; quality control activities; and construction of packaging and shipping devices, placement into shipping containers or any type of shipping devices or medium, and the movement of materials, components, or products until shipment from the processor.

(6) “*Receipt or producing of raw materials*” means activities performed upon tangible personal property only. With respect to raw materials produced from or upon real estate, the receipt or producing of raw materials is deemed to occur immediately following the severance of the raw materials from the real estate.

47A. a. Subject to paragraph “b”, the sales price from the sale or rental of central office equipment or transmission equipment primarily used by local exchange carriers and competitive local exchange service providers as defined in section 476.96; by franchised cable television operators, mutual companies, municipal utilities, cooperatives, and companies furnishing communications services that are not subject to rate regulation as provided in chapter 476; by long distance companies as defined in section 477.10; or for a commercial mobile radio service as defined in 47 C.F.R. § 20.3 in the furnishing of telecommunications services on a commercial basis. For the purposes of this subsection, “*central office equipment*” means equipment utilized in the initiating, processing, amplifying, switching, or monitoring of telecommunications services. “*Transmission equipment*” means equipment utilized in the process of sending information from one location to another location. “*Central office equipment*” and “*transmission equipment*” also include ancillary equipment and apparatus which support, regulate, control, repair, test, or enable such equipment to accomplish its function.

b. The exemption in this subsection shall be phased in by means of tax refunds as follows:

(1) If the sale or rental occurs on or after July 1, 2006, through June 30, 2007, one-seventh of the state tax on the sales price shall be refunded.

(2) If the sale or rental occurs on or after July 1, 2007, through June 30, 2008, two-sevenths of

the state tax on the sales price shall be refunded.

(3) If the sale or rental occurs on or after July 1, 2008, through June 30, 2009, three-sevenths of the state tax on the sales price shall be refunded.

(4) If the sale or rental occurs on or after July 1, 2009, through June 30, 2010, four-sevenths of the state tax on the sales price shall be refunded.

(5) If the sale or rental occurs on or after July 1, 2010, through June 30, 2011, five-sevenths of the state tax on the sales price shall be refunded.

(6) If the sale or rental occurs on or after July 1, 2011, through June 30, 2012, six-sevenths of the state tax on the sales price shall be refunded.

(7) If the sale or rental occurs on or after July 1, 2012, the sales price is exempt and no payment of tax and subsequent refund are required.

c. For sales or rentals occurring on or after July 1, 2006, through June 30, 2012, a refund of the tax paid as provided in paragraph "b", subparagraph (1), (2), (3), (4), (5), or (6), must be applied for, not later than six months after the month in which the sale or rental occurred, in the manner and on the forms provided by the department. Refunds shall only be of the state tax collected. Refunds authorized shall accrue interest at the rate in effect under section 421.7 from the first day of the second calendar month following the date the refund claim is received by the department.

48. The sales price from the furnishing of the design and installation of new industrial machinery or equipment, including electrical and electronic installation.

49. The sales price from the sale of carbon dioxide in a liquid, solid, or gaseous form, electricity, steam, and other taxable services and the lease or rental of tangible personal property when used by a manufacturer of food products to produce marketable food products for human consumption, including but not limited to treatment of material to change its form, context, or condition, in order to produce the food product, maintenance of quality or integrity of the food product, changing or maintenance of temperature levels necessary to avoid spoilage or to hold the food product in marketable condition, maintenance of environmental conditions necessary for the safe or efficient use of machinery and material used to produce the food product, sanitation and quality control activities, formation of packaging, placement into shipping containers, and movement of the material or food product until shipment from the building of manufacture.

50. The sales price of sales of electricity, steam, or any taxable service when purchased and used in the processing of tangible personal property intended to be sold ultimately at retail or of any fuel which is consumed in creating power, heat, or steam for processing or for generating electric current.

51. The sales price of tangible personal property sold for processing. Tangible personal property is sold for processing within the meaning of this

subsection only when it is intended that the property will, by means of fabrication, compounding, manufacturing, or germination, become an integral part of other tangible personal property intended to be sold ultimately at retail; or for generating electric current; or the property is a chemical, solvent, sorbent, or reagent, which is directly used and is consumed, dissipated, or depleted, in processing tangible personal property which is intended to be sold ultimately at retail or consumed in the maintenance or repair of fabric or clothing, and which may not become a component or integral part of the finished product. The distribution to the public of free newspapers or shoppers guides is a retail sale for purposes of the processing exemption set out in this subsection and in subsection 50.

52. The sales price from the sale of argon and other similar gases to be used in the manufacturing process.

53. The sales price from the sale of electricity to water companies assessed for property tax pursuant to sections 428.24, 428.26, and 428.28 which is used solely for the purpose of pumping water from a river or well.

54. The sales price from the sale of wind energy conversion property to be used as an electric power source and the sale of the materials used to manufacture, install, or construct wind energy conversion property used or to be used as an electric power source.

For purposes of this subsection, "*wind energy conversion property*" means any device, including, but not limited to, a wind charger, windmill, wind turbine, tower and electrical equipment, pad mount transformers, power lines, and substation, which converts wind energy to a form of usable energy.

55. The sales price from the sales of newspapers, free newspapers, or shoppers guides and the printing and publishing of such newspapers and shoppers guides, and envelopes for advertising.

56. The sales price from the sale of motor fuel and special fuel consumed for highway use or in watercraft or aircraft where the fuel tax has been imposed and paid and no refund has been or will be allowed and the sales price from the sales of ethanol blended gasoline, as defined in section 214A.1.

57. The sales price from all sales of food and food ingredients. However, as used in this subsection, "*food*" does not include alcoholic beverages, candy, dietary supplements, food sold through vending machines, prepared food, soft drinks, and tobacco.

For the purposes of this subsection:

a. "*Alcoholic beverages*" means beverages that are suitable for human consumption and contain one-half of one percent or more of alcohol by volume.

b. "*Candy*" means a preparation of sugar, honey, or other natural or artificial sweeteners in com-

bination with chocolate, fruits, nuts, or other ingredients or flavorings in the form of bars, drops, or pieces. Candy shall not include any preparation containing flour and shall require no refrigeration.

c. “*Dietary supplement*” means any product, other than tobacco, intended to supplement the diet that contains one or more of the following dietary ingredients:

- (1) A vitamin.
- (2) A mineral.
- (3) An herb or other botanical.
- (4) An amino acid.

(5) A dietary substance for use by humans to supplement the diet by increasing the total dietary intake.

(6) A concentrate, metabolite, constituent, extract, or combination of any of the ingredients in subparagraphs (1) through (5) that is intended for ingestion in tablet, capsule, powder, softgel, gelcap, or liquid form, or if not intended for ingestion in such a form, is not represented as conventional food and is not represented for use as a sole item of a meal or of the diet; and is required to be labeled as a dietary supplement, identifiable by the “supplement facts” box found on the label and as required pursuant to 21 C.F.R. § 101.36.

d. “*Food and food ingredients*” means substances, whether in liquid, concentrated, solid, frozen, dried, or dehydrated form, that are sold for ingestion or chewing by humans and are consumed for their taste or nutritional value.

e. “*Food sold through vending machines*” means food dispensed from a machine or other mechanical device that accepts payment, other than food which would be qualified for exemption under subsection 58 if purchased with a coupon described in subsection 58.

f. “*Prepared food*” means any of following:

(1) Food sold in a heated state or heated by the seller, including food sold by a caterer.

(2) Two or more food ingredients mixed or combined by the seller for sale as a single item.

(3) “*Prepared food*”, for the purposes of this paragraph, does not include food that is any of the following:

(a) Only cut, repackaged, or pasteurized by the seller.

(b) Eggs, fish, meat, poultry, and foods containing these raw animal foods requiring cooking by the consumer as recommended by the United States food and drug administration, ch. 3, part 401.11 of its food code, so as to prevent foodborne illnesses.

(c) Bakery items sold by the seller which baked them. The words “*bakery items*” includes but is not limited to breads, rolls, buns, biscuits, bagels, croissants, pastries, donuts, Danish, cakes, tortes, pies, tarts, muffins, bars, cookies, and tortillas.

(d) Food sold without eating utensils provided by the seller in an unheated state as a single item

which is priced by weight or volume.

(4) Food sold with eating utensils provided by the seller, including plates, knives, forks, spoons, glasses, cups, napkins, or straws. A plate does not include a container or packaging used to transport food.

g. “*Soft drinks*” means nonalcoholic beverages that contain natural or artificial sweeteners. “*Soft drinks*” does not include beverages that contain milk or milk products; soy, rice, or similar milk substitutes; or greater than fifty percent of vegetable or fruit juice by volume.

h. “*Tobacco*” means cigarettes, cigars, chewing or pipe tobacco, or any other item that contains tobacco.

58. The sales price from the sale of items purchased with coupons issued under the federal Food Stamp Act of 1977, 7 U.S.C. § 2011 et seq.

59. In transactions in which tangible personal property is traded toward the sales price of other tangible personal property, that portion of the sales price which is not payable in money to the retailer is exempted from the taxable amount if the following conditions are met:

a. The tangible personal property traded to the retailer is the type of property normally sold in the regular course of the retailer’s business.

b. The tangible personal property traded to the retailer is intended by the retailer to be ultimately sold at retail or is intended to be used by the retailer or another in the remanufacturing of a like item.

60. The sales price from the sale or rental of prescription drugs, durable medical equipment, mobility enhancing equipment, prosthetic devices, and other medical devices intended for human use or consumption.

For the purposes of this subsection:

a. “*Drug*” means a compound, substance, or preparation, and any component of a compound, substance, or preparation, other than food and food ingredients, dietary supplements, or alcoholic beverages, which is any of the following:

(1) Recognized in the official United States pharmacopoeia, official homeopathic pharmacopoeia of the United States, or official national formulary, and supplement to any of them.

(2) Intended for use in the diagnosis, cure, mitigation, treatment, or prevention of disease.

(3) Intended to affect the structure or any function of the body.

b. “*Durable medical equipment*” means equipment, including repair and replacement parts, but does not include mobility enhancing equipment, to which all of the following apply:

(1) Can withstand repeated use.

(2) Is primarily and customarily used to serve a medical purpose.

(3) Generally is not useful to a person in the absence of illness or injury.

(4) Is not worn in or on the body.

(5) Is for home use only.



(6) Is prescribed by a practitioner.

c. *"Mobility enhancing equipment"* means equipment, including repair and replacement parts, but does not include durable medical equipment, to which all of the following apply:

(1) Is primarily and customarily used to provide or increase the ability to move from one place to another and which is appropriate for use either in a home or a motor vehicle.

(2) Is not generally used by persons with normal mobility.

(3) Does not include any motor vehicle or equipment on a motor vehicle normally provided by a motor vehicle manufacturer.

(4) Is prescribed by a practitioner.

d. *"Other medical device"* means equipment or a supply that is not a drug, durable medical equipment, mobility enhancing equipment, or prosthetic device. *"Other medical devices"* includes, but is not limited to, ostomy, urological, and tracheostomy supplies, diabetic testing materials, hypodermic syringes and needles, anesthesia trays, biopsy trays and biopsy needles, cannula systems, catheter trays and invasive catheters, fistula sets, irrigation solutions, intravenous administering solutions and stopcocks, myelogram trays, small vein infusion kits, spinal puncture trays, and venous blood sets intended to be dispensed for human use with or without a prescription to an ultimate user.

e. *"Practitioner"* means a practitioner as defined in section 155A.3, or a person licensed to prescribe drugs.

f. *"Prescription"* means an order, formula, or recipe issued in any form of oral, written, electronic, or other means of transmission by a practitioner.

g. *"Prescription drug"* means a drug intended to be dispensed to an ultimate user pursuant to a prescription drug order, formula, or recipe issued in any form of oral, written, electronic, or other means of transmission by a duly licensed practitioner, or oxygen or insulin dispensed for human consumption with or without a prescription drug order or medication order.

h. *"Prosthetic device"* means a replacement, corrective, or supportive device including repair and replacement parts for the same worn on or in the body to do any of the following:

(1) Artificially replace a missing portion of the body.

(2) Prevent or correct physical deformity or malfunction.

(3) Support a weak or deformed portion of the body.

*"Prosthetic device"* includes, but is not limited to, orthopedic or orthotic devices, ostomy equipment, urological equipment, tracheostomy equipment, and intraocular lenses.

i. *"Ultimate user"* means an individual who has lawfully obtained and possesses a prescription

drug or medical device for the individual's own use or for the use of a member of the individual's household, or an individual to whom a prescription drug or medical device has been lawfully supplied, administered, dispensed, or prescribed.

61. The sales price from services furnished by aerial commercial and charter transportation services.

62. The sales price from the sale of raffle tickets for a raffle licensed pursuant to section 99B.5.

63. The sales price from the sale of tangible personal property which will be given as prizes to players in games of skill, games of chance, raffles, and bingo games as defined in chapter 99B.

64. The sales price from the sale of a modular home, as defined in section 435.1, to the extent of the portion of the purchase price of the modular home which is not attributable to the cost of the tangible personal property used in the processing of the modular home. For purposes of this exemption, the portion of the purchase price which is not attributable to the cost of the tangible personal property used in the processing of the modular home is forty percent.

65. The sales price from charges paid to a provider for access to on-line computer services. For purposes of this subsection, *"on-line computer service"* means a service that provides or enables computer access by multiple users to the internet or to other information made available through a computer server or other device.

66. The sales price from the sale or rental of information services. *"Information services"* means every business activity, process, or function by which a seller or its agent accumulates, prepares, organizes, or conveys data, facts, knowledge, procedures, and like services to a buyer or its agent of such information through any tangible or intangible medium. Information accumulated, prepared, or organized for a buyer or its agent is an information service even though it may incorporate pre-existing components of data or other information. *"Information services"* includes, but is not limited to, database files, mailing lists, subscription files, market research, credit reports, surveys, real estate listings, bond rating reports, abstracts of title, bad check lists, broadcasting rating services, wire services, and scouting reports, or other similar items.

67. The sales price of a sale at retail if the substance of the transaction is delivered to the purchaser digitally, electronically, or utilizing cable, or by radio waves, microwaves, satellites, or fiber optics.

68. a. The sales price from the sale of an article of clothing designed to be worn on or about the human body if all of the following apply:

(1) The sales price of the article is less than one hundred dollars.

(2) The sale takes place during a period beginning at 12:01 a.m. on the first Friday in August

and ending at midnight on the following Saturday.

b. This subsection does not apply to any of the following:

- (1) Sport or recreational equipment and protective equipment.
- (2) Clothing accessories or equipment.
- (3) The rental of clothing.

c. For purposes of this subsection:

(1) “*Clothing*” means all human wearing apparel suitable for general use. “*Clothing*” includes, but is not limited to the following: aprons, household and shop; athletic supporters; baby receiving blankets; bathing suits and caps; beach capes and coats; belts and suspenders; boots; coats and jackets; costumes; diapers (children and adults, including disposable diapers); earmuffs; footlets; formal wear; garters and garter belts; girdles; gloves and mittens for general use; hats and caps; hosiery; insoles for shoes; lab coats; neckties; overshoes; pantyhose; rainwear; rubber pants; sandals; scarves; shoes and shoelaces; slippers; sneakers; socks and stockings; steel-toed shoes; underwear; uniforms, athletic and nonathletic; and wedding apparel.

“*Clothing*” does not include the following: belt buckles sold separately; costume masks sold separately; patches and emblems sold separately; sewing equipment and supplies (including, but not limited to, knitting needles, patterns, pins, scissors, sewing machines, sewing needles, tape measures, and thimbles); and sewing materials that become part of clothing (including, but not limited to, buttons, fabric, lace, thread, yarn, and zippers).

(2) “*Clothing accessories or equipment*” means incidental items worn on the person or in conjunction with clothing. “*Clothing accessories or equipment*” includes, but is not limited to, the following: briefcases; cosmetics; hair notions (including, but not limited to, barrettes, hair bows, and hair nets); handbags; handkerchiefs; jewelry; sunglasses, nonprescription; umbrellas; wallets; watches; and wigs and hairpieces.

(3) “*Protective equipment*” means items for human wear and designed as protection for the wearer against injury or disease or as protection against damage or injury of other persons or property but not suitable for general use. “*Protective equipment*” includes, but is not limited to, the following: breathing masks; clean room apparel and equipment; ear and hearing protectors; face shields; hard hats; helmets; paint or dust respirators; protective gloves; safety glasses and goggles; safety belts; tool belts; and welders gloves and masks.

(4) “*Sport or recreational equipment*” means items designed for human use and worn in conjunction with an athletic or recreational activity that are not suitable for general use. “*Sport or recreational equipment*” includes, but is not limited to, the following: ballet and tap shoes; cleated or spiked athletic shoes; gloves (including, but not

limited to, baseball, bowling, boxing, hockey, and golf); goggles; hand and elbow guards; life preservers and vests; mouth guards; roller and ice skates; shin guards; shoulder pads; ski boots; waders; and wetsuits and fins.

69. The sales price from charges paid for the delivery of electricity or natural gas if the sale or furnishing of the electricity or natural gas or its use is exempt from the tax on sales prices imposed under this subchapter or from the use tax imposed under subchapter III.

69A. The sales price from surcharges paid for E911 service and wireless E911 service pursuant to chapter 34A.

70. The sales price of delivery charges. This exemption does not apply to the delivery of electric energy or natural gas.

71. The sales price from sales of tangible personal property used or to be used as railroad rolling stock for transporting persons or property, or as materials or parts therefor.

72. The sales price from the sales of special fuel for diesel engines consumed or used in the operation of ships, barges, or waterborne vessels which are used primarily in or for the transportation of property or cargo, or the conveyance of persons for hire on rivers bordering on the state if the fuel is delivered by the seller to the purchaser’s barge, ship, or waterborne vessel while it is afloat upon such a river.

73. The sales price from sales of vehicles subject to registration or subject only to the issuance of a certificate of title and sales of aircraft subject to registration under section 328.20.

74. The sales price from the sale of aircraft for use in a scheduled interstate federal aviation administration certificated air carrier operation.

75. The sales price from the sale or rental of aircraft; the sale or rental of tangible personal property permanently affixed or attached as a component part of the aircraft, including but not limited to repair or replacement materials or parts; and the sales price of all services used for aircraft repair, remodeling, and maintenance services when such services are performed on aircraft, aircraft engines, or aircraft component materials or parts. For the purposes of this exemption, “*aircraft*” means aircraft used in a scheduled interstate federal aviation administration certificated air carrier operation.

76. The sales price from the sale or rental of tangible personal property permanently affixed or attached as a component part of the aircraft, including but not limited to repair or replacement materials or parts; and the sales price of all services used for aircraft repair, remodeling, and maintenance services when such services are performed on aircraft, aircraft engines, or aircraft component materials or parts. For the purposes of this exemption, “*aircraft*” means aircraft used in nonscheduled interstate federal aviation adminis-

tration certificated air carrier operation operating under 14 C.F.R. ch. 1, pt. 135.

77. The sales price from the sale of aircraft to an aircraft dealer who in turn rents or leases the aircraft if all of the following apply:

*a.* The aircraft is kept in the inventory of the dealer for sale at all times.

*b.* The dealer reserves the right to immediately take the aircraft from the renter or lessee when a buyer is found.

*c.* The renter or lessee is aware that the dealer will immediately take the aircraft when a buyer is found.

If an aircraft exempt under this subsection is used for any purpose other than leasing or renting, or the conditions in paragraphs “*a*”, “*b*”, and “*c*” are not continuously met, the dealer claiming the exemption under this subsection is liable for the tax that would have been due except for this subsection. The tax shall be computed upon the original purchase price.

78. The sales price from sales or rental of tangible personal property, or services rendered by any entity where the profits from the sales or rental of the tangible personal property, or services rendered are used by or donated to a nonprofit entity which is exempt from federal income taxation pursuant to section 501(c)(3) of the Internal Revenue Code, a government entity, or a nonprofit private educational institution, and where the entire proceeds from the sales, rental, or services are expended for any of the following purposes:

*a.* Educational.

*b.* Religious.

*c.* Charitable. A charitable act is an act done out of goodwill, benevolence, and a desire to add to or to improve the good of humankind in general or any class or portion of humankind, with no pecuniary profit inuring to the person performing the service or giving the gift.

This exemption does not apply to the sales price from games of skill, games of chance, raffles, and bingo games as defined in chapter 99B. This exemption is disallowed on the amount of the sales price only to the extent the profits from the sales, rental, or services are not used by or donated to the appropriate entity and expended for educational, religious, or charitable purposes.

79. The sales price from the sale or rental of tangible personal property or from services furnished to a recognized community action agency as provided in section 216A.93 to be used for the purposes of the agency.

80. *a.* For purposes of this subsection, “*designated exempt entity*” means an entity which is designated in section 423.4, subsection 1 or 6.

*b.* If a contractor, subcontractor, or builder is to use building materials, supplies, and equipment in the performance of a construction contract with a designated exempt entity, the person shall purchase such items of tangible personal property

without liability for the tax if such property will be used in the performance of the construction contract and a purchasing agent authorization letter and an exemption certificate, issued by the designated exempt entity, are presented to the retailer. The sales price of building materials, supplies, or equipment is exempt from tax by this subsection only to the extent the building materials, supplies, or equipment are completely consumed in the performance of the construction contract with the designated exempt entity.

*c.* Where the owner, contractor, subcontractor, or builder is also a retailer holding a retail sales tax permit and transacting retail sales of building materials, supplies, and equipment, the tax shall not be due when materials are withdrawn from inventory for use in construction performed for a designated exempt entity if an exemption certificate is received from such entity.

*d.* Tax shall not apply to tangible personal property purchased and consumed by a manufacturer as building materials, supplies, or equipment in the performance of a construction contract for a designated exempt entity, if a purchasing agent authorization letter and an exemption certificate are received from such entity and presented to a retailer.

81. The sales price from the sales of lottery tickets or shares pursuant to chapter 99G.

82. *a.* The sales price from the sale or rental of core-making, mold-making, and sand-handling machinery and equipment, including replacement parts, directly and primarily used in the mold-making process by a foundry.

*b.* The sales price from the sale of fuel used in creating heat, power, steam, or for generating electric current, or from the sale of electricity, consumed by core-making, mold-making, and sand-handling machinery and equipment used directly and primarily in the mold-making process by a foundry.

*c.* The sales price from the furnishing of the design and installation, including electrical and electronic installation, of core-making, mold-making, and sand-handling machinery and equipment used directly and primarily in the mold-making process by a foundry.

83. The sales price from noncustomer point of sale or noncustomer automated teller machine access or service charges assessed by a financial institution. For purposes of this subsection, “*financial institution*” means the same as defined in section 527.2.

84. *a.* Subject to paragraph “*b*”, the sales price from the sale or furnishing of metered gas, electricity, and fuel, including propane and heating oil, to residential customers which is used to provide energy for residential dwellings and units of apartment and condominium complexes used for human occupancy.

*b.* The exemption in this subsection shall be

phased in by means of a reduction in the tax rate as follows:

(1) If the date of the utility billing or meter reading cycle of the residential customer for the sale or furnishing of metered gas and electricity is on or after January 1, 2004, through December 31, 2004, or if the sale or furnishing of fuel for purposes of residential energy and the delivery of the fuel occurs on or after January 1, 2004, through December 31, 2004, the rate of tax is two percent of the sales price.

(2) If the date of the utility billing or meter reading cycle of the residential customer for the sale or furnishing of metered gas and electricity is on or after January 1, 2005, through December 31, 2005, or if the sale or furnishing of fuel for purposes of residential energy and the delivery of the fuel occurs on or after January 1, 2005, through December 31, 2005, the rate of tax is one percent of the sales price.

(3) If the date of the utility billing or meter reading cycle of the residential customer for the sale or furnishing of metered gas and electricity is on or after January 1, 2006, or if the sale, furnishing, or service of fuel for purposes of residential energy and the delivery of the fuel occurs on or after January 1, 2006, the rate of tax is zero percent of the sales price.

c. The exemption in this subsection does not apply to local option sales and services tax imposed pursuant to chapters 423B and 423E.

85. The sales price from the sale of the following items: self-propelled building equipment, pile drivers, motorized scaffolding, or attachments customarily drawn or attached to self-propelled building equipment, pile drivers, and motorized scaffolding, including auxiliary attachments which improve the performance, safety, operation, or efficiency of the equipment, and replacement parts and are directly and primarily used by contractors, subcontractors, and builders for new construction, reconstruction, alterations, expansion, or remodeling of real property or structures.

86. The sales price from services performed on a vessel if all of the following apply:

a. The vessel is a licensed vessel under the laws of the United States coast guard.

b. The service is used to repair or restore a defect in the vessel.

c. The vessel is engaged in interstate commerce and will continue in interstate commerce once the repairs or restoration is completed.

d. The vessel is in navigable water that borders a boundary of this state.

For purposes of this exemption, "vessel" includes a ship, barge, or other waterborne vessel.

87. The sales price from the sales of toys to a nonprofit organization exempt from federal income tax under section 501 of the Internal Revenue Code that purchases the toys from donations collected by the nonprofit organization and distributes the toys to children at no cost.

88. The sales price from the sale of building materials, supplies, goods, wares, or merchandise sold to a nonprofit Iowa affiliate of a nonprofit international organization whose primary activity is the promotion of the construction, remodeling, or rehabilitation of one-family or two-family dwellings for use by low-income families and where the building materials, supplies, goods, wares, or merchandise are used in the construction, remodeling, or rehabilitation of such dwellings.

89. a. The sales price of all goods, wares, or merchandise sold, or of services furnished, which are used in the fulfillment of a written construction contract for the original construction of a building or structure to be used as a collaborative educational facility.

b. The sales price of all goods, wares, or merchandise sold, or of services furnished, which are used in the fulfillment of a written construction contract for the construction of additions or modifications to a building or structure used as part of a collaborative educational facility.

c. To receive the exemption provided in paragraph "a" or "b", a collaborative educational facility must meet all of the criteria in paragraph "d" or "e":

d. (1) The contract for construction of the building or structure is entered into on or after April 1, 2003.

(2) The building or structure is located within the corporate limits of a city in the state with a population in excess of one hundred ninety-five thousand residents.

(3) The sole purpose of the building or structure is to provide facilities for a collaborative of public and private educational institutions that provide education to students.

(4) The owner of the building or structure is a nonprofit corporation governed by chapter 504 or former chapter 504A which is exempt from federal income tax pursuant to section 501(a) of the Internal Revenue Code.

e. (1) The contract for construction of the building or structure is entered into on or after May 15, 2007.

(2) The sole purpose of the building or structure is to provide facilities for a regional academy under a collaborative of public and private educational institutions that includes a community college established under chapter 260C that provide education to students.

(3) The owner of the building or structure is a qualified charitable nonprofit corporation governed by chapter 504 or former chapter 504A which is exempt from federal income tax pursuant to section 501(c)(3) of the Internal Revenue Code.

(4) The owner of the building or structure is a qualified charitable nonprofit corporation governed by chapter 504 or former chapter 504A which is exempt from federal income tax pursuant to section 501(c)(3) of the Internal Revenue Code.

f. References to “building” or “structure” in paragraphs “d” and “e” include any additions or modifications to the building or structure.

90. The sales price from the sale of solar energy equipment. For purposes of this subsection, “solar energy equipment” means equipment that is primarily used to collect and convert incident solar radiation into thermal, mechanical, or electrical energy or equipment that is primarily used to transform such converted solar energy to a storage point or to a point of use.

91. a. The sales price from the sale of coins, currency, or bullion.

b. For purposes of this subsection:

(1) “Bullion” means bars, ingots, or commemorative medallions of gold, silver, platinum, palladium, or a combination of these where the value of the metal depends on its content and not the form.

(2) “Coins” or “currency” means a coin or currency made of gold, silver, or other metal or paper which is or has been used as legal tender.

92. a. (1) The sales price from the sale or rental of computers and equipment that are necessary for the maintenance and operation of a web search portal and property whether directly or indirectly connected to the computers, including but not limited to cooling systems, cooling towers, and other temperature control infrastructure; power infrastructure for transformation, distribution, or management of electricity used for the maintenance and operation of the web search portal, including but not limited to exterior dedicated business-owned substations, back-up power generation systems, battery systems, and related infrastructure; and racking systems, cabling, and trays, which are necessary for the maintenance and operation of the web search portal.

(2) The sales price of back-up power generation fuel, that is purchased by a web search portal business for use in the items listed in subparagraph (1).

(3) The sales price of electricity purchased for use in providing a web search portal.

b. For the purpose of claiming this exemption, all of the following requirements shall be met:

(1) The business of the purchaser or renter shall be as a provider of a web search portal.

(2) The web search portal business shall have a physical location in the state that is used for the operations and maintenance of the web search portal site on the internet including but not limited to research and development to support capabilities to organize information and to provide internet access, navigation, and search.

(3) The web search portal business shall make a minimum investment in an Iowa physical location of two hundred million dollars within the first six years of operation in Iowa beginning with the date the web search portal business initiates site preparation activities. The minimum investment

includes the initial investment, including land and subsequent acquisition of additional adjacent land and subsequent investment at the Iowa location.

(4) The web search portal business shall purchase, option, or lease Iowa land not later than December 31, 2008, for any initial investment. However, the December 31, 2008, date shall not affect the future purchases of adjacent land and additional investment in the initial or adjacent land to qualify as part of the minimum investment for purposes of this exemption.

c. This exemption applies from the date of the initial investment in or the initiation of site preparation activities for the web search portal facility as described in paragraph “b”. For purposes of claiming this exemption, the requirements may be met by aggregating the various Iowa investments and other requirements of the web search portal business’s affiliates. This exemption applies to affiliates of the web search portal business.

d. Failure to meet eighty percent of the minimum investment amount requirement specified in paragraph “b” within the first six years of operation from the date the web search portal business initiates site preparation activities will result in the web search portal business losing the right to claim this exemption and the web search portal business shall pay all sales or use tax that would have been due on the purchase or rental or use of the items listed in this exemption, plus any applicable penalty and interest imposed by statute.

e. For purposes of this subsection:

(1) “Affiliate” means an entity that directly or indirectly controls, is controlled with or by, or is under common control with another entity.

(2) “Control” means any of the following:

(a) In the case of a United States corporation, the ownership, directly or indirectly, of fifty percent or more of the voting power to elect directors.

(b) In the case of a foreign corporation, if the voting power to elect the directors is less than fifty percent, the maximum amount allowed by applicable law.

(c) In the case of an entity other than a corporation, fifty percent or more ownership interest in the entity, or the power to direct the management of the entity.

(3) “Web search portal business” means an entity among whose primary businesses is to provide a search portal to organize information; to access, search, and navigate the internet, including research and development to support capabilities to organize information; and to provide internet access, navigation, and search functionalities.

2007 Acts, ch 22, §74, 75; 2007 Acts, ch 186, §21, 22; 2007 Acts, ch 199, §1; 2007 Acts, ch 215, §112, 125

Former §423.3 repealed effective July 1, 2004, by 2003 Acts, 1st Ex, ch 2, §151, 205

2005 amendments to subsections 2, 37, and 49 take effect June 3, 2005, and apply retroactively to July 1, 2004; 2005 Acts, ch 140, §16

2005 amendment to subsection 5 takes effect June 3, 2005, and applies

retroactively to January 1, 1998; limitations on total refunds; filing deadline; proration of refund amounts; 2005 Acts, ch 140, §72, 73; 2006 Acts, ch 1158, §66, 69

2006 amendment to subsection 11 takes effect June 2, 2006, and applies retroactively to January 1, 1992; for sales occurring before June 2, 2006, refunds limited to \$25,000 in the aggregate and not allowed unless claims are filed prior to October 1, 2006; 2006 Acts, ch 1161, §6, 7

For claims arising under subsection 89, paragraph d, for original construction projects occurring between April 1, 2003, and June 30, 2005, refunds not allowed unless claims are filed by June 30, 2006; 2006 Acts, ch 1001, §4, 5

For claims arising under subsection 89, paragraph e, for original construction projects occurring between May 15, 2007, and June 30, 2007, refunds not allowed unless claims are filed by October 1, 2007; 2007 Acts, ch 215, §125

- Subsection 56 amended
- Subsection 57, paragraph f, subparagraph (3), subparagraph subdivision (b) amended
- Subsection 65 amended
- Subsection 80, paragraph b amended
- Subsection 89 amended
- NEW subsection 92

**423.4 Refunds.**

1. A private nonprofit educational institution in this state, nonprofit Iowa affiliate of a nonprofit international organization whose primary activity is the promotion of the construction, remodeling, or rehabilitation of one-family or two-family dwellings for low-income families, nonprofit private museum in this state, tax-certifying or tax-levying body or governmental subdivision of the state, including the state board of regents, state department of human services, state department of transportation, a municipally owned solid waste facility which sells all or part of its processed waste as fuel to a municipally owned public utility, and all divisions, boards, commissions, agencies, or instrumentalities of state, federal, county, or municipal government which do not have earnings going to the benefit of an equity investor or stockholder, may make application to the department for the refund of the sales or use tax upon the sales price of all sales of goods, wares, or merchandise, or from services furnished to a contractor, used in the fulfillment of a written contract with the state of Iowa, any political subdivision of the state, or a division, board, commission, agency, or instrumentality of the state or a political subdivision, a private nonprofit educational institution in this state, a nonprofit Iowa affiliate described in this subsection, or a nonprofit private museum in this state if the property becomes an integral part of the project under contract and at the completion of the project becomes public property, is devoted to educational uses, becomes part of a low-income one-family or two-family dwelling in the state, or becomes a nonprofit private museum; except goods, wares, or merchandise, or services furnished which are used in the performance of any contract in connection with the operation of any municipal utility engaged in selling gas, electricity, or heat to the general public or in connection with the operation of a municipal pay television system; and except goods, wares, and merchandise used in the performance of a contract for a "project" under chapter 419 as defined in that chapter other than goods, wares, or merchandise

used in the performance of a contract for a "project" under chapter 419 for which a bond issue was approved by a municipality prior to July 1, 1968, or for which the goods, wares, or merchandise becomes an integral part of the project under contract and at the completion of the project becomes public property or is devoted to educational uses.

a. Such contractor shall state under oath, on forms provided by the department, the amount of such sales of goods, wares, or merchandise, or services furnished and used in the performance of such contract, and upon which sales or use tax has been paid, and shall file such forms with the governmental unit, private nonprofit educational institution, nonprofit Iowa affiliate, or nonprofit private museum which has made any written contract for performance by the contractor. The forms shall be filed by the contractor with the governmental unit, educational institution, nonprofit Iowa affiliate, or nonprofit private museum before final settlement is made.

b. Such governmental unit, educational institution, nonprofit Iowa affiliate, or nonprofit private museum shall, not more than one year after the final settlement has been made, make application to the department for any refund of the amount of the sales or use tax which shall have been paid upon any goods, wares, or merchandise, or services furnished, the application to be made in the manner and upon forms to be provided by the department, and the department shall forthwith audit the claim and, if approved, issue a warrant to the governmental unit, educational institution, nonprofit Iowa affiliate, or nonprofit private museum in the amount of the sales or use tax which has been paid to the state of Iowa under the contract.

c. Refunds authorized under this subsection shall accrue interest at the rate in effect under section 421.7 from the first day of the second calendar month following the date the refund claim is received by the department.

d. Any contractor who willfully makes a false report of tax paid under the provisions of this subsection is guilty of a simple misdemeanor and in addition shall be liable for the payment of the tax and any applicable penalty and interest.

2. The refund of sales and use tax paid on transportation construction projects let by the state department of transportation is subject to the special provisions of this subsection.

a. A contractor awarded a contract for a transportation construction project is considered the consumer of all building materials, building supplies, and equipment and shall pay sales tax to the supplier or remit consumer use tax directly to the department.

b. The contractor is not required to file information with the state department of transportation stating the amount of goods, wares, or merchandise, or services rendered, furnished, or performed and used in the performance of the con-

tract or the amount of sales or use tax paid.

c. The state department of transportation shall file a refund claim based on a formula that considers the following:

(1) The quantity of material to complete the contract, and quantities of items of work.

(2) The estimated cost of these materials included in the items of work, and the state sales or use tax to be paid on the tax rate in effect in section 423.2. The quantity of materials shall be determined after each letting based on the contract quantities of all items of work let to contract. The quantity of individual component materials required for each item shall be determined and maintained in a database. The total quantities of materials shall be determined by multiplying the quantities of component materials for each contract item of work by the total quantities of each contract item for each letting. Where variances exist in the cost of materials, the lowest cost shall be used as the base cost.

d. Only the state sales or use tax is refundable. Local option taxes paid by the contractor are not refundable.

3. A relief agency may apply to the director for refund of the amount of sales or use tax imposed and paid upon sales to it of any goods, wares, merchandise, or services furnished, used for free distribution to the poor and needy.

a. The refunds may be obtained only in the following amounts and manner and only under the following conditions:

(1) On forms furnished by the department, and filed within the time as the director shall provide by rule, the relief agency shall report to the department the total amount or amounts, valued in money, expended directly or indirectly for goods, wares, merchandise, or services furnished, used for free distribution to the poor and needy.

(2) On these forms the relief agency shall separately list the persons making the sales to it or to its order, together with the dates of the sales, and the total amount so expended by the relief agency.

(3) The relief agency must prove to the satisfaction of the director that the person making the sales has included the amount thereof in the computation of the sales price of such person and that such person has paid the tax levied by this subchapter or subchapter III, based upon such computation of the sales price.

b. If satisfied that the foregoing conditions and requirements have been complied with, the director shall refund the amount claimed by the relief agency.

4. A person in possession of a renewable energy tax credit certificate issued pursuant to chapter 476C may apply to the director for refund of the amount of sales or use tax imposed and paid upon purchases made by the applicant.

a. The refunds may be obtained only in the following manner and under the following conditions:

(1) On forms furnished by the department and filed by January 31 after the end of the calendar year in which the tax credit certificate is to be applied, the applicant shall report to the department the total amount of sales and use tax paid during the reporting period on purchases made by the applicant.

(2) The applicant shall separately list the amounts of sales and use tax paid during the reporting period.

(3) If required by the department, the applicant shall prove that the person making the sales has included the amount thereof in the computation of the sales price of such person and that such person has paid the tax levied by this subchapter or subchapter III, based upon such computation of the sales price.

(4) The applicant shall provide the tax credit certificates issued pursuant to chapter 476C to the department with the forms required by this paragraph "a".

b. If satisfied that the foregoing conditions and requirements have been complied with, the director shall refund the amount claimed by the applicant for an amount not greater than the amount of tax credits issued in tax credit certificates pursuant to chapter 476C.

5. a. For purposes of this subsection:

(1) "*Automobile racetrack facility*" means a sanctioned automobile racetrack facility located as part of a racetrack and entertainment complex, including any museum attached to or included in the racetrack facility but excluding any restaurant, and which facility is located, on a maximum of two hundred thirty-two acres, in a city with a population of at least fourteen thousand five hundred but not more than sixteen thousand five hundred residents, which city is located in a county with a population of at least thirty-five thousand but not more than forty thousand residents and where the construction on the racetrack facility commenced not later than July 1, 2006, and the cost of the construction upon completion was at least thirty-five million dollars.

(2) "*Change of control*" means any of the following:

(a) Any change in the ownership of the original or any subsequent legal entity that is the owner or operator of the automobile racetrack facility such that at least sixty percent of the equity interests in the legal entity cease to be owned by individuals who are residents of Iowa, an Iowa corporation, or combination of both.

(b) The original owners of the legal entity that is the owner or operator of the automobile racetrack facility shall collectively cease to own more than fifty percent of the voting equity interests of such legal entity or shall otherwise cease to have effective control of such legal entity.

(3) "*Iowa corporation*" means a corporation incorporated under the laws of Iowa where at least sixty percent of the corporation's equity interests

are owned by individuals who are residents of Iowa.

(4) “*Owner or operator*” means a for-profit legal entity where at least sixty percent of its equity interests are owned by individuals who are residents of Iowa, an Iowa corporation, or combination of both and that is the owner or operator of an automobile racetrack facility and is primarily a promoter of motor vehicle races.

(5) “*Population*” means the population based upon the 2000 certified federal census.

*b.* The owner or operator of an automobile racetrack facility may apply to the department for a rebate of sales tax imposed and collected by retailers upon sales of any goods, wares, merchandise, or services furnished to purchasers at the automobile racetrack facility.

*c.* The rebate may be obtained only in the following amounts and manner and only under the following conditions:

(1) On forms furnished by the department within the time period provided by the department by rule, which time period shall not be longer than quarterly.

(2) The owner or operator shall provide information as deemed necessary by the department.

(3) The transactions for which sales tax was collected and the rebate is sought occurred on or after January 1, 2006, but before January 1, 2016. However, not more than twelve million five hundred thousand dollars in total rebates shall be provided pursuant to this subsection.

(4) Notwithstanding subparagraph (3), the rebate of sales tax shall cease for transactions occurring on or after the date of the sale or other transfer, whether voluntarily or involuntarily, of the automobile racetrack facility to a party other than the original owner of the facility or upon a change of control of such facility.

(5) The automobile racetrack facility has not received or shall not receive any grants under the community attraction and tourism program pursuant to chapter 15F, subchapter II, or the vision Iowa program pursuant to chapter 15F, subchapter III.

*d.* To assist the department in determining the amount of the rebate, the owner or operator shall identify to the department retailers located at the automobile racetrack facility who will be collecting sales tax. The department shall verify such identity and ensure that all proper permits have been issued. For purposes of this subsection, advance ticket and admissions sales shall be considered occurring at the automobile racetrack facility regardless of where the transactions actually occur.

*e.* Upon determining that the conditions and requirements of this subsection and the department are met, the department shall issue a warrant to the owner or operator in the amount equal to the amount claimed and verified by the department.

*f.* Only the state sales tax is subject to rebate. Any local option taxes paid and collected shall not be subject to rebate under this subsection.

*g.* This subsection is repealed June 30, 2016, or thirty days following the date on which twelve million five hundred thousand dollars in total rebates have been provided, or thirty days following the date on which rebates cease as provided in paragraph “*c*”, subparagraph (4), whichever is the earliest.

6. *a.* The owner of a collaborative educational facility in this state may make application to the department for the refund of the sales or use tax upon the sales price of all sales of goods, wares, or merchandise, or from services furnished to a contractor, used in the fulfillment of a written construction contract with the owner of the collaborative educational facility for the original construction, or additions or modifications to, a building or structure to be used as part of the collaborative educational facility.

To receive the refund under this subsection, a collaborative educational facility must meet all of the following criteria:

(1) The contract for construction of the building or structure is entered into on or after April 1, 2003.

(2) The building or structure is located within the corporate limits of a city in the state with a population in excess of one hundred ninety-five thousand residents.

(3) The sole purpose of the building or structure is to provide facilities for a collaborative of public and private educational institutions that provide education to students.

(4) The owner of the building or structure is a nonprofit corporation governed by chapter 504 or former chapter 504A which is exempt from federal income tax pursuant to section 501(a) of the Internal Revenue Code.

References to “*building*” or “*structure*” in subparagraphs (1) through (4) include any additions or modifications to the building or structure.

*b.* Such contractor shall state under oath, on forms provided by the department, the amount of such sales of goods, wares, or merchandise, or services furnished and used in the performance of such contract, and upon which sales or use tax has been paid, and shall file such forms with the owner of the collaborative educational facility which has made any written contract for performance by the contractor.

*c.* The owner of the collaborative educational facility shall, not more than one year after the final settlement has been made, make application to the department for any refund of the amount of the sales or use tax which shall have been paid upon any goods, wares, or merchandise, or services furnished, the application to be made in the manner and upon forms to be provided by the department, and the department shall forthwith audit the claim and, if approved, issue a warrant to



the owner of the collaborative educational facility in the amount of the sales or use tax which has been paid to the state of Iowa under the contract.

Refunds authorized under this subsection shall accrue interest at the rate in effect under section 421.7 from the first day of the second calendar month following the date the refund claim is received by the department.

*d.* Any contractor who willfully makes a false report of tax paid under the provisions of this subsection is guilty of a simple misdemeanor and in addition shall be liable for the payment of the tax and any applicable penalty and interest.

7. A person in possession of a soy-based transformer fluid tax credit certificate issued pursuant to chapter 476D may apply to the director for refund of the amount of sales or use tax imposed and paid upon purchases made by the applicant.

*a.* The refunds may be obtained only in the following manner and under the following conditions:

(1) On forms furnished by the department and filed by January 31 after the end of the calendar year in which the tax credit certificate is to be applied, the applicant shall report to the department the total amount of sales and use tax paid during the reporting period on purchases made by the applicant.

(2) The applicant shall separately list the amounts of sales and use tax paid during the reporting period.

(3) If required by the department, the applicant shall prove that the person making the sale has included the amount thereof in the computation of the sales price of such person and that such person has paid the tax levied by this subchapter or subchapter III, based upon such computation of the sales price.

(4) The applicant shall provide the tax credit certificates issued pursuant to chapter 476D to the department with the forms required by this paragraph "a".

*b.* If satisfied that the foregoing conditions and requirements have been complied with, the director shall refund the amount claimed by the applicant for an amount not greater than the amount of tax credits issued in tax credit certificates pursuant to chapter 476D.

*c.* This subsection is repealed December 31, 2008.

8. *a.* The owner of an information technology facility located in this state on July 1, 2007, and having a primary business with a North American industry classification system number 518210 or 541519 as verified by the department of economic development using nationally recognized third-party sources such as Hoovers, Harris Directory or others designated by the department of economic development, may make an annual application for up to five consecutive years to the department for the refund of the sales or use tax upon the sales price of all sales of fuel used in creating heat, pow-

er, and steam for processing or generating electrical current, or from the sale of electricity consumed by computers, machinery, or other equipment for operation of the technology facility.

*b.* An information technology facility shall qualify for the refund in this subsection if all of the following criteria are met:

(1) The facility's six-digit North American industry classification system number 518210 or 541519 indicates that the facility is primarily engaged in providing computer-related services.

(2) The capital expenditures for computers, machinery, and other equipment used in the operation of the facility equals at least one million dollars.

(3) The facility is certified as meeting the Leadership in Energy and Environmental Design (LEED) standards.

*c.* The refund may be obtained only in the following manner and under the following conditions:

(1) The applicant shall use forms furnished by the department.

(2) The applicant shall separately list the amounts of sales and use tax paid during the reporting period.

(3) The applicant may request when the refund begins, but it must start on the first day of a month and proceed for a continuous twelve-month period.

*d.* In determining the amount to be refunded, if the dates of the utility billing or meter reading cycle for the sale or furnishing of metered gas and electricity is on or after the first day of the first month through the last day of the last month of the refund year, the full amount of tax charged in the billings shall be refunded. In determining the amount to be refunded, if the dates of the sale or furnishing of fuel for purposes of commercial energy and the delivery of the fuel is on or after the first day of the first month through the last day of the last month of the refund year, the full amount of tax charged in the billings shall be refunded.

*e.* To receive refunds during the five-year period, the applicant shall file a refund claim within three months after the end of each refund year.

*f.* The refund in this subsection applies only to state sales and use tax paid and does not apply to local option sales and services taxes imposed pursuant to chapters 423B and 423E.

2007 Acts, ch 126, §69; 2007 Acts, ch 199, §2  
Former §423.4 repealed effective July 1, 2004, by 2003 Acts, 1st Ex, ch 2, §151, 205

Department of economic development and department of revenue to report to general assembly by January 15, 2008, regarding sales tax rebate program pilot project provided in subsection 5; 2005 Acts, ch 110, §3

Subsection 1, paragraph b, unnumbered paragraph 2 designated as paragraph c and former paragraph c redesignated as paragraph d  
NEW subsection 8

#### **423.9A Iowa streamlined sales tax advisory council.**

1. An Iowa streamlined sales tax advisory council is created. The advisory council shall re-

view, study, and submit recommendations to the Iowa streamlined sales and use tax representatives appointed pursuant to section 423.9, subsection 3, regarding the streamlined sales and use tax agreement formalized by the project's member states on November 12, 2002, agreement amendments, proposed language conforming Iowa's sales and use tax to the national agreement, and the following issues:

- a. Uniform definitions proposed in the current agreement and future proposals.
- b. Effects upon taxability of items newly defined in Iowa.
- c. Impacts upon business as a result of the agreement.
- d. Technology implementation issues.
- e. Any other issues that are brought before the streamlined sales and use tax member states or the streamlined sales and use tax governing board.

2. The department shall provide administrative support to the Iowa streamlined sales tax advisory council. The advisory council shall be representative of Iowa's business community and economy when reviewing and recommending solutions to streamlined sales and use tax issues. The advisory council shall provide the general assembly and the governor with final recommendations made to the Iowa streamlined sales and use tax representatives upon the conclusion of each calendar year.

3. The director, in consultation with the Iowa taxpayers association, Iowa retail federation, and the Iowa association of business and industry, shall appoint members to the Iowa streamlined sales tax advisory council, which shall consist of the following members:

- a. One member from the department.
- b. Three members representing small Iowa businesses, at least one of whom shall be a retailer, and at least one of whom shall be a supplier.
- c. Three members representing medium Iowa businesses, at least one of whom shall be a retailer, and at least one of whom shall be a supplier.
- d. Three members representing large Iowa businesses, at least one of whom shall be a retailer, and at least one of whom shall be a supplier.
- e. One member representing taxpayers as a whole.
- f. One member representing the retail community as a whole.
- g. Any other member representative of business the director deems appropriate.

2007 Acts, ch 22, §76  
Subsection 3, paragraph b amended

**423.16 Transactions to which the general sourcing rules do not apply.**

Section 423.15 does not apply to sales or use taxes levied on the following:

- 1. The retail sale or transfer of watercraft, modular homes, manufactured housing, or mobile

homes, and the retail sale, excluding lease or rental, of motor vehicles, trailers, semitrailers, or aircraft that do not qualify as transportation equipment, as defined in section 423.15, subsection 3.

2. The lease or rental of motor vehicles, trailers, semitrailers, or aircraft that do not qualify as transportation equipment, as defined in section 423.15, subsection 3, which shall be sourced in accordance with section 423.17.

3. Transactions to which direct mail sourcing is applicable, which shall be sourced in accordance with section 423.19.

4. Telecommunications services, as set out in section 423.20, which shall be sourced in accordance with section 423.20, subsection 2.

2007 Acts, ch 179, §2  
Subsection 3 stricken and former subsections 4 and 5 renumbered as 3 and 4

**423.18 Multiple points of use exemption forms.** Repealed by 2007 Acts, ch 179, § 9.

Future amendment to this section by 2006 Acts, ch 1158, §71, 80, repealed by 2007 Acts, ch 179, §8

**423.20 Telecommunications service sourcing.**

1. As used in this section:

a. "*Air-to-ground radiotelephone service*" means a radio service, as that term is used in 47 C.F.R. § 22.99, in which common carriers are authorized to offer and provide radio telecommunications service for hire to subscribers in aircraft.

b. "*Call-by-call basis*" means any method of charging for the telecommunications service where the price is measured by individual calls.

c. "*Communications channel*" means a physical or virtual path of communications over which signals are transmitted between or among customer channel termination points.

d. "*Customer*" means the person or entity that contracts with the seller of the telecommunications service. If the end user of the telecommunications service is not the contracting party, the end user of the telecommunications service is the customer of the telecommunications service, but this sentence only applies for the purpose of sourcing sales of the telecommunications service under this section. "*Customer*" does not include a reseller of a telecommunications service or for mobile telecommunications service of a serving carrier under an agreement to serve the customer outside the home service provider's licensed service area.

e. "*Customer channel termination point*" means the location where the customer either inputs or receives the communications.

f. "*End user*" means the person who utilizes the telecommunications service. In the case of an entity, "*end user*" means the individual who utilizes the service on behalf of the entity.

g. "*Home service provider*" means the same as that term is defined in the federal Mobile Telecommunications Sourcing Act, Pub. L. No. 106-252, 4 U.S.C. § 124(5).

*h. "Mobile telecommunications service"* means the same as that term is defined in the federal Mobile Telecommunications Sourcing Act, Pub. L. No. 106-252, 4 U.S.C. § 124(7).

*i. "Place of primary use"* means the street address representative of where the customer's use of the telecommunications service primarily occurs, which must be the residential street address or the primary business street address of the customer. In the case of mobile telecommunications service, "place of primary use" must be within the licensed service area of the home service provider.

*j. "Postpaid calling service"* means the telecommunications service obtained by making a payment on a call-by-call basis either through the use of a credit card or payment mechanism such as a bank card, travel card, credit card, or debit card, or by charge made to a telephone number which is not associated with the origination or termination of the telecommunications service. A "postpaid calling service" includes a telecommunications service, except a prepaid wireless calling service, that would be a prepaid calling service except it is not exclusively a telecommunications service.

*k. "Prepaid calling service"* means the right to access exclusively telecommunications services, which must be paid for in advance and which enables the origination of calls using an access number or authorization code, whether manually or electronically dialed, and that is sold in predetermined units or dollars of which the amount declines with use in a known amount.

*l. "Prepaid wireless calling service"* means a telecommunications service that provides the right to utilize mobile wireless service as well as other nontelecommunications services, including the download of digital products delivered electronically, content and ancillary services, which must be paid for in advance and that is sold in predetermined units or dollars of which the amount declines with use in a known amount.

*m. "Private communication service"* means a telecommunications service that entitles the customer to exclusive or priority use of a communications channel or group of channels between or among termination points, regardless of the manner in which such channel or channels are connected, and includes switching capacity, extension lines, stations, and any other associated services that are provided in connection with the use of such channel or channels.

*n. "Service address"* means one of the following:

(1) The location of the telecommunications equipment to which a customer's call is charged and from which the call originates or terminates, regardless of where the call is billed or paid.

(2) If the location in subparagraph (1) is not known, "service address" means the origination point of the signal of the telecommunications service first identified by either the seller's telecommunications system or in information received by

the seller from its service provider, where the system used to transport such signals is not that of the seller.

(3) If the locations in subparagraphs (1) and (2) are not known, the "service address" means the location of the customer's place of primary use.

2. Sales of telecommunications services shall be sourced in the following manner:

*a.* Except for the defined telecommunications services in paragraph "c", the sale of telecommunications services sold on a call-by-call basis shall be sourced to one of the following:

(1) Each level of taxing jurisdiction where the call originates and terminates in that jurisdiction.

(2) Each level of taxing jurisdiction where the call either originates or terminates and in which the service address is also located.

*b.* Except for the defined telecommunications services in paragraph "c", a sale of telecommunications services sold on a basis other than a call-by-call basis is sourced to the customer's place of primary use.

*c.* Sale of the following telecommunications services shall be sourced to each level of taxing jurisdiction as follows:

(1) A sale of mobile telecommunications services other than air-to-ground radiotelephone service, prepaid calling service, or prepaid wireless calling service is sourced to the customer's place of primary use as required by the federal Mobile Telecommunications Sourcing Act.

(2) A sale of postpaid calling service is sourced to the origination point of the telecommunications signal as first identified by either of the following:

(a) The seller's telecommunications system.

(b) Information received by the seller from its service provider, where the system used to transport such signals is not that of the seller.

(3) A sale of prepaid calling service or a sale of prepaid wireless calling service is sourced in accordance with section 423.15. However, in the case of a sale of a prepaid wireless calling service, the rule provided in section 423.15, subsection 1, paragraph "e", shall include as an option the location associated with the mobile telephone number.

(4) A sale of a private telecommunications service is sourced as follows:

(a) Service for a separate charge related to a customer channel termination point is sourced to each level of jurisdiction in which such customer channel termination point is located.

(b) Service where all customer termination points are located entirely within one jurisdiction or level of jurisdiction is sourced in such jurisdiction in which the customer channel termination points are located.

(c) Service for segments of a channel between two customer channel termination points located in different jurisdictions and which segments of a channel are separately charged is sourced fifty percent in each level of jurisdiction in which the customer channel termination points are located.

(d) Service for segments of a channel located in more than one jurisdiction or levels of jurisdiction and which segments are not separately billed is sourced in each jurisdiction based on the percentage determined by dividing the number of customer channel termination points in such jurisdiction by the total number of customer channel termination points.

2006 Acts, ch 1158, §72 – 74, 80  
 2006 amendments to subsections 1 and 2 take effect January 1, 2008;  
 2006 Acts, ch 1158, §80  
 Subsection 1, paragraph j amended  
 Subsection 1, NEW paragraph l and former paragraphs l and m redesignated as m and n  
 Subsection 2, paragraph c, subparagraphs (1) and (3) amended

**423.33 Liability of persons other than retailers for payment of sales or use tax.**

1. *Liability of purchaser for sales tax.* If a purchaser fails to pay sales tax to the retailer required to collect the tax, then in addition to all of the rights, obligations, and remedies provided, the tax is payable by the purchaser directly to the department, and sections 423.31, 423.32, 423.37, 423.38, 423.39, 423.40, 423.41, and 423.42 apply to the purchaser. For failure to pay, the retailer and purchaser are liable, unless the circumstances described in section 421.60, subsection 2, paragraph “m”, or section 423.45, subsection 4, paragraph “b” or “e”, or subsection 5, paragraph “c” or “e”, are applicable.

2. *Immediate successor liability for sales or use tax.* If a retailer sells the retailer’s business or stock of goods or quits the business, the retailer shall prepare a final return and pay all sales or use tax due within the time required by law. The immediate successor to the retailer, if any, shall withhold a sufficient portion of the purchase price, in money or money’s worth, to pay the amount of delinquent tax, interest, or penalty due and unpaid. If the immediate successor of the business or stock of goods intentionally fails to withhold the amount due from the purchase price as provided in this subsection, the immediate successor is personally liable for the payment of delinquent taxes, interest, and penalty accrued and unpaid on account of the operation of the business by the immediate former retailer, except when the purchase is made in good faith as provided in section 421.28. However, a person foreclosing on a valid security interest or retaking possession of premises under a valid lease is not an “immediate successor” for purposes of this section. The department may waive the liability of the immediate successor under this subsection if the immediate successor exercised good faith in establishing the amount of the previous liability.

3. *Event sponsor’s liability for sales tax.* A person sponsoring a flea market or a craft, antique, coin, or stamp show or similar event shall obtain from every retailer selling tangible personal property or taxable services at the event proof that the retailer possesses a valid sales tax permit

or secure from the retailer a statement, taken in good faith, that property or services offered for sale are not subject to sales tax. Failure to do so renders a sponsor of the event liable for payment of any sales tax, interest, and penalty due and owing from any retailer selling property or services at the event. Sections 423.31, 423.32, 423.37, 423.38, 423.39, 423.40, 423.41, and 423.42 apply to the sponsors. For purposes of this subsection, a “person sponsoring a flea market or a craft, antique, coin, or stamp show or similar event” does not include an organization which sponsors an event determined to qualify as an event involving casual sales pursuant to section 423.3, subsection 39, or the state fair or a fair as defined in section 174.1.

For future amendment to subsection 1 effective January 1, 2009, see 2007 Acts, ch 179, §3, 10

**423.34A Reserved.**

For future text of this section effective January 1, 2009, see 2007 Acts, ch 179, §4, 10

**423.41 Books — examination.**

Every retailer required or authorized to collect taxes imposed by this chapter and every person using in this state tangible personal property, services, or the product of services shall keep records, receipts, invoices, and other pertinent papers as the director shall require, in the form that the director shall require, for as long as the director has the authority to examine and determine tax due. The director or any duly authorized agent of the department may examine the books, papers, records, and equipment of any person either selling tangible personal property or services or liable for the tax imposed by this chapter, and investigate the character of the business of any person in order to verify the accuracy of any return made, or if a return was not made by the person, ascertain and determine the amount due under this chapter. These books, papers, and records shall be made available within this state for examination upon reasonable notice when the director deems it advisable and so orders. If the taxpayer maintains any records in an electronic format, the taxpayer shall comply with reasonable requests by the director or the director’s authorized agents to provide those electronic records in a standard record format. The preceding requirements shall likewise apply to users and persons furnishing services enumerated in section 423.2.

2007 Acts, ch 186, §23  
 Section amended

**423.43 Deposit of revenue — appropriations.**

Except as otherwise provided in section 312.2, subsection 14, all revenues derived from the use tax on motor vehicles, trailers, and motor vehicle accessories and equipment as collected pursuant to sections 423.26 and 423.27 shall be deposited and credited to the road use tax fund and shall be

used exclusively for the construction, maintenance, and supervision of public highways.

1. Notwithstanding any provision of this section which provides that all revenues derived from the use tax on motor vehicles, trailers, and motor vehicle accessories and equipment as collected pursuant to sections 423.26 and 423.27 shall be deposited and credited to the road use tax fund, eighty percent of the revenues shall be deposited and credited as follows:

*a.* Twenty-five percent of all such revenue, up to a maximum of four million two hundred fifty thousand dollars per quarter, shall be deposited into and credited to the Iowa comprehensive petroleum underground storage tank fund created in section 455G.3, and the moneys so deposited are a continuing appropriation for expenditure under chapter 455G, and moneys so appropriated shall not be used for other purposes.

*b.* Any such revenues remaining shall be credited to the road use tax fund.

2. Notwithstanding any other provision of this section that provides that all revenue derived from the use tax on motor vehicles, trailers, and motor vehicle accessories and equipment as collected pursuant to section 423.26 shall be deposited and credited to the road use tax fund, twenty percent of the revenues shall be credited and deposited as follows: one-half to the road use tax fund and one-half to the primary road fund to be used for the commercial and industrial highway network.

3. All other revenue arising under the operation of the use tax under subchapter III shall be credited to the general fund of the state.

Road use tax fund, §312.1

Appropriation of use tax receipts to administrative hearings division of department of inspections and appeals for fiscal year beginning July 1, 2007; 2007 Acts, ch 217, §14

Section not amended; footnote revised

### 423.51 Administration of exemptions.

1. The following provisions shall apply when a purchaser claims an exemption:

*a.* The seller shall obtain identifying information of the purchaser and the reason for claiming a tax exemption at the time of the purchase as determined by the member states acting jointly.

*b.* A purchaser is not required to provide a signature to claim an exemption from tax unless a paper certificate is used.

*c.* The seller shall use the standard form for claiming an exemption electronically as adopted jointly by the member states.

*d.* The seller shall obtain the same information for proof of a claimed exemption regardless of the medium in which the transaction occurred.

*e.* The department may authorize a system wherein the purchaser exempt from the payment of the tax is issued an identification number which shall be presented to the seller at the time of the sale.

*f.* The seller shall maintain proper records of

exempt transactions and provide them to the department when requested.

*g.* The department shall administer entity-based and use-based exemptions when practicable through a direct pay tax permit, an exemption certificate, or another means that does not burden sellers. For the purposes of this paragraph:

(1) An “*entity-based exemption*” is an exemption based on who purchases the product or who sells the product.

(2) A “*use-based exemption*” is an exemption based on the purchaser’s use of the product.

2. Sellers that follow the requirements of this section are relieved from any tax otherwise applicable if it is determined that the purchaser improperly claimed an exemption and that the purchaser is liable for the nonpayment of tax. This relief from liability does not apply to a seller who does any of the following:

*a.* Fraudulently fails to collect tax.

*b.* Solicits purchasers to participate in the unlawful claim of an exemption.

*c.* Accepts an exemption certificate when the purchaser claims an entity-based exemption when the following conditions are met:

(1) The subject of the transaction sought to be covered by the exemption certificate is actually received by the purchaser at a location operated by the seller.

(2) The state provides an exemption certificate that clearly and affirmatively indicates that the claimed exemption is not available in the state.

3. *a.* A seller otherwise obligated to collect tax from a purchaser is relieved of that obligation if the seller obtains a fully completed exemption certificate or secures the relevant data elements of a fully completed exemption certificate within ninety days after the date of sale.

*b.* If the seller has not obtained an exemption certificate or all relevant data elements as provided in paragraph “*a*”, the seller may, within one hundred twenty days after a request for substantiation by the department, either prove that the transaction was not subject to tax by other means or obtain a fully completed exemption certificate from the purchaser, taken in good faith.

*c.* Nothing in this subsection shall affect the ability of the state to require purchasers to update exemption certificate information or to reapply with the state to claim certain exemptions.

*d.* Notwithstanding paragraphs “*a*”, “*b*”, and “*c*”, a seller is relieved of its obligation to collect tax from a purchaser if the seller obtains a blanket exemption certificate from the purchaser, and the seller and purchaser have a recurring business relationship. For the purposes of this paragraph, a recurring business relationship exists when a period of no more than twelve months elapses between sales transactions. The department may not request from the seller renewal of blanket certificates or updates of exemption certificate infor-

mation or data elements when there is a recurring business relationship between the purchaser and seller.

4. All relief that this section provides to sellers is also provided to certified service providers under this chapter.

2006 Acts, ch 1158, §77, 78, 80; 2007 Acts, ch 179, §7  
2006 amendments to this section amending subsection 2 and adding new subsections 3 and 4 take effect January 1, 2008; 2006 Acts, ch 1158, §80  
Subsection 2 amended  
NEW subsections 3 and 4

**423.57 Statutes applicable.**

The director shall administer this subchapter as

it relates to the taxes imposed in this chapter in the same manner and subject to all the provisions of, and all of the powers, duties, authority, and restrictions contained in sections 423.14, 423.15, 423.16, 423.17, 423.19, 423.20, 423.21, 423.22, 423.23, 423.24, 423.25, 423.28, 423.29, 423.31, 423.32, 423.33, 423.34, 423.35, 423.37, 423.38, 423.39, 423.40, 423.41, and 423.42, section 423.43, subsection 3, and sections 423.45, 423.46, and 423.47.

2007 Acts, ch 179, §5  
For future amendment to this section effective January 1, 2009, see 2007 Acts, ch 179, §6, 10  
Section amended

**CHAPTER 423A**

**HOTEL AND MOTEL TAX**

**423A.4 Locally imposed hotel and motel tax.**

1. A city or county may impose by ordinance of the city council or by resolution of the board of supervisors a hotel and motel tax, at a rate not to exceed seven percent, which shall be imposed in increments of one or more full percentage points upon the sales price from the renting of lodging. The tax when imposed by a city shall apply only within the corporate boundaries of that city and when imposed by a county shall apply only outside incorporated areas within that county.

2. Within ten days of the election at which a majority of those voting on the question favors the imposition, repeal, or change in the rate of the hotel and motel tax, the county auditor shall give written notice by sending a copy of the abstract of votes from the favorable election to the director of revenue.

3. A local hotel and motel tax shall be imposed on January 1 or July 1, following the notification of the director of revenue. Once imposed, the tax shall remain in effect at the rate imposed for a minimum of one year. A local hotel and motel tax shall terminate only on June 30 or December 31. At least forty-five days prior to the tax being effective or prior to a revision in the tax rate or prior to the repeal of the tax, a city or county shall provide notice by mail of such action to the director of revenue. The director shall have the authority to waive the notice requirement.

4. A city or county shall impose or repeal a hotel and motel tax or increase or reduce the tax rate only after an election at which a majority of those voting on the question favors imposition, repeal, or change in rate. However, a hotel and motel tax shall not be repealed or reduced in rate if obligations are outstanding which are payable as provided in section 423A.7, unless funds sufficient to pay the principal, interest, and premium, if any, on the outstanding obligations at and prior to maturity have been properly set aside and pledged for that

purpose. The election shall be held at the time of the regular city election or the county's general election or at the time of a special election.

2007 Acts, ch 186, §24  
Unnumbered paragraphs 1 and 2 designated as subsections 1 and 2  
Unnumbered paragraph 3 amended and designated as subsection 3  
Unnumbered paragraph 4 designated as subsection 4

**423A.6 Administration by director.**

The director of revenue shall administer the state and local hotel and motel tax as nearly as possible in conjunction with the administration of the state sales tax law, except that portion of the law which implements the streamlined sales and use tax agreement. The director shall provide appropriate forms, or provide on the regular state tax forms, for reporting state and local hotel and motel tax liability. All moneys received or refunded one hundred eighty days after the date on which a city or county terminates its local hotel and motel tax and all moneys received from the state hotel and motel tax shall be deposited in or withdrawn from the general fund of the state.

The director, in consultation with local officials, shall collect and account for a local hotel and motel tax and shall credit all revenues to the local transient guest tax fund created in section 423A.7. Local authorities shall not require any tax permit not required by the director of revenue.

Section 422.25, subsection 4, sections 422.30, 422.67, and 422.68, section 422.69, subsection 1, sections 422.70, 422.71, 422.72, 422.74, and 422.75, section 423.14, subsection 1, and sections 423.23, 423.24, 423.25, 423.31, 423.33, 423.35, 423.37 through 423.42, and 423.47, consistent with the provisions of this chapter, apply with respect to the taxes authorized under this chapter, in the same manner and with the same effect as if the state and local hotel and motel taxes were retail sales taxes within the meaning of those statutes. Notwithstanding this paragraph, the director shall provide for quarterly filing of returns and for other than quarterly filing of returns both as

prescribed in section 423.31. The director may require all persons who are engaged in the business of deriving any sales price subject to tax under this chapter to register with the department. All taxes collected under this chapter by a retailer or any in-

dividual are deemed to be held in trust for the state of Iowa and the local jurisdictions imposing the taxes.

2007 Acts, ch 126, §70  
Unnumbered paragraph 3 amended

## CHAPTER 423B

### LOCAL OPTION TAXES

#### **423B.1 Authorization — election — imposition and repeal.**

1. A county may impose by ordinance of the board of supervisors local option taxes authorized by this chapter, subject to this section and subject to the exception provided in subsection 2.

2. *a.* A city whose corporate boundaries include areas of two counties may impose by ordinance of its city council a local sales and services tax if all of the following apply:

(1) At least eighty-five percent of the residents of the city live in one county.

(2) The county in which at least eighty-five percent of the city residents reside has held an election on the question of the imposition of a local sales and services tax and a majority of those voting on the question in the city favored its imposition.

(3) The city has entered into an agreement on the distribution of the sales and services tax revenues collected from the area where the city tax is imposed with the county where such area is located.

*b.* The city council of a city authorized to impose a local sales and services tax pursuant to paragraph “*a*” shall only do so subject to all of the following restrictions:

(1) The tax shall only be imposed in the area of the city located in the county where not more than fifteen percent of the city’s residents reside.

(2) The tax shall be at the same rate and become effective at the same time as the county tax imposed in the other area of the city.

(3) The tax once imposed shall continue to be imposed until the county-imposed tax is reduced or increased in rate or repealed, and then the city-imposed tax shall also be reduced or increased in rate or repealed in the same amount and be effective on the same date.

(4) The tax shall be imposed on the same basis as provided in section 423B.5 and notification requirements in section 423B.6 apply.

(5) The city shall assist the department of revenue to identify the businesses in the area which are to collect the city-imposed tax. The process shall be ongoing as long as the city tax is imposed.

*c.* The agreement on the distribution of the revenues collected from the city-imposed tax shall provide that fifty percent of such revenues shall be

remitted to the county in which the part of the city where the city tax is imposed is located.

*d.* The latest certified federal census preceding the election held by the county on the question of imposition of the local sales and services tax shall be used in determining if the city qualifies under paragraph “*a*”, subparagraph (1), to impose its own tax and in determining the area where the city tax may be imposed under paragraph “*b*”, subparagraph (1).

*e.* A city is not authorized to impose a local sales and services tax under this subsection after July 1, 2000. A city that has imposed a local sales and services tax under this subsection on or before July 1, 2000, may continue to collect the tax until such time as the tax is repealed by the city and the fact that the area acquires more than fifteen percent of the city’s residents after the tax is imposed shall not affect the imposition or collection of the tax.

3. A local option tax shall be imposed only after an election at which a majority of those voting on the question favors imposition and shall then be imposed until repealed as provided in subsection 6, paragraph “*a*”. If the tax is a local vehicle tax imposed by a county, it shall apply to all incorporated and unincorporated areas of the county. If the tax is a local sales and services tax imposed by a county, it shall only apply to those incorporated areas and the unincorporated area of that county in which a majority of those voting in the area on the tax favors its imposition. For purposes of the local sales and services tax, all cities contiguous to each other shall be treated as part of one incorporated area and the tax would be imposed in each of those contiguous cities only if the majority of those voting in the total area covered by the contiguous cities favors its imposition. In the case of a local sales and services tax submitted to the registered voters of two or more contiguous counties as provided in subsection 4, paragraph “*c*”, all cities contiguous to each other shall be treated as part of one incorporated area, even if the corporate boundaries of one or more of the cities include areas of more than one county, and the tax shall be imposed in each of those contiguous cities only if a majority of those voting on the tax in the total area covered by the contiguous cities favored its imposition. For purposes of the local sales and services tax, a city is

not contiguous to another city if the only road access between the two cities is through another state.

4. *a.* A county board of supervisors shall direct within thirty days the county commissioner of elections to submit the question of imposition of a local vehicle tax or a local sales and services tax to the registered voters of the incorporated and unincorporated areas of the county upon receipt of a petition, requesting imposition of a local vehicle tax or a local sales and services tax, signed by eligible electors of the whole county equal in number to five percent of the persons in the whole county who voted at the last preceding state general election. In the case of a local vehicle tax, the petition requesting imposition shall specify the rate of tax and the classes, if any, that are to be exempt. If more than one valid petition is received, the earliest received petition shall be used.

*b.* The question of the imposition of a local sales and services tax shall be submitted to the registered voters of the incorporated and unincorporated areas of the county upon receipt by the county commissioner of elections of the motion or motions, requesting such submission, adopted by the governing body or bodies of the city or cities located within the county or of the county, for the unincorporated areas of the county, representing at least one half of the population of the county. Upon adoption of such motion, the governing body of the city or county, for the unincorporated areas, shall submit the motion to the county commissioner of elections and in the case of the governing body of the city shall notify the board of supervisors of the adoption of the motion. The county commissioner of elections shall keep a file on all the motions received and, upon reaching the population requirements, shall publish notice of the ballot proposition concerning the imposition of the local sales and services tax. A motion ceases to be valid at the time of the holding of the regular election for the election of members of the governing body which adopted the motion. The county commissioner of elections shall eliminate from the file any motion that ceases to be valid. The manner provided under this paragraph for the submission of the question of imposition of a local sales and services tax is an alternative to the manner provided in paragraph "a".

*c.* Upon receipt of petitions or motions calling for the submission of the question of the imposition of a local sales and services tax as described in paragraph "a" or "b", the boards of supervisors of two or more contiguous counties in which the question is to be submitted may enter into a joint agreement providing that for purposes of this chapter, a city whose corporate boundaries include areas of more than one county shall be treated as part of the county in which a majority of the residents of the city reside. In such event, the county commissioners of elections from each such county shall cooperate in the selection of a single date

upon which the election shall be held, and for all purposes of this chapter relating to the imposition, repeal, change of use, or collection of the tax, such a city shall be deemed to be part of the county in which a majority of the residents of the city reside. A copy of the joint agreement shall be provided promptly to the director of revenue.

5. The county commissioner of elections shall submit the question of imposition of a local option tax at a state general election or at a special election held at any time other than the time of a city regular election. The election shall not be held sooner than sixty days after publication of notice of the ballot proposition. The ballot proposition shall specify the type and rate of tax and in the case of a vehicle tax the classes that will be exempt and in the case of a local sales and services tax the date it will be imposed which date shall not be earlier than ninety days following the election. The ballot proposition shall also specify the approximate amount of local option tax revenues that will be used for property tax relief and shall contain a statement as to the specific purpose or purposes for which the revenues shall otherwise be expended. If the county board of supervisors decides under subsection 6 to specify a date on which the local option sales and services tax shall automatically be repealed, the date of the repeal shall also be specified on the ballot. The rate of the vehicle tax shall be in increments of one dollar per vehicle as set by the petition seeking to impose the tax. The rate of a local sales and services tax shall not be more than one percent as set by the governing body. The state commissioner of elections shall establish by rule the form for the ballot proposition which form shall be uniform throughout the state.

6. *a.* If a majority of those voting on the question of imposition of a local option tax favors imposition of a local option tax, the governing body of that county shall impose the tax at the rate specified for an unlimited period. However, in the case of a local sales and services tax, the county shall not impose the tax in any incorporated area or the unincorporated area if the majority of those voting on the tax in that area did not favor its imposition. For purposes of the local sales and services tax, all cities contiguous to each other shall be treated as part of one incorporated area and the tax shall be imposed in each of those contiguous cities only if the majority of those voting on the tax in the total area covered by the contiguous cities favored its imposition. In the case of a local sales and services tax submitted to the registered voters of two or more contiguous counties as provided in subsection 4, paragraph "c", all cities contiguous to each other shall be treated as part of one incorporated area, even if the corporate boundaries of one or more of the cities include areas of more than one county, and the tax shall be imposed in each of those contiguous cities only if a majority of those voting on the tax in the total area covered by the contiguous cities favored its imposition.



The local option tax may be repealed or the rate increased or decreased or the use thereof changed after an election at which a majority of those voting on the question of repeal or rate or use change favored the repeal or rate or use change. The date on which the repeal, rate, or use change is to take effect shall not be earlier than ninety days following the election. The election at which the question of repeal or rate or use change is offered shall be called and held in the same manner and under the same conditions as provided in subsections 4 and 5 for the election on the imposition of the local option tax. However, in the case of a local sales and services tax where the tax has not been imposed countywide, the question of repeal or imposition or rate or use change shall be voted on only by the registered voters of the areas of the county where the tax has been imposed or has not been imposed, as appropriate. However, the governing body of the incorporated area or unincorporated area where the local sales and services tax is imposed may, upon its own motion, request the county commissioner of elections to hold an election in the incorporated or unincorporated area, as appropriate, on the question of the change in use of local sales and services tax revenues. The election may be held at any time but not sooner than sixty days following publication of the ballot proposition. If a majority of those voting in the incorporated or unincorporated area on the change in use favors the change, the governing body of that area shall change the use to which the revenues shall be used. The ballot proposition shall list the present use of the revenues, the proposed use, and the date after which revenues received will be used for the new use.

When submitting the question of the imposition of a local sales and services tax, the county board of supervisors may direct that the question contain a provision for the repeal, without election, of the local sales and services tax on a specific date, which date shall be as provided in section 423B.6, subsection 1.

b. Within ten days of the election at which a majority of those voting on the question favors the imposition, repeal, or change in the rate of a local option tax, the county auditor shall give written notice of the result of the election by sending a copy of the abstract of the votes from the favorable election to the director of revenue or, in the case of a local vehicle tax, to the director of the department

of transportation. The appropriate director shall have the authority to waive the notice requirement.

7. More than one of the authorized local option taxes may be submitted at a single election and the different taxes shall be separately implemented as provided in this section.

Costs of local option tax elections shall be apportioned among jurisdictions within the county voting on the question at the same election on a pro rata basis in proportion to the number of registered voters in each taxing jurisdiction and the total number of registered voters in all of the taxing jurisdictions.

8. Local option taxes authorized to be imposed as provided in this chapter are a local sales and services tax and a local vehicle tax. The rate of the tax shall be in increments of one dollar per vehicle for a vehicle tax as set on the petition seeking to impose the vehicle tax. The rate of a local sales and services tax shall not be more than one percent as set by the governing body.

9. In a county that has imposed a local option sales and services tax, the board of supervisors shall, notwithstanding any contrary provision of this chapter, repeal the local option sales and services tax in the unincorporated areas or in an incorporated city area in which the tax has been imposed upon adoption of its own motion for repeal in the unincorporated areas or upon receipt of a motion adopted by the governing body of that incorporated city area requesting repeal. The board of supervisors shall repeal the local option sales and services tax effective on the later of the date of the adoption of the repeal motion or the earliest date specified in section 423B.6, subsection 1. For purposes of this subsection, incorporated city area includes an incorporated city which is contiguous to another incorporated city.

10. Notwithstanding subsection 9 or any other contrary provision of this chapter, a local option sales and services tax shall not be repealed or reduced in rate if obligations are outstanding which are payable as provided in section 423B.9, unless funds sufficient to pay the principal, interest, and premium, if any, on the outstanding obligations at and prior to maturity have been properly set aside and pledged for that purpose.

2007 Acts, ch 186, §25  
Subsection 6, paragraph b amended

## CHAPTER 423D

### EQUIPMENT TAX

#### **423D.4 Administration by director.**

The director of revenue shall administer the excise tax on the sale and use of equipment as nearly

as possible in conjunction with the administration of the state sales and use tax law, except that portion of the law which implements the streamlined

sales and use tax agreement. The director shall provide appropriate forms, or provide on the regular state tax forms, for reporting the sale and use of equipment excise tax liability. All moneys received and all refunds shall be deposited in or withdrawn from the general fund of the state.

The director may require all persons who are engaged in the business of deriving any sales price or purchase price subject to tax under this chapter to register with the department. The director may also require a tax permit applicable only to this chapter for any retailer not collecting, or any user not paying, taxes under chapter 423.

Section 422.25, subsection 4, sections 422.30, 422.67, and 422.68, section 422.69, subsection 1, sections 422.70, 422.71, 422.72, 422.74, and

422.75, section 423.14, subsection 1, and sections 423.23, 423.24, 423.25, 423.31 through 423.35, 423.37 through 423.42, and 423.47, consistent with the provisions of this chapter, apply with respect to the tax authorized under this chapter, in the same manner and with the same effect as if the excise taxes on equipment sales or use were retail sales taxes within the meaning of those statutes. Notwithstanding this paragraph, the director shall provide for quarterly filing of returns and for other than quarterly filing of returns both as prescribed in section 423.31. All taxes collected under this chapter by a retailer or any user are deemed to be held in trust for the state of Iowa.

2007 Acts, ch 126, §71  
Unnumbered paragraph 3 amended

## CHAPTER 423E

### SCHOOL INFRASTRUCTURE FUNDING

#### 423E.2 Imposition by county.

1. *a.* A local sales and services tax shall be imposed by a county only after an election at which a majority of those voting on the question favors imposition. The effective date shall be either January 1 or July 1 but not sooner than ninety days following the favorable election. A local sales and services tax approved by a majority vote shall apply to all incorporated and unincorporated areas of that county.

*b.* A local sales and services tax shall be repealed on either June 30 or December 31 but not sooner than ninety days following the favorable election, if one is held.

*c.* If a local sales and services tax has been imposed prior to April 1, 2000, and at the time of the election a date for repeal was specified on the ballot, the local sales and services tax may be repealed on that date, notwithstanding paragraph "b".

2. *a.* Upon receipt by a county board of supervisors of a petition requesting imposition of a local sales and services tax for infrastructure purposes, signed by eligible electors of the whole county equal in number to five percent of the persons in the whole county who voted at the last preceding state general election, the board shall within thirty days direct the county commissioner of elections to submit the question of imposition of the tax to the registered voters of the whole county.

*b.* Alternatively, the question of imposition of a local sales and services tax for school infrastructure purposes may be proposed by motion or motions, requesting such submission, adopted by the governing body of a school district or school districts located within the county containing a total, or a combined total in the case of more than one school district, of at least one-half of the popula-

tion of the county, or by the county board of supervisors. Upon adoption of such motion, the governing body of a school district shall notify the board of supervisors of the adoption of the motion. The county board of supervisors shall submit the motion to the county commissioner of elections, who shall publish notice of the ballot proposition concerning the imposition of the local sales and services tax. A motion ceases to be valid at the time of the holding of the regular election for the election of members of the governing body which adopted the motion.

3. The county commissioner of elections shall submit the question of imposition of a local sales and services tax for school infrastructure purposes at a state general election or at a special election held at any time other than the time of a city regular election. The election shall not be held sooner than sixty days after publication of notice of the ballot proposition. The ballot proposition shall specify the rate of tax, the date the tax will be imposed and repealed, and shall contain a statement as to the specific purpose or purposes for which the revenues shall be expended. The content of the ballot proposition shall be substantially similar to the petition of the board of supervisors or motions of a school district or school districts requesting the election as provided in subsection 2, as applicable, including the rate of tax, imposition and repeal date, and the specific purpose or purposes for which the revenues will be expended. The dates for the imposition and repeal of the tax shall be as provided in subsection 1. The rate of tax shall not be more than one percent. The state commissioner of elections shall establish by rule the form for the ballot proposition which form shall be uniform throughout the state.

4. *a.* Each school district located within the

county may submit a revenue purpose statement to the county commissioner of elections no later than sixty days prior to the election indicating the specific purpose or purposes for which the local sales and services tax for school infrastructure revenue and supplemental school infrastructure amount revenue will be expended. The revenues received pursuant to this chapter shall be expended for the purposes indicated in the revenue purpose statement. The revenue purpose statement may include information regarding the school district's use of the revenues to provide for property tax relief or debt reduction. A copy of the revenue purpose statement shall be made available for public inspection in accordance with chapter 22, shall be posted at the appropriate polling places of each school district during the hours that the polls are open, and be published in a newspaper of general circulation in the school district no sooner than twenty days and no later than ten days prior to the election. Notwithstanding the requirements for a revenue purpose statement in this paragraph, for elections occurring after April 1, 2003, but before August 1, 2003, a revenue purpose statement submitted not later than April 1, 2004, shall be considered to have met the requirements of this paragraph.

b. If a revenue purpose statement is not submitted sixty days prior to the election or revenues remain after fulfilling the purpose specified in the revenue purpose statement, the revenues shall be used to reduce the following levies in the following order:

(1) Bond levies under sections 298.18 and 298.18A and all other debt levies, until the moneys received or the levies are reduced to zero.

(2) The regular physical plant and equipment levy under section 298.2, until the moneys received or the levy is reduced to zero.

(3) The voter-approved physical plant and equipment levy and income surtax, if any, under section 298.2, until the moneys received or the levy and income surtax, if any, are reduced to zero.

(4) The public educational and recreational levy under section 300.2, until the moneys received or the levy is reduced to zero.

(5) The schoolhouse tax levy under section 278.1, subsection 7, Code 1989, until the moneys received or the levy is reduced to zero.

Any money remaining after the reduction of the levies specified in this paragraph "b" may be used for any authorized infrastructure purpose of the school district.

c. Counties holding an election on the local sales and services tax for school infrastructure purposes on or after April 1, 2003, but before July 1, 2003, which approve the imposition of the tax at the election shall expend the revenues for any authorized infrastructure purpose of the school district.

5. a. The tax may be repealed, the period of imposition of the tax may be extended for additional periods up to ten years each, or the rate increased, but not above one percent, or decreased, or the use of the revenues changed after an election at which a majority of those voting on the question of repeal, extension, rate change, or change in use favored the repeal, extension, rate change, or change in use. The election at which the question of repeal, extension, rate change, or change in use is offered shall be called and held in the same manner and under the same conditions as provided in this section for the election on the imposition of the tax. However, an election on the change in use shall only be held in the school district where the change in use is proposed to occur. The election may be held at any time but not sooner than sixty days following publication of the ballot proposition. However, the tax shall not be repealed before it has been in effect for one year.

b. Within ten days of the election at which a majority of those voting on the question favors the imposition, repeal, extension, or change in the rate of the tax, the county auditor shall give written notice of the result of the election by sending a copy of the abstract of the votes from the favorable election to the director of revenue. Election costs shall be apportioned among school districts within the county on a pro rata basis in proportion to the number of registered voters in each school district who reside within the county and the total number of registered voters within the county. The director shall have the authority to waive the notice requirement.

c. A local option sales and services tax shall not be repealed or reduced in rate if obligations are outstanding which are payable as provided in section 423E.5, unless funds sufficient to pay the principal, interest, and premium, if any, on the outstanding obligations at and prior to maturity have been properly set aside and pledged for that purpose. However, this paragraph does not apply to the repeal of the tax on December 31, 2022, as specified in section 423E.1, subsection 2.

2007 Acts, ch 186, §26

Subsection 5, paragraph b amended

## CHAPTER 426B

PROPERTY TAX RELIEF — MENTAL HEALTH, MENTAL RETARDATION,  
AND DEVELOPMENTAL DISABILITIES SERVICES**426B.5 Funding pools.**1. *Allowed growth funding pool.*

a. An allowed growth funding pool is created in the property tax relief fund. The pool shall consist of the moneys credited to the pool by law.

b. Moneys available in the allowed growth funding pool for a fiscal year are appropriated to the department of human services for distribution as provided in this subsection.

c. The first twelve million dollars credited to the funding pool shall be allocated to counties based upon the county's relative proportion of the state's general population.

d. (1) The amount in the funding pool remaining after the allocation made in paragraph "c" shall be allocated to those counties that meet all of the following eligibility requirements:

(a) The county is levying the maximum amount allowed for the county's mental health, mental retardation, and developmental disabilities services fund under section 331.424A for the fiscal year in which the funding is distributed.

(b) In the latest fiscal year reported in accordance with section 331.403, the county's mental health, mental retardation, and developmental disabilities services fund ending balance under generally accepted accounting principles was equal to or less than twenty-five percent of the county's actual gross expenditures for that fiscal year.

(2) The amount allocated to a county from the moneys available in the pool under this paragraph "d" shall be determined based upon the county's proportion of the general population of the counties eligible to receive moneys from the pool for that fiscal year.

e. In order to receive an allocation under this section, a county must comply with the filing date requirements under section 331.403. Moneys credited to the allowed growth funding pool which remain unobligated or unexpended at the close of a fiscal year shall remain in the pool for distribution in the succeeding fiscal year.

f. The most recent population estimates issued by the United States bureau of the census shall be applied in determining population for the purposes of this subsection.

g. The department of human services shall annually calculate the amount of moneys due to eligible counties in accordance with this subsection. The department shall authorize the issuance of warrants payable to the county treasurer for the amounts due and the warrants shall be issued in January.

2. *Risk pool.*

a. For the purposes of this subsection, unless

the context otherwise requires, "*services fund*" means a county's mental health, mental retardation, and developmental disabilities services fund created in section 331.424A.

b. A risk pool is created in the property tax relief fund. The pool shall consist of the moneys credited to the pool by law.

c. A risk pool board is created. The board shall consist of two county supervisors, two county auditors, a member of the mental health, mental retardation, developmental disabilities, and brain injury commission who is not a member of a county board of supervisors, a member of the county finance committee created in chapter 333A who is not an elected official, a representative of a provider of mental health or developmental disabilities services selected from nominees submitted by the Iowa association of community providers, and two central point of coordination process administrators, all appointed by the governor, and one member appointed by the director of human services. All members appointed by the governor shall be subject to confirmation by the senate. Members shall serve for three-year terms. A vacancy shall be filled in the same manner as the original appointment. Expenses and other costs of the risk pool board members representing counties shall be paid by the county of origin. Expenses and other costs of risk pool board members who do not represent counties shall be paid from a source determined by the governor. Staff assistance to the board shall be provided by the department of human services and counties. Actuarial expenses and other direct administrative costs shall be charged to the pool.

d. A county must apply to the risk pool board for assistance from the risk pool on or before January 25. The risk pool board shall make its final decisions on or before February 25 regarding acceptance or rejection of the applications for assistance and the total amount accepted shall be considered obligated.

e. Basic eligibility for risk pool assistance requires that a county meet all of the following conditions:

(1) The county is in compliance with the requirements of section 331.439.

(2) The county levied the maximum amount allowed for the county's services fund under section 331.424A for the fiscal year of application for risk pool assistance.

(3) At the close of the fiscal year that immediately preceded the fiscal year of application, the county's services fund ending balance under generally accepted accounting principles was equal to or less than twenty percent of the county's actual

gross expenditures for that fiscal year.

*f.* The board shall review the fiscal year-end financial records for all counties that are granted risk pool assistance. If the board determines a county's actual need for risk pool assistance was less than the amount of risk pool assistance granted to the county, the county shall refund the difference between the amount of assistance granted and the actual need. The county shall submit the refund within thirty days of receiving notice from the board. Refunds shall be credited to the risk pool. The mental health, mental retardation, developmental disabilities, and brain injury commission shall adopt rules pursuant to chapter 17A providing criteria for the purposes of this lettered paragraph and as necessary to implement the other provisions of this subsection.

*g.* The board shall determine application requirements to ensure prudent use of risk pool assistance. The board may accept or reject an application for assistance in whole or in part. The decision of the board is final.

*h.* The total amount of risk pool assistance shall be limited to the amount available in the risk pool for a fiscal year. Any unobligated balance in the risk pool at the close of a fiscal year shall remain in the risk pool for distribution in the succeeding fiscal year.

*i.* A county may apply for preapproval for risk pool assistance. A county may submit a preapproval application beginning on July 1 for the fiscal year of submission and the risk pool board shall notify the county of the risk pool board's decision concerning the application within forty-five days of receiving the application. Whether for a preapproval or regular application, risk pool assistance shall only be made available to address one or more of the following circumstances:

- (1) Continuing support for mandated services.
- (2) Avoiding the need for reduction or elimination of critical services when the reduction or elimination places consumers' health or safety at risk.
- (3) Avoiding the need for reduction or elimination of critical emergency services when the reduction or elimination places the public's health or safety at risk.
- (4) Avoiding the need for reduction or elimination of the services or other support provided to entire disability populations.
- (5) Avoiding the need for reduction or elimination of services or other support that maintain consumers in a community setting, creating a risk that the consumers would be placed in more restrictive, higher cost settings.

*j.* Subject to the amount available and obli-

gated from the risk pool for a fiscal year, the department of human services shall annually calculate the amount of moneys due to eligible counties in accordance with the board's decisions and that amount is appropriated from the risk pool to the department for payment of the moneys due. The department shall authorize the issuance of warrants payable to the county treasurer for the amounts due and the warrants shall be issued before the close of the fiscal year.

*k.* On or before March 1 and September 1 of each fiscal year, the department of human services shall provide the risk pool board with a report of the financial condition of each funding source administered by the board. The report shall include but is not limited to an itemization of the funding source's balances, types and amount of revenues credited, and payees and payment amounts for the expenditures made from the funding source during the reporting period.

*l.* If the board has made its decisions but has determined that there are otherwise qualifying requests for risk pool assistance that are beyond the amount available in the risk pool fund for a fiscal year, the board shall compile a list of such requests and the supporting information for the requests. The list and information shall be submitted to the mental health, mental retardation, developmental disabilities, and brain injury commission, the department of human services, and the general assembly.

### 3. *Incentive pool.*

*a.* An incentive pool is created in the property tax relief fund. The incentive pool shall consist of the moneys credited to the incentive pool by law.

*b.* Moneys available in the incentive pool for a fiscal year shall be distributed to those counties that either meet or show progress toward meeting the purposes described in section 331.439, subsection 1, paragraph "c". The moneys received by a county from the incentive pool shall be used to build community capacity to support individuals covered by the county's management plan approved under section 331.439, in meeting such purposes.

2007 Acts, ch 218, §82, 89, 92

Confirmation, see §2.32

Purchase of service provider reimbursement; 2000 Acts, ch 1221, §3; 2001 Acts, ch 184, §2; 2002 Acts, ch 1174, §2; 2003 Acts, ch 183, §2; 2004 Acts, ch 1176, §2; 2005 Acts, ch 176, §2; 2006 Acts, ch 1181, §2; 2007 Acts, ch 208, §2

Subsection 3 is first applicable for allowed growth funding distributed in the fiscal year beginning July 1, 2008; 2006 Acts, ch 1115, §12

2007 amendment to subsection 2 takes effect May 29, 2007, and applies retroactively to and after December 1, 2006, for information collected by a county as of that date; submission of data by counties that have not submitted data specified in §225C.6A for preceding fiscal year; rules; penalties for failure to submit data; 2007 Acts, ch 218, §92

Subsections 1 and 2 amended

## CHAPTER 427

### PROPERTY EXEMPT AND TAXABLE

#### 427.1 Exemptions.

The following classes of property shall not be taxed:

1. *Federal and state property.* The property of the United States and this state, including state university, university of science and technology, and school lands, except as otherwise provided in this subsection. The exemption herein provided shall not include any real property subject to taxation under any federal statute applicable thereto, but such exemption shall extend to and include all machinery and equipment owned exclusively by the United States or any corporate agency or instrumentality thereof without regard to the manner of the affixation of such machinery and equipment to the land or building upon or in which such property is located, until such time as the Congress of the United States shall expressly authorize the taxation of such machinery and equipment.

Property of the state operated pursuant to section 904.302, 904.705, or 904.706 that is leased to an entity other than an entity which is exempt from property taxation under this section shall be subject to property taxation for the term of the lease. Property taxes levied against such leased property shall be paid from the revolving farm fund created in section 904.706. The lessor shall file a copy of the lease with the county assessor of the county where the property is located.

2. *Municipal and military property.* The property of a county, township, city, school corporation, levee district, drainage district, or the Iowa national guard, when devoted to public use and not held for pecuniary profit, except property of a municipally owned electric utility held under joint ownership and property of an electric power facility financed under chapter 28F or 476A that shall be subject to taxation under chapter 437A and facilities of a municipal utility that are used for the provision of local exchange services pursuant to chapter 476, but only to the extent such facilities are used to provide such services, which shall be subject to taxation under chapter 433, except that section 433.11 shall not apply. The exemption for property owned by a city or county also applies to property which is operated by a city or county as a library, art gallery or museum, conservatory, botanical garden or display, observatory or science museum, or as a location for holding athletic contests, sports or entertainment events, expositions, meetings or conventions, or leased from the city or county for any such purposes, or leased from the city or county by the Iowa national guard or by a federal agency for the benefit of the Iowa national guard when devoted for public use and not for pecuniary profit. Food and beverages may be served

at the events or locations without affecting the exemptions, provided the city has approved the serving of food and beverages on the property if the property is owned by the city or the county has approved the serving of food and beverages on the property if the property is owned by the county. The exemption for property owned by a city or county also applies to property which is located at an airport and leased to a fixed base operator providing aeronautical services to the public.

3. *Public grounds and cemeteries.* Public grounds, including all places for the burial of the dead; and crematoriums with the land, not exceeding one acre, on which they are built and appurtenant thereto, so long as no dividends or profits are derived therefrom.

4. *Fire company buildings and grounds.* The publicly owned buildings and grounds used exclusively for keeping fire engines and implements for extinguishing fires and for meetings of fire companies.

5. *Property of associations of war veterans.* The property of any organization composed wholly of veterans of any war, when such property is devoted entirely to its own use and not held for pecuniary profit. The operation of bingo games on property of such organization shall not adversely affect the exemption of that property under this subsection if all proceeds, in excess of expenses, are used for the legitimate purposes of the organization.

6. *Property of cemetery associations.* Burial grounds, mausoleums, buildings and equipment owned and operated by cemetery associations and used exclusively for the maintenance and care of the cemeteries devoted to interment of human bodies and human remains. The exemption granted by this subsection shall not apply to any property used for the practice of mortuary science.

7. *Libraries and art galleries.* All grounds and buildings used for public libraries, public art galleries, and libraries and art galleries owned and kept by private individuals, associations, or corporations, for public use and not for private profit.

8. *Property of religious, literary, and charitable societies.* All grounds and buildings used or under construction by literary, scientific, charitable, benevolent, agricultural, and religious institutions and societies solely for their appropriate objects, not exceeding three hundred twenty acres in extent and not leased or otherwise used or under construction with a view to pecuniary profit. However, an organization mentioned in this subsection whose primary objective is to preserve land in its natural state may own or lease land not exceeding three hundred twenty acres in each

county for its appropriate objects. All deeds or leases by which such property is held shall be filed for record before the property herein described shall be omitted from the assessment. All such property shall be listed upon the tax rolls of the district or districts in which it is located and shall have ascribed to it an actual fair market value and an assessed or taxable value, as contemplated by section 441.21, whether such property be subject to a levy or be exempted as herein provided and such information shall be open to public inspection.

9. *Property of educational institutions.* Real estate owned by any educational institution of this state as a part of its endowment fund, to the extent of one hundred sixty acres in any civil township except any real property acquired after January 1, 1965, by any educational institution as a part of its endowment fund or upon which any income is derived or used, directly or indirectly, for full or partial payment for services rendered, shall be taxed beginning with the levies applied for taxes payable in the year 1967, at the same rate as all other property of the same class in the taxing district in which the real property is located. The property acquired prior to January 1, 1965, and held or owned as part of the endowment fund of an educational institution shall be subject to assessment and levy in the assessment year 1974 for taxes payable in 1975. All the property shall be listed on the assessment rolls in the district in which the property is located and an actual fair market value and an assessed or taxable value be ascribed to it, as contemplated by section 441.21, irrespective of whether an exemption under this subsection may be or is affirmed, and the information shall be open to public inspection; it being the intent of this section that the property be valued whether or not it be subject to a levy. Every educational institution claiming an exemption under this subsection shall file with the assessor not later than February 1 of the year for which the exemption is requested, a statement upon forms to be prescribed by the director of revenue, describing and locating the property upon which exemption is claimed. Property which is located on the campus grounds and used for student union purposes may serve food and beverages without affecting its exemption received pursuant to subsection 8 or this subsection.

10. *Homes for soldiers.* The buildings and grounds of homes owned and operated by organizations of soldiers, sailors, or marines of any of the wars of the United States when used for a home for disabled soldiers, sailors, or marines and not operated for pecuniary profit.

11. *Agricultural produce.* Growing agricultural and horticultural crops except commercial orchards and vineyards.

12. *Government lands.* Government lands entered and located, or lands purchased from this state, for the year in which the entry, location, or purchase is made.

13. *Public airports.* Any lands, the use of which (without charge by or compensation to the holder of the legal title thereto) has been granted to and accepted by the state or any political subdivision thereof for airport or aircraft landing area purposes.

14. *Statement of objects and uses filed.* A society or organization claiming an exemption under subsection 5, 8, or 33 shall file with the assessor not later than February 1 a statement upon forms to be prescribed by the director of revenue, describing the nature of the property upon which the exemption is claimed and setting out in detail any uses and income from the property derived from the rentals, leases, or other uses of the property not solely for the appropriate objects of the society or organization. Upon the filing and allowance of the claim, the claim shall be allowed on the property for successive years without further filing as long as the property is used for the purposes specified in the original claim for exemption. When the property is sold or transferred, the county recorder shall provide notice of the transfer to the assessor. The notice shall describe the property transferred and the name of the person to whom title to the property is transferred.

The assessor, in arriving at the valuation of any property of the society or organization, shall take into consideration any uses of the property not for the appropriate objects of the organization and shall assess in the same manner as other property, all or any portion of the property involved which is leased or rented and is used regularly for commercial purposes for a profit to a party or individual. If a portion of the property is used regularly for commercial purposes, an exemption shall not be allowed upon property so used and the exemption granted shall be in the proportion of the value of the property used solely for the appropriate objects of the organization, to the entire value of the property. However, the board of trustees or the board of directors of a hospital, as defined in section 135B.1, may permit use of a portion of the hospital for commercial purposes, and the hospital is entitled to full exemption for that portion used for nonprofit health-related purposes, upon compliance with the filing requirements of this subsection. The property of a nursing facility, as defined in section 135C.1, subsection 13, which is exempt from federal income tax under section 501(c)(3) of the Internal Revenue Code, and otherwise qualified, is entitled to the full exemption of the property regardless of the proportion of residents of the facility for whom the cost of care is privately paid or paid under Title XIX of the federal Social Security Act, upon compliance with the filing requirements of this subsection.

An exemption shall not be granted upon property upon or in which persistent violations of the laws of the state are permitted. A claimant of an exemption shall, under oath, declare that no violations of law will be knowingly permitted or have

been permitted on or after January 1 of the year in which a tax exemption is requested. Claims for exemption shall be verified under oath by the president or other responsible head of the organization. A society or organization which ceases to use the property for the purposes stated in the claim shall provide written notice to the assessor of the change in use.

15. *Mandatory denial.* No exemption shall be granted upon any property which is the location of federally licensed devices not lawfully permitted to operate under the laws of the state.

16. *Revoking or modifying exemption.* Any taxpayer or any taxing district may make application to the director of revenue for revocation or modification of any exemption, based upon alleged violations of this chapter. The director of revenue may also on the director's own motion set aside or modify any exemption which has been granted upon property for which exemption is claimed under this chapter. The director of revenue shall give notice by mail to the taxpayer or taxing district applicant and to the societies or organizations claiming an exemption upon property, exemption of which is questioned before or by the director of revenue, and shall hold a hearing prior to issuing any order for revocation or modification. An order made by the director of revenue revoking or modifying an exemption shall be applicable to the tax year commencing with the tax year in which the application is made to the director or the tax year commencing with the tax year in which the director's own motion is filed. An order made by the director of revenue revoking or modifying an exemption is subject to judicial review in accordance with chapter 17A, the Iowa administrative procedure Act. Notwithstanding the terms of chapter 17A, petitions for judicial review may be filed in the district court having jurisdiction in the county in which the property is located, and must be filed within thirty days after any order revoking or modifying an exemption is made by the director of revenue.

17. *Rural water sales.* The real property of a nonprofit corporation engaged in the distribution and sale of water to rural areas when devoted to public use and not held for pecuniary profit.

18. *Assessed value of exempt property.* Each county and city assessor shall determine the assessment value that would be assigned to the property if it were taxable and value all tax exempt property within the assessor's jurisdiction. A summary report of tax exempt property shall be filed with the director of revenue and the local board of review on or before April 16 of each year on forms prescribed by the director of revenue.

19. *Pollution control and recycling.* Pollution-control or recycling property as defined in this subsection shall be exempt from taxation to the extent provided in this subsection, upon compliance with the provisions of this subsection.

This exemption shall apply to new installations

of pollution-control or recycling property beginning on January 1 after the construction or installation of the property is completed. This exemption shall apply beginning on January 1, 1975, to existing pollution-control property if its construction or installation was completed after September 23, 1970, and this exemption shall apply beginning January 1, 1994, to recycling property.

This exemption shall be limited to the market value, as defined in section 441.21, of the pollution-control or recycling property. If the pollution-control or recycling property is assessed with other property as a unit, this exemption shall be limited to the net market value added by the pollution-control or recycling property, determined as of the assessment date.

Application for this exemption shall be filed with the assessing authority not later than the first of February of the first year for which the exemption is requested, on forms provided by the department of revenue. The application shall describe and locate the specific pollution-control or recycling property to be exempted.

The application for a specific pollution-control or recycling property shall be accompanied by a certificate of the department of natural resources certifying that the primary use of the pollution-control property is to control or abate pollution of any air or water of this state or to enhance the quality of any air or water of this state or, if the property is recycling property, that the primary use of the property is for recycling.

A taxpayer may seek judicial review of a determination of the department or, on appeal, of the environmental protection commission in accordance with the provisions of chapter 17A.

The environmental protection commission of the department of natural resources shall adopt rules relating to certification under this subsection and information to be submitted for evaluating pollution-control or recycling property for which a certificate is requested. The department of revenue shall adopt any rules necessary to implement this subsection, including rules on identification and valuation of pollution-control or recycling property. All rules adopted shall be subject to the provisions of chapter 17A.

For the purposes of this subsection, "*pollution-control property*" means personal property or improvements to real property, or any portion thereof, used primarily to control or abate pollution of any air or water of this state or used primarily to enhance the quality of any air or water of this state and "*recycling property*" means personal property or improvements to real property or any portion of the property, used primarily in the manufacturing process and resulting directly in the conversion of waste glass, waste plastic, wastepaper products, waste paperboard, or waste wood products into new raw materials or products composed primarily of recycled material. In the event such property shall also serve other purposes or uses of produc-



tive benefit to the owner of the property, only such portion of the assessed valuation thereof as may reasonably be calculated to be necessary for and devoted to the control or abatement of pollution, to the enhancement of the quality of the air or water of this state, or for recycling shall be exempt from taxation under this subsection.

For the purposes of this subsection, “*pollution*” means air pollution as defined in section 455B.131 or water pollution as defined in section 455B.171. “*Water of the state*” means the water of the state as defined in section 455B.171. “*Enhance the quality*” means to diminish the level of pollutants below the air or water quality standards established by the environmental protection commission of the department of natural resources.

20. *Impoundment structures.* The impoundment structure and any land underlying an impoundment located outside an incorporated city, which are not developed or used directly or indirectly for nonagricultural income-producing purposes and which are maintained in a condition satisfactory to the soil and water conservation district commissioners of the county in which the impoundment structure and the impoundment are located. A person owning land which qualifies for a property tax exemption under this subsection shall apply to the county assessor each year not later than February 1 for the exemption. The application shall be made on forms prescribed by the department of revenue. The first application shall be accompanied by a copy of the water storage permit approved by the director of the department of natural resources or the director’s designee, and a copy of the plan for the construction of the impoundment structure and the impoundment. The construction plan shall be used to determine the total acre-feet of the impoundment and the amount of land which is eligible for the property tax exemption. The county assessor shall annually review each application for the property tax exemption under this subsection and submit it, with the recommendation of the soil and water conservation district commissioners, to the board of supervisors for approval or denial. An applicant for a property tax exemption under this subsection may appeal the decision of the board of supervisors to the district court.

As used in this subsection, “*impoundment*” means a reservoir or pond which has a storage capacity of at least eighteen acre-feet of water or sediment at the time of construction; “*storage capacity*” means the total area below the crest elevation of the principal spillway including the volume of any excavation in the area; and “*impoundment structure*” means a dam, earthfill, or other structure used to create an impoundment.

21. *Low-rent housing.* The property owned and operated or controlled by a nonprofit organization, as recognized by the internal revenue service, providing low-rent housing for persons who are elderly and persons with physical and mental

disabilities. The exemption granted under the provisions of this subsection shall apply only until the final payment due date of the borrower’s original low-rent housing development mortgage or until the borrower’s original low-rent housing development mortgage is paid in full or expires, whichever is sooner, subject to the provisions of subsection 14. However, if the borrower’s original low-rent housing development mortgage is refinanced, the exemption shall apply only until the date that would have been the final payment due date under the terms of the borrower’s original low-rent housing development mortgage or until the refinanced mortgage is paid in full or expires, whichever is sooner, subject to the provisions of subsection 14.

21A. *Dwelling unit property owned by community housing development organization.* Dwelling unit property owned and managed by a community housing development organization, as recognized by the state of Iowa and the federal government pursuant to criteria for community housing development organization designation contained in the HOME program of the federal National Affordable Housing Act of 1990, if the organization is also a nonprofit organization exempt from federal income tax under section 501(c)(3) of the Internal Revenue Code and owns and manages more than one hundred fifty dwelling units that are located in a city with a population of more than one hundred ten thousand. For the 2005 and 2006 assessment years, an application is not required to be filed to receive the exemption. For the 2007 and subsequent assessment years, an application for exemption must be filed with the assessing authority not later than February 1 of the assessment year for which the exemption is sought. Upon the filing and allowance of the claim, the claim shall be allowed on the property for successive years without further filing as long as the property continues to qualify for the exemption.

22. *Natural conservation or wildlife areas.* Recreational lakes, forest covers, rivers and streams, river and stream banks, and open prairies as designated by the board of supervisors of the county in which located. The board of supervisors shall annually designate the real property, not to exceed in the aggregate for the fiscal year beginning July 1, 1983, the greater of one percent of the acres assessed as agricultural land or three thousand acres in each county, for which this exemption shall apply. For subsequent fiscal years, the limitation on the maximum acreage of real property that may be granted exemptions shall be the limitation for the previous fiscal year, unless the amount of acreage granted exemptions for the previous fiscal year equaled the limitation for that year, then the limitation for the subsequent fiscal year is the limitation for the previous fiscal year plus an increase, not to exceed three hundred acres, of ten percent of that limitation. The procedures of this subsection shall be followed for each

assessment year to procure an exemption for the fiscal year beginning in the assessment year. The exemption shall be only for the fiscal year for which it is granted. A parcel of property may be granted subsequent exemptions. The exemption shall only be granted for parcels of property of two acres or more.

Application for this exemption shall be filed with the commissioners of the soil and water conservation district in which the property is located, not later than February 1 of the assessment year, on forms provided by the department of revenue. The application shall describe and locate the property to be exempted and have attached to it an aerial photo of that property on which is outlined the boundaries of the property to be exempted. In the case of an open prairie that has been restored or reestablished, the property shall be inspected and certified as provided by the county board of supervisors as having adequate ground cover consisting of native species and that all primary and secondary noxious weeds present are being controlled to prevent the spread of seeds by either wind or water. In the case of an open prairie which is or includes a gully area susceptible to severe erosion, an approved erosion control plan must accompany the application. Upon receipt of the application, the commissioners shall certify whether the property is eligible to receive the exemption. The commissioners shall not withhold certification of the eligibility of property because of the existence upon the property of an abandoned building or structure which is not used for economic gain. If the commissioners certify that the property is eligible, the application shall be forwarded to the board of supervisors by May 1 of that assessment year with the certification of the eligible acreage. An application must be accompanied by an affidavit signed by the applicant that if an exemption is granted, the property will not be used for economic gain during the assessment year in which the exemption is granted.

In the case of an open prairie that has been restored or reestablished and that does not receive the certification as provided by the county board of supervisors as it relates to the ground cover, the applicant shall be notified of the availability of resource enhancement and protection fund cost-share moneys and soil and conservation technological assistance for reestablishing native vegetation.

Before the board of supervisors may designate real property for the exemption, it shall establish priorities for the types of real property for which an exemption may be granted and the amount of acreage. These priorities may be the same as or different than those for previous years. The board of supervisors shall get the approval of the governing body of the city before an exemption may be granted to real property located within the corporate limits of that city. A public hearing shall be held with notice given as provided in section 73A.2

at which the proposed priority list shall be presented. However, no public hearing is required if the proposed priorities are the same as those for the previous year. After the public hearing, the board of supervisors shall adopt by resolution the proposed priority list or another priority list. Property upon which are located abandoned buildings or structures shall have the lowest priority on the list adopted, except where the board of supervisors determines that a structure has historic significance. The board of supervisors shall also provide for a procedure where the amount of acres for which exemptions are sought exceeds the amount the priority list provides for that type or in the aggregate for all types.

After receipt of an application with its accompanying certification and affidavit and the establishment of the priority list, the board of supervisors may grant a tax exemption under this subsection using the established priority list as a mandate. Real property designated for the tax exemption shall be designated by May 15 of the assessment year in which begins the fiscal year for which the exemption is granted. Notification shall be sent to the county auditor and the applicant.

The board of supervisors does not have to grant tax exemptions under this subsection, grant tax exemptions in the aggregate of the maximum acreage which may be granted exemptions, or grant a tax exemption for the total acreage for which the applicant requested the exemption. Only real property in parcels of two acres or more which is recreational lakes, forest cover, river and stream, river and stream banks, or open prairie and which is utilized for the purposes of providing soil erosion control or wildlife habitat or both, and which is subject to property tax for the fiscal year for which the tax exemption is requested, is eligible for the exemption under this subsection. However, in addition to the above, in order for a gully area which is susceptible to severe erosion to be eligible, there must be an erosion control plan for it approved by the commissioners of the soil and water conservation district in which it is located. In the case of an open prairie that has been restored or reestablished, the property shall be inspected and certified as provided by the county board of supervisors as having adequate ground cover consisting of native species and that all primary and secondary noxious weeds present are being controlled to prevent the spread of seeds by either wind or water. In the case of an exemption for river and stream or river and stream banks, the exemption shall not be granted unless there is included in the exemption land located at least thirty-three feet from the ordinary high water mark of the river and stream or river and stream banks. Property shall not be denied an exemption because of the existence upon the property of an abandoned building or structure which is not used for economic gain. If the real property is located within a city, the approval of the governing body

must be obtained before the real property is eligible for an exemption. For purposes of this subsection:

a. “*Open prairies*” includes hillsides and gully areas which have a permanent grass cover but does not include native prairies meeting the criteria of the natural resource commission.

b. “*Forest cover*” means land which is predominantly wooded.

c. “*Recreational lake*” means a body of water, which is not a river or stream, owned solely by a nonprofit organization and primarily used for boating, fishing, swimming and other recreational purposes.

d. “*Used for economic gain*” includes, but is not limited to, using property for the storage of equipment, machinery, or crops.

Notwithstanding other requirements under this subsection, the owner of any property lying between a river or stream and a dike which is required to be set back three hundred feet or less from the river or stream shall automatically be granted an exemption for that property upon submission of an application accompanied by an affidavit signed by the applicant that if the exemption is granted the property will not be used for economic gain during the period of exemption. The exemption shall continue from year to year for as long as the property qualifies and is not used for economic gain, without need for filing additional applications or affidavits. Property exempted pursuant to this paragraph is in addition to the maximum acreage applicable to other exemptions under this subsection.

23. *Native prairie and wetland.* Land designated as native prairie or land designated as a protected wetland by the department of natural resources pursuant to section 456B.12. Application for the exemption shall be made on forms provided by the department of revenue. Land designated as a protected wetland shall be assessed at a value equal to the average value of the land where the wetland is located and which is owned by the person granted the exemption. The application forms shall be filed with the assessing authority not later than the first of February of the year for which the exemption is requested. The application must be accompanied by an affidavit signed by the applicant that if the exemption is granted, the property will not be used for economic gain during the assessment year in which the exemption is granted. If the property is used for economic gain during the assessment year in which the exemption is granted, the property shall lose its tax exemption and shall be taxed at the rate levied by the county for the fiscal year beginning in that assessment year. The first annual application shall be accompanied by a certificate from the department of natural resources stating that the land is native prairie or protected wetland. The department of natural resources shall issue a certificate for the native prairie exemption if the department finds that the

land has never been cultivated, is unimproved, is primarily a mixture of warm season grasses interspersed with flowering plants, and meets the other criteria established by the natural resource commission for native prairie. The department of natural resources shall issue a certificate for the wetland exemption if the department finds the land is a protected wetland, as defined under section 456B.1, or if the wetland was previously drained and cropped but has been restored under a nonpermanent restoration agreement with the department or other county, state, or federal agency or private conservation group. A taxpayer may seek judicial review of a decision of the department according to chapter 17A. The natural resource commission shall adopt rules to implement this subsection.

The assessing authority each year may submit to the department a claim for reimbursement of tax revenue lost from the exemption. Upon receipt of the claim, the department shall reimburse the assessing authority an amount equal to the lost tax revenue based on the value of the protected wetland as assessed by the authority, unless the department reimburses the authority based upon a departmental assessment of the protected wetland. The authority may contest the department’s assessment as provided in chapter 17A. The department is not required to honor a claim submitted more than sixty days after the authority has assessed land where the protected wetland is located and which is owned by the person granted the exemption.

24. *Land certified as a wildlife habitat.* The owner of agricultural land may designate not more than two acres of the land for use as a wildlife habitat. After inspection, if the land meets the standards established by the natural resource commission for a wildlife habitat under section 483A.3, and, in the case of a wildlife habitat that has been restored or reestablished, is inspected and certified as provided by the county board of supervisors as having adequate ground cover consisting of native species and that all primary and secondary noxious weeds present are being controlled to prevent the spread of seeds by either wind or water, the department of natural resources shall certify the designated land as a wildlife habitat and shall send a copy of the certification to the appropriate assessor not later than February 1 of the assessment year for which the exemption is requested. The department of natural resources may subsequently withdraw certification of the designated land if it fails to meet the established standards for a wildlife habitat and the ground cover requirement and the assessor shall be given written notice of the decertification.

In the case where the property is a restored or reestablished wildlife habitat and does not receive the certification as provided by the county board of supervisors as it relates to the ground cover, the owner shall be notified of the availability of re-

source enhancement and protection fund cost-share moneys and soil and conservation technological assistance for reestablishing native vegetation.

25. *Right-of-way.* Railroad right-of-way and improvements on the right-of-way only during that period of time that the Iowa railway finance authority holds an option to purchase the right-of-way under section 327I.24.

26. *Public television station.* All grounds and buildings used or under construction for a public television station and not leased or otherwise used or under construction for pecuniary profit.

27. *Speculative shell buildings of certain organizations.* New construction of shell buildings by community development organizations, not-for-profit cooperative associations under chapter 499, or for-profit entities for speculative purposes or the portion of the value added to buildings being reconstructed or renovated by community development organizations, not-for-profit cooperative associations under chapter 499, or for-profit entities in order to become speculative shell buildings. The exemption or partial exemption shall be allowed only pursuant to ordinance of a city council or board of supervisors, which ordinance shall specify if the exemption will be available for community development organizations, not-for-profit cooperative associations under chapter 499, or for-profit entities and shall be effective for the assessment year in which the building is first assessed for property taxation or the assessment year in which the reconstruction or renovation first adds value and all subsequent years until the property is leased or sold or for a specific time period stated in the ordinance or until the exemption is terminated by ordinance of the city council or board of supervisors which approved the exemption. Eligibility for an exemption as a speculative shell building shall be determined as of January 1 of the assessment year. However, an exemption shall not be granted a speculative shell building of a not-for-profit cooperative association under chapter 499 or a for-profit entity if the building is used by the cooperative association or for-profit entity, or a subsidiary or majority owners thereof for other than as a speculative shell building. If the shell building or any portion of the shell building is leased or sold, the portion of the shell building which is leased or sold shall not be entitled to an exemption under this subsection for subsequent years. An application shall be filed pursuant to section 427B.4 for each project for which an exemption is claimed. Upon the sale of the shell building, the shell building shall be considered new construction for purposes of section 427B.1 if used for purposes set forth in section 427B.1.

For purposes of this subsection the following definitions apply:

a. (1) *“Community development organization”* means an organization, which meets the membership requirements of subparagraph (2), formed

within a city or county or multicommunity group for one or more of the following purposes:

(a) To promote, stimulate, develop, and advance the business prosperity and economic welfare of the community, area, or region and its citizens.

(b) To encourage and assist the location of new business and industry.

(c) To rehabilitate and assist existing business and industry.

(d) To stimulate and assist in the expansion of business activity.

(2) For purposes of this definition, a community development organization must have at least fifteen members with representation from the following:

(a) A representative from government at the level or levels corresponding to the community development organization’s area of operation.

(b) A representative from a private sector lending institution.

(c) A representative of a community organization in the area.

(d) A representative of business in the area.

(e) A representative of private citizens in the community, area, or region.

b. *“New construction”* means new buildings or structures and includes new buildings or structures which are constructed as additions to existing buildings or structures. *“New construction”* also includes reconstruction or renovation of an existing building or structure which constitutes complete replacement of an existing building or structure or refitting of an existing building or structure, if the reconstruction or renovation of the existing building or structure is required due to economic obsolescence, if the reconstruction or renovation is necessary to implement recognized industry standards for the manufacturing or processing of products, and the reconstruction or renovation is required in order to competitively manufacture or process products or for community development organizations, not-for-profit cooperative associations under chapter 499, or for-profit entities to market a building or structure as a speculative shell building, which determination must receive prior approval from the city council of the city or county board of supervisors of the county.

c. *“Speculative shell building”* means a building or structure owned and constructed or reconstructed by a community development organization, a not-for-profit cooperative association under chapter 499, or a for-profit entity without a tenant or buyer for the purpose of attracting an employer or user which will complete the building to the employer’s or user’s specification for manufacturing, processing, or warehousing the employer’s or user’s product line.

28. *Joint water utilities.* The property of a joint water utility established under chapter 389, when devoted to public use and not held for pecu-

niary profit.

29. *Methane gas conversion.* Methane gas conversion property shall be exempt from taxation.

For purposes of this subsection, “*methane gas conversion property*” means personal property, real property, and improvements to real property, and machinery, equipment, and computers assessed as real property pursuant to section 427A.1, subsection 1, paragraphs “e” and “j”, used in an operation connected with, or in conjunction with, a publicly owned sanitary landfill to collect methane gas or other gases produced as a by-product of waste decomposition and to convert the gas to energy, or to collect waste that would otherwise be collected by, or deposited with, a publicly owned sanitary landfill in order to decompose the waste to produce methane gas or other gases and to convert the gas to energy. However, property used to decompose the waste and convert the waste to gas is not eligible for this exemption.

If the property used to convert the gas to energy also burns another fuel, the exemption shall apply to that portion of the value of such property which equals the ratio that its use of methane gas bears to total fuel consumed.

Application for this exemption shall be filed with the assessing authority not later than February 1 of each year for which the exemption is requested on forms provided by the department of revenue. The application shall describe and locate the specific methane gas conversion property to be exempted. If the property consuming methane gas also consumes another fuel, the first year application shall contain a statement to that effect and shall identify the other fuel and estimate the ratio that the methane gas consumed bears to the total fuel consumed. Subsequent year applications shall identify the actual ratio for the previous year which ratio shall be used to calculate the exemption for that assessment year.

30. *Manufactured home community or mobile home park storm shelter.* A structure constructed as a storm shelter at a manufactured home community or mobile home park as defined in section 435.1. An application for this exemption shall be filed with the assessing authority not later than February 1 of the first year for which the exemption is requested, on forms provided by the department of revenue. The application shall describe and locate the storm shelter to be exempted. If the storm shelter structure is used exclusively as a storm shelter, all of the structure’s assessed value shall be exempt from taxation. If the storm shelter structure is not used exclusively as a storm shelter, the storm shelter structure shall be assessed for taxation at fifty percent of its value as commercial property.

31. *Barn preservation.* The increase in assessed value added to a farm structure constructed prior to 1937 as a result of improvements made to the farm structure for purposes of preserving

the integrity of the internal and external features of the structure as a barn is exempt from taxation. To be eligible for the exemption, the structure must have been first placed in service as a barn prior to 1937. The exemption shall apply to the assessment year beginning after the completion of the improvements to preserve the structure as a barn.

For purposes of this subsection, “*barn*” means an agricultural structure, in whatever shape or design, which is used for the storage of farm products or feed or for the housing of farm animals, poultry, or farm equipment.

Application for this exemption shall be filed with the assessing authority not later than February 1 of the first year for which the exemption is requested, on forms provided by the department of revenue. The application shall describe and locate the specific structure for which the added value is requested to be exempt.

Once the exemption is granted, the exemption shall continue to be granted for subsequent assessment years without further filing of applications as long as the structure continues to be used as a barn. The taxpayer shall notify the assessing authority when the structure ceases to be used as a barn.

32. *One-room schoolhouse preservation.* The increase in assessed value added to a one-room schoolhouse as a result of improvements made to the structure for purposes of preserving the integrity of the internal and external features of the structure as a one-room schoolhouse is exempt from taxation. The exemption shall apply to the assessment year beginning after the completion of the improvements to preserve the structure as a one-room schoolhouse.

Application for this exemption shall be filed with the assessing authority not later than February 1 of the first year for which the exemption is requested, on forms provided by the department of revenue. The application shall describe and locate the specific one-room schoolhouse for which the added value is requested to be exempt.

Once the exemption is granted, the exemption shall continue to be granted for subsequent assessment years without further filing of applications as long as the structure is not used for dwelling purposes and the structure is preserved as a one-room schoolhouse. The taxpayer shall notify the assessing authority when the structure ceases to be eligible. The exemption in this subsection applies even though the one-room schoolhouse is no longer used for instructional purposes.

33. *Indian housing authority property.* Property owned and operated by an Indian housing authority, as defined in 24 C.F.R. § 950.102, created under Indian law, if a cooperative agreement has been made with the local governing body agreeing to the exemption. The exemption in this subsection is subject to the provisions of subsection 14.

For purposes of this subsection:

a. “Indian law” means the code of an Indian tribe recognized as eligible for services provided to Indians by the United States secretary of the interior.

b. “Local governing body” means the county board of supervisors if the property is located outside an incorporated city or the governing body of the city in which the property is located.

34. *Port authority property.* The property of a port authority created pursuant to section 28J.2, when devoted to public use and not held for pecuniary profit.

35. *Web search portal business property.*

a. Property, other than land and buildings and other improvements, that is utilized by a web search portal business as defined in and meeting the requirements of section 423.3, subsection 92, including computers and equipment that are necessary for the maintenance and operation of a web search portal and other property whether directly or indirectly connected to the computers, including but not limited to cooling systems, cooling towers, and other temperature control infrastructure; power infrastructure for transformation, distribution, or management of electricity, including but not limited to exterior dedicated business-owned substations, and power distribution systems which are not subject to assessment under chapter 437A; racking systems, cabling, and trays; and back-up power generation systems, battery systems, and related infrastructure all of which are necessary for the maintenance and operation of the web search portal site.

b. This exemption applies beginning with the assessment year the investment in or construction of the facility utilizing the materials, equipment, and systems set forth in paragraph “a” are first assessed. For purposes of claiming this exemption, the requirements may be met by aggregating the various Iowa investments and other requirements of the web search portal business’s affiliates as allowed under section 423.3, subsection 92. This ex-

emption applies to affiliates of the web search portal business.

2007 Acts, ch 199, §3

(1) Federally owned lands, §1.4 et seq.

(8) Leased church property, §565.2

Contracts with city or county for services; see §364.19

2003 amendments to subsection 1 are effective July 1, 2003, and apply to leases entered into on or after that date; 2003 Acts, ch 130, §5

2003 amendments to subsections 19, 22, and 24 apply to assessment years beginning on or after January 1, 2004; 2003 Acts, ch 121, §4; 2003 Acts, ch 136, §3

Abatement of property taxes for educational institutions failing to file for exemption under subsection 9 in counties with 180,000 – 200,000 population for taxes due and payable during fiscal years beginning July 1, 2004, and July 1, 2005; deadline; 2005 Acts, ch 140, §71, 73

2005 amendments to subsection 14 take effect May 12, 2005, and apply to property taxes due and payable in fiscal years beginning on or after July 1, 2005; 2005 Acts, ch 122, §2

2005 amendments to subsection 21 and enacting subsection 21A take effect June 16, 2005, and apply retroactively to January 1, 2005, for assessment years beginning on or after that date; 2005 Acts, ch 179, §86

2006 amendment to subsection 19 applies to taxes due and payable in fiscal years beginning on or after July 1, 2007; 2006 Acts, ch 1125, §2

2006 amendment to subsection 21A concerning the filing of applications takes effect June 2, 2006, and applies retroactively to January 1, 2005, for assessment years beginning on or after that date; 2006 Acts, ch 1185, §89

NEW subsection 35

**427.3 Abatement of taxes of certain exempt entities.**

The board of supervisors may abate the taxes levied against property acquired by gift or purchase by a person or entity if the property acquired by gift or purchase was transferred to the person or entity after the deadline for filing for property tax exemption in the year in which the property was transferred and the property acquired by gift or purchase would have been exempt under section 427.1, subsection 7, 8, or 9, if the person or entity had been able to file for exemption in a timely manner.

2007 Acts, ch 186, §27, 30

Refund of property taxes due and payable in fiscal year beginning July 1, 2002, and in fiscal year beginning July 1, 2005, on property located in a county with a population of 88,001 – 95,000, purchased by an institution that did not receive an exemption due to inability or failure to file for exemption; application requirements and filing deadline; 2007 Acts, ch 186, §29

2007 amendment to this section takes effect May 24, 2007, and applies retroactively to property taxes due and payable in fiscal year beginning July 1, 2002, and in fiscal year beginning July 1, 2005; 2007 Acts, ch 186, §30

Section amended

**CHAPTER 430A**

**LOAN AGENCIES TAX**

Repealed by 2007 Acts, ch 185, §6

**CHAPTER 432**

**INSURANCE COMPANIES TAX**

**432.1 Tax on gross premiums — exclusions.**

Every insurance company or association of whatever kind or character, not including fraternal beneficiary associations, and nonprofit hospital and medical service corporations, shall, as required by law, pay to the director of the depart-

ment of revenue, or to a depository designated by the director, as taxes, an amount equal to the following, except that the premium tax applicable to county mutual insurance associations shall be governed by section 518.18:

1. a. The applicable percent, as provided in subsection 2, of the gross amount of premiums re-

ceived during the preceding calendar year by every life insurance company or association, not including fraternal beneficiary associations, or the gross payments or deposits collected from holders of fraternal beneficiary association certificates, on contracts of insurance covering risks resident in this state during the preceding year, including contracts for group insurance and annuities and without including or deducting any amounts received or paid for reinsurance.

b. In determining the gross amount of premiums to be taxed hereunder, there shall be excluded all premiums received from policies or contracts issued in connection with a pension, annuity, profit-sharing plan or individual retirement annuity qualified or exempt under sections 401, 403, 404, 408 or 501(a) of the federal Internal Revenue Code as now or hereafter amended and all premiums returned to policyholders or annuitants during the preceding calendar year, except cash surrender values, all dividends that, during said year, have been paid in cash or applied in reduction of premiums or left to accumulate to the credit of policyholders or annuitants.

c. In determining the gross amount of premiums to be taxed, there shall be excluded all consideration received in connection with an annuity contract, whether or not such contract is qualified or exempt under the federal Internal Revenue Code as now or hereafter amended, and all premiums returned to policyholders or annuitants during the preceding calendar year, except cash surrender values, and all dividends that, during said year, have been paid in cash or applied in reduction of premiums or left to accumulate to the credit of policyholders or annuitants.

2. The “*applicable percent*” for purposes of subsection 1 of this section and section 432.2 is the following:

a. For calendar years beginning before the 2003 calendar year, two percent.

b. For the 2003 calendar year, one and three-fourths percent.

c. For the 2004 calendar year, one and one-half percent.

d. For the 2005 calendar year, one and one-fourth percent.

e. For the 2006 and subsequent calendar years, one percent.

3. The applicable percent, as provided in subsection 4, of the gross amount of premiums written, and assessments and fees received during the preceding calendar year by every company or association other than life on contracts of insurance other than life for business done in this state, including all insurance upon property situated in this state, after deducting the amounts returned upon canceled policies, certificates, and rejected applications but not including the gross premiums written, and assessments and fees received in connection with ocean marine insurance authorized in section 515.48.

4. The “*applicable percent*” for purposes of subsection 3 is the following:

a. For calendar years beginning before the 2004 calendar year, two percent.

b. For the 2004 calendar year, one and three-fourths percent.

c. For the 2005 calendar year, one and one-half percent.

d. For the 2006 calendar year, one and one-fourth percent.

e. For the 2007 and subsequent calendar years, one percent.

5. Except as provided in subsection 6, the premium tax shall be paid on or before March 1 of the year following the calendar year for which the tax is due. The commissioner may suspend or revoke the license of a company or association that fails to pay its premium tax on or before the due date.

6. a. Each insurance company and association transacting business in this state whose Iowa premium tax liability for the preceding calendar year was one thousand dollars or more shall remit on or before June 1, on a prepayment basis, an amount equal to one-half of the premium tax liability for the preceding calendar year.

b. In addition to the prepayment amount in paragraph “a”, each life insurance company or association which is subject to tax under subsection 1 of this section and each mutual health service corporation which is subject to tax under section 432.2 shall remit on or before August 15, on a prepayment basis, an additional amount equal to the following percent of the premium tax liability for the preceding calendar year as follows:

(1) For prepayment in the 2003 calendar year, four percent.

(2) For prepayment in the 2004 calendar year, twenty-one percent.

(3) For prepayment in the 2005 and subsequent calendar years, fifty percent.

c. In addition to the prepayment amount in paragraph “a”, each insurance company or association, other than a life insurance company or association, which is subject to tax under subsection 3 shall remit on or before August 15, on a prepayment basis, an additional amount equal to the following percent of the premium tax liability for the preceding calendar year as follows:

(1) For prepayment in the 2003 and 2004 calendar years, eleven percent.

(2) For prepayment in the 2005 calendar year, twenty-six percent.

(3) For prepayment in the 2006 and subsequent calendar years, fifty percent.

d. The sums prepaid by a company or association under this subsection shall be allowed as credits against its premium tax liability for the calendar year during which the payments are made. If a prepayment made under this subsection exceeds the annual premium tax liability, the excess shall be allowed as a credit against subsequent prepayment or tax liabilities. The commissioner of insur-

ance shall authorize the department of revenue to make a cash refund to an insurer, in lieu of a credit against subsequent prepayment or tax liabilities, if the insurer demonstrates the inability to recoup the funds paid via a credit. The commissioner shall adopt rules establishing eligibility criteria for such a refund and a refund process. The commissioner may suspend or revoke the license of a company or association that fails to make a prepayment on or before the due date.

2007 Acts, ch 137, §2  
Taxation of organized delivery systems; see §135.120  
Subsection 3 amended

**432.12A Historic preservation and cultural and entertainment district tax credit.**

1. The tax imposed under this chapter shall be reduced by a historic preservation and cultural and entertainment district tax credit equal to the amount as computed under chapter 404A for rehabilitating eligible property. Any credit in excess of the tax liability shall be refunded or credited to the following year, as provided in section 404A.4, subsection 3.

2. For purposes of this section, “eligible property” means the same as used in section 404A.1.

2007 Acts, ch 165, §7, 9  
2007 amendment to subsection 1 applies to historic preservation and cultural and entertainment district tax credits applied for or reserved prior

to July 1, 2007; 2007 Acts, ch 165, §9  
Subsection 1 amended

**432.12D Endow Iowa tax credit.**

The tax imposed under this chapter shall be reduced by an endow Iowa tax credit authorized pursuant to section 15E.305.

Future repeal stricken pursuant to 2006 Acts, ch 1151, §7, 8  
Section not amended; footnote revised

**432.12J Film qualified expenditure tax credit.**

The tax imposed under this chapter shall be reduced by a qualified expenditure tax credit authorized pursuant to section 15.393, subsection 2, paragraph “a”.

2007 Acts, ch 162, §10, 13  
Section takes effect May 17, 2007, and applies retroactively to tax years beginning on or after January 1, 2007; 2007 Acts, ch 162, §13  
NEW section

**432.12K Film investment tax credit.**

The tax imposed under this chapter shall be reduced by an investment tax credit authorized pursuant to section 15.393, subsection 2, paragraph “b”.

2007 Acts, ch 162, §11, 13  
Section takes effect May 17, 2007, and applies retroactively to tax years beginning on or after January 1, 2007; 2007 Acts, ch 162, §13  
NEW section

CHAPTER 437A

TAXES ON ELECTRICITY AND NATURAL GAS PROVIDERS

**437A.3 Definitions.**

As used in this chapter, unless the context otherwise requires:

1. “Assessed value” means the base year assessed value, as adjusted by section 437A.19, subsection 2. “Base year assessed value”, for a taxpayer other than an electric company, natural gas company, or electric cooperative, means the value attributable to property identified in section 427A.1, subsection 1, paragraph “h”, certified by the department of revenue to the county auditors for the assessment date of January 1, 1997, and the value attributable to property identified in section 427A.1 and section 427B.17, subsection 5, as certified by the local assessors to the county auditors for the assessment date of January 1, 1997, provided, that for a taxpayer subject to section 437A.17A, such value shall be the value certified by the department of revenue and local assessors to the county auditors for the assessment date of January 1, 1998. However, “base year assessed value”, for purposes of property of a taxpayer that is a municipal utility, if the property is not a major addition, and the property was initially assessed to the taxpayer as of January 1, 1998, and is not located in a county where the taxpayer had property that was assessed for purposes of this chapter

as of January 1, 1997, means the value attributable to such property for the assessment date of January 1, 1998.

For taxpayers that are electric companies, natural gas companies, and electric cooperatives, “base year assessed value” means the average of the total of these values for each taxpayer for the assessment dates of January 1, 1993, through January 1, 1997, allocated among taxing districts in proportion to the allocation of the taxpayer’s January 1, 1998, assessed value among taxing districts. “Base year assessed value” does not include value attributable to steam-operating property.

2. “Book”, “list”, “record”, or “schedule” kept by a county auditor, assessor, treasurer, recorder, sheriff, or other county officer means the county system as defined in section 445.1.

3. “Centrally assessed property tax” means property tax imposed with respect to the value of property determined by the director pursuant to section 427.1, subsection 2, Code 1997, section 428.29, Code 1997, and chapters 437 and 438, Code 1997, and allocated to electric service and natural gas service. For purposes of this subsection, “natural gas service” means such service provided by natural gas pipelines permitted pursuant to chapter 479.



4. “*Cogeneration facility*” means a facility with a capacity of two hundred megawatts or less that uses the same energy source for the sequential generation of electrical or mechanical power in combination with steam, heat, or other forms of useful energy and, except for ownership, meets the criteria to be a qualifying cogeneration facility as defined in the federal Public Utility Regulatory Policies Act of 1978, 16 U.S.C. § 2601 et seq., and related federal regulations.

5. “*Consumer*” means an end user of electricity or natural gas used or consumed within this state. “*Consumer*” includes any master-metered facility even though the electricity or natural gas delivered to such facility may ultimately be used by another person. A person to whom electricity or natural gas is delivered by a master-metered facility is not a consumer. A “*master-metered facility*” means any multi-occupancy premises where units are separately rented or owned and where electricity or natural gas is used in centralized heating, cooling, water-heating, or ventilation systems, where individual metering is impractical, where the facility is designated for elderly or handicapped persons and utility costs constitute part of the operating cost and are not apportioned to individual units, or where submetering or resale of service was permitted prior to 1966.

6. “*Delivery*” means the physical transfer of electricity or natural gas to a consumer. Physical transfer to a consumer occurs when transportation of electricity or natural gas ends and such electricity or natural gas becomes available for use or consumption by a consumer.

7. “*Director*” means the director of revenue.

8. “*Electric company*” means a person engaged primarily in the production, delivery, service, or sales of electric energy whether formed or organized under the laws of this state or elsewhere. “*Electric company*” includes a combination natural gas company and electric company. “*Electric company*” does not include an electric cooperative or a municipal utility.

9. “*Electric competitive service area*” means an electric service area assigned by the utilities board under chapter 476 as of January 1, 1999, including utility property and facilities described in section 476.23, subsection 3, which were owned and served by the electric company, electric cooperative, or municipal utility serving such area on January 1, 1999.

10. “*Electric cooperative*” means an electric utility provider formed or organized as an electric cooperative under the laws of this state or elsewhere. An electric cooperative shall also include an incorporated city utility provider. “*Generation and transmission electric cooperative*” means an electric cooperative which owns both transmission lines and property which is used to generate electricity. “*Distribution electric cooperative*” means an electric cooperative other than a generation and transmission electric cooperative or a municipi-

pal electric cooperative association.

11. a. “*Electric power generating plant*” means a nameplate rated electric power generating plant, which produces electric energy from other forms of energy, including all taxable land, buildings, and equipment used in the production of such electric energy.

b. “*New electric power generating plant*” means any of the following:

(1) An electric power generating plant that is owned by or leased to an electric company, electric cooperative, or municipal utility, and that initially generates electricity subject to replacement generation tax under section 437A.6 on or after January 1, 2003.

(2) An electric power generating plant that is owned by or leased to an electric company, electric cooperative, or municipal utility, that initially generated electricity subject to replacement generation tax under section 437A.6 before January 1, 2003, and that is sold, leased, or transferred, in full or in part, on or after January 1, 2003. If any portion of an electric power generating plant is sold, the entire plant shall be treated as if it were a new electric power generating plant.

12. “*Incorporated city utility provider*” means a corporation with assets worth one million dollars or more which has one or more platted villages located within the territorial limits of the tract of land which it owns, and which provides electricity to ten thousand or fewer customers.

13. “*Lease*” means a contract between a lessor and lessee pursuant to which the lessee obtains a present possessory interest in tangible property without obtaining legal title in such property. A contract to transmit or deliver electricity or natural gas using operating property within this state is not a lease. “*Capital lease*” means a lease classified as a capital lease under generally accepted accounting principles.

14. “*Local amount*” means the first forty-four million four hundred forty-four thousand four hundred forty-five dollars of the acquisition cost of any major addition which is an electric power generating plant and the total acquisition cost of any other major addition.

“*Local amount*” for the purposes of determining the local taxable value for a new electric power generating plant shall annually be determined to be equal up to the first forty-four million four hundred forty-four thousand four hundred forty-five dollars of the taxable value of the new electric power generating plant. “*Local amount*” for the purposes of determining the local assessed value for a new electric power generating plant shall be annually determined to be the percentage share of the taxable value of the new electric power generating plant allocated as the local amount multiplied by the total assessed value of the new electric power generating plant.

15. “*Local taxing authority*” means a city, county, community college, school district, or other

taxing authority located in this state and authorized to certify a levy on property located within such authority for the payment of bonds and interest or other obligations of such authority.

16. “*Local taxing district*” means a geographic area with a common consolidated property tax rate.

17. “*Low capacity factor electric power generating plant*” means, for any tax year, an electric power generating plant, with the exception of an electric power generating plant owned or leased by an electric company, an electric cooperative, or a municipal utility, which operated during the preceding calendar year at a net capacity factor of twenty percent or less. “*Net capacity factor*” means net actual generation during the preceding calendar year divided by the product of nameplate capacity times the number of hours the plant was in the active state during the preceding calendar year. Upon commissioning, a plant is in the active state until it is decommissioned. “*Net actual generation*” means net electrical megawatt hours produced by a plant during the preceding calendar year.

18. “*Major addition*” means either of the following:

*a.* Any acquisition on or after January 1, 1998, by a taxpayer, by transfer of ownership, self-construction, or capital lease of any interest in any of the following:

(1) A building in this state where the acquisition cost of all interests acquired exceeds ten million dollars.

(2) An electric power generating plant where the acquisition cost of all interests acquired exceeds ten million dollars. For purposes of this paragraph, “*electric power generating plant*” means each nameplate rated electric power generating plant owned solely or jointly by any person or electric power facility financed under the provisions of chapter 28F or 476A in which electrical energy is produced from other forms of energy, including all equipment used in the production of such energy through its step-up transformer.

(3) Natural gas operating property within a local taxing district where the acquisition cost of all interests acquired exceeds one million dollars.

(4) Any property described in section 437A.16 in this state acquired by a person not previously subject to taxation under this chapter.

*b.* Any acquisition on or after January 1, 2004, by a taxpayer, by transfer of ownership, self-construction, or capital lease of any interest in electric transmission operating property within a local taxing district where the acquisition cost of all interests acquired exceeds one million dollars.

For purposes of this chapter, the acquisition cost of an asset acquired by capital lease is its capitalized value determined under generally accepted accounting principles.

19. “*Municipal electric cooperative association*” means an electric cooperative, the member-

ship of which is composed entirely of municipal utilities.

20. “*Municipal utility*” means all or part of an electric light and power plant system or a natural gas system, either of which is owned by a city, including all land, easements, rights-of-way, fixtures, equipment, accessories, improvements, appurtenances, and other property necessary or useful for the operation of the municipal utility.

21. “*Natural gas company*” means a person that owns, operates, or is engaged primarily in operating or utilizing pipelines for the purpose of distributing natural gas to consumers located within this state, excluding a gas distributing plant or company located entirely within any city and not a part of a pipeline transportation company. “*Natural gas company*” includes a combination natural gas company and electric company. “*Natural gas company*” does not include a municipal utility.

22. *a.* “*Natural gas competitive service area*” means any of the fifty-two natural gas competitive service areas described as follows:

(1) Each of the following municipal natural gas competitive service areas:

(a) Taylor county, except for those areas of Taylor county which are contained within another municipal natural gas competitive service area as described in this subsection.

(b) The city of Brighton in Washington county and the area within two miles of the city limits plus sections 5, 6, 7, 8, 17, 18, 19, 20, 29, and 30 in Brighton township; sections 19, 30, and 33 in Franklin township; sections 1, 2, 11, 12, 13, 14, 23, 24, 25, and 36 in Dutch Creek township; and sections 25, 26, 35, and 36 in Seventy-Six township.

(c) Davis county.

(d) The city of Brooklyn in Poweshiek county and the area within two miles of the city limits.

(e) The city of Cascade in Dubuque county and the area within two miles of the city limits.

(f) The city of Cedar Falls in Black Hawk county and the area within one mile of the city limits, not including any part of the city of Waterloo.

(g) The city of Clearfield in Taylor county and the area within two miles of the city limits and sections 20, 21, 26, and 27 of Platte township, Grant township in Taylor county, and Grant township in Ringgold county.

(h) The south half of Carroll county and sections 3 and 4 of Orange township in Guthrie county.

(i) Adams county, except those areas of Adams county which are contained within another municipal natural gas competitive service area as defined in this subsection.

(j) The city of Emmetsburg in Palo Alto county and the area within two miles of the city limits.

(k) The city of Everly in Clay county and the area within two miles of the city limits.

(l) The city of Fairbank and the area within two miles of the city limits plus the area one-quarter mile on either side of the county line road,

Highway 281, from Fairbank to the intersection of Outer road and Tenth street, proceeding twenty-eight hundredths of a mile north in Buchanan and Fayette counties.

(m) The city of Gilmore City in Pocahontas and Humboldt counties and the area within two miles of the city limits.

(n) The city of Graettinger in Palo Alto county and the area within two miles of the city limits.

(o) The city of Guthrie Center in Guthrie county and the area within one mile of the city limits.

(p) The city of Harlan in Shelby county and the area within two miles of the city limits.

(q) The city of Hartley in O'Brien county and the area within one mile of the city limits, except the eastern one-half of section four in Omega township.

(r) The city of Hawarden in Sioux county and the area within two miles of the city limits.

(s) The city of Lake Park plus Silver Lake township in Dickinson county.

(t) Fayette and New Buda townships in Decatur county.

(u) The city of Lenox in Taylor county including section 1 of Platte township in Taylor county and the townships of Carl, Grant, Mercer, Colony, Union, and Prescott in Adams county.

(v) Grand River township in Wayne county.

(w) New Hope township in Union county and Monroe township in Madison county.

(x) Ewoldt and Eden townships in Carroll county and Iowa township in Crawford county.

(y) The city of Montezuma in Poweshiek county and the area within two miles of the city limits plus Jackson township in Poweshiek county except the city of Barnes City, Pleasant Grove and Monroe townships in Mahaska county except the city of Barnes City.

(z) Morning Sun township in Louisa county.

(aa) Wells and Washington townships in Appanoose county.

(ab) The city of Osage in Mitchell county and the area within two miles of the city limits.

(ac) The city of Prescott in Adams county and the area within two miles of the city limits.

(ad) The city of Preston in Jackson county and the area within two miles of the city limits.

(ae) The city of Remsen in Plymouth county and the area within two miles of the city limits.

(af) The city of Rock Rapids in Lyon county and the area within two miles of the city limits.

(ag) The city of Rolfe in Pocahontas county and the area within two miles of the city limits.

(ah) The city of Sabula in Jackson county and the area within two miles of the city limits.

(ai) The city of Sac City in Sac county and the area within two miles of the city limits.

(aj) The city of Sanborn in O'Brien county and the area within two miles of the city limits.

(ak) The city of Sioux Center in Sioux county and the area within two miles of the city limits.

(al) The city of Tipton in Cedar county and the

area within two miles of the city limits.

(am) The city of Waukee in Dallas county and the area within two miles of the city limits of Waukee as of January 1, 1999, not including any part of the cities of Clive, Urbandale, or West Des Moines.

(an) The city of Wayland plus Jefferson and Trenton townships in Henry county.

(ao) Seventy-Six and Lime Creek townships in Washington county except for those areas of Seventy-Six township which are contained within another municipal natural gas competitive service area as defined in this subsection.

(ap) The city of West Bend in Kossuth and Palo Alto counties and the area within two miles of the city limits.

(aq) The city of Whittemore in Kossuth county and the area within two miles of the city limits.

(ar) Scott, Canaan, and Wayne townships in Henry county.

(as) The city of Woodbine in Harrison county and the area within two miles of the city limits.

(at) Nishnabotna township in Crawford county.

(2) The natural gas competitive service area, excluding any municipal natural gas competitive service area described in subparagraph (1) and consisting of Sioux county; Plymouth county; Woodbury county; Ida county; Harrison county; Shelby county; Audubon county; Palo Alto county; Humboldt county; Mahaska county; Scott county; Lyon county except Wheeler, Dale, Liberal, Grant, Midland, and Elgin townships; O'Brien county except Union, Dale, Summit, Highland, Franklin, and Center townships; Cherokee county except Cherokee and Pilot townships; Monona county except Franklin township and the south half of Ashton township; Pottawattamie county except Crescent, Hazel Dell, Lake, Garner, Kane, and Lewis townships; Mills county except Glenwood and Center townships; Montgomery county except Douglas, Washington, and East townships; Page county except Valley, Douglas, Nodaway, Nebraska, Harlan, East River, Amity, and Buchanan townships; Fremont county except Green, Scott, Sidney, Benton, Washington, and Madison townships; Brighton and Pleasant townships in Cass county; Sac county except Clinton, Wall Lake, Coon Valley, Levey, Viola, and Sac townships; Newell township in Buena Vista county; Calhoun county except Reading township; Denmark township in Emmet county; Kossuth county except Eagle, Grant, Springfield, Hebron, Swea, Harrison, Ledyard, Lincoln, Seneca, Greenwood, Ramsey, and German townships; Webster county except Roland, Clay, Burnside, Yell, Webster, Gowrie, Lost Grove, Dayton, and Hardin townships; Guthrie county except Grant, Thompson, and Beaver townships; Union township in Union county; Madison county except Ohio and New Hope townships; Warren county except Virginia, Squaw, Liberty, and White Breast townships; Cedar, Union,

Bluff Creek, and Pleasant townships in Monroe county; Marion county except Lake Prairie, Knoxville, Summit, and Union townships; Dallas county except Des Moines and Grant townships; Polk county except sections 4, 5, 6, 7, 8, 9, 16, 17, and 18 in Lincoln township and the city of Grimes, and sections 1, 2, 3, 10, 11, 12, 13, 14, and 15 in Union township; Poweshiek, Washington, Mound Prairie, Des Moines, Elk Creek, and Fairview townships in Jasper county; Wright county except Belmont and Pleasant townships; Geneseo township in Cerro Gordo county; Franklin county except Wisner and Scott townships and the city of Coulter; Butler county except Bennezette, Coldwater, Dayton, and Fremont townships; Floyd county except Rock Grove, Rudd, Rockford, Ulster, Scott, and Union townships; Branford township in Chickasaw county; Bremer county except Frederika, LeRoy, Sumner No. 2, Fremont, Dayton, Maxfield, and Franklin townships; Perry, Washington, Westburg, and Sumner townships in Buchanan county; Black Hawk county except Big Creek township; Fremont township in Benton county; Wapello county except Washington township; Benton and Steady Run townships in Keokuk county; the city of Barnes City in Poweshiek county; Iowa township in Washington county; Johnson county except Fremont township; Linn county except Franklin, Grant, Spring Grove, Jackson, Boulder, Washington, Otter Creek, Maine, Buffalo, and Fayette townships; Monroe township west and north of Otter Creek to its intersection with County Home road, and north of County Home road in Linn county; the city of Walford in Linn county; Farmington township in Cedar county; Wapsinonoc, Goshen, Moscow, Wilton, and Fulton townships in Muscatine county; and Lee county except Des Moines, Montrose, Keokuk, and Jackson townships.

(3) The natural gas competitive service area, excluding any municipal natural gas competitive service areas described in subparagraph (1) and consisting of that part of Kossuth county not described in subparagraph (2); Lincoln and Buffalo townships in Winnebago county; Worth county except Silver Lake, Hartland, Bristol, Brookfield, Fertile, and Danville townships; Cerro Gordo county except Grimes, Pleasant Valley, and Dougherty townships; Rock Grove and Rudd townships in Floyd county; Eden, Camanche, and Hampshire townships and the city of Clinton in Clinton county; and Stacyville and Union townships in Mitchell county.

(4) The natural gas competitive service area, excluding any municipal natural gas service areas described in subparagraph (1) and consisting of Franklin township and the south half of Ashton township in Monona county; Crescent, Hazel Dell, Lake, Garner, Kane, and Lewis townships in Pottawattamie county; Glenwood and Center townships in Mills county; Green, Scott, Sidney, Benton, Washington, and Madison townships in Fre-

mont county; Cass, Bear Grove, Union, Noble, Edna, Victoria, Massena, Lincoln, and Grant townships in Cass county; Glidden township in Carroll county; Summit township in Adair county; Grant township in Guthrie county; Crawford county except Nishnabotna township; Clinton, Wall Lake, Coon Valley, Levey, Viola, and Sac townships in Sac county; Reading township in Calhoun county; Marshall, Sherman, Roosevelt, Dover, Grant, Lincoln, and Cedar townships in Pocahontas county; Union, Dale, Summit, Highland, Franklin, and Center townships in O'Brien county; the north half of Clay county plus Clay township; Dickinson county; Emmet county except Denmark, Armstrong Grove, and Iowa Lake townships; Greene county except Bristol, Hardin, Jackson, and Grant townships; Boone county except Worth, Colfax, Des Moines, Jackson, Dodge, and Harrison townships; Des Moines and Grant townships in Dallas county; Roland, Clay, Burnside, Yell, Webster, Gowrie, Lost Grove, Dayton, and Newark townships in Webster county; Clear Lake, Hamilton, Webster, Freedom, Independence, Cass, and Fremont townships in Hamilton county; Ell, Madison, and Ellington townships in Hancock county; Winnebago county except Lincoln and Buffalo townships; Silver Lake, Hartland, Bristol, Brookfield, Fertile, and Danville townships in Worth county; Etna township in Hardin county; Lafayette township and the west one-half of Howard township in Story county; the city of Grimes in Polk county; Independence, Malaka, Mariposa, Hickory Grove, Rock Creek, Kellogg, Newton, Sherman, Palo Alto, Buena Vista, and Richland townships in Jasper county; Palermo, Grant, and Fairfield townships in Grundy county; Bennezette, Coldwater, Dayton, and Fremont townships in Butler county; Rockford, Ulster, Scott, and Union townships in Floyd county; St. Ansgar and Mitchell townships in Mitchell county; Howard county; Chickasaw county except Branford township; Frederika, LeRoy, Sumner No. 2, Fremont, Dayton, Maxfield, and Franklin townships in Bremer county; Big Creek township in Black Hawk county; Brown township in Linn county; Madison township and the east half of Buffalo township in Buchanan county; Fayette county except Harlan, Fremont, Oran, and Jefferson townships; Winneshiek county; Allamakee county; Clayton county; Delaware county except Adams and Hazel Green townships; Dubuque county; Jones county except Rome, Hale, Oxford, and the east half of Greenfield townships; and Jackson county.

(5) The natural gas competitive service area consisting of Des Moines, Montrose, Keokuk, and Jackson townships in Lee county.

(6) The natural gas competitive service area consisting of the city of Allerton and the area within two miles of the city limits.

(7) The natural gas competitive service area consisting of all of Iowa not contained in any of the

other natural gas competitive service areas described in this paragraph.

b. "Township" includes any city or part of a city located within the exterior boundaries of that township.

c. References to city limits contained in this subsection mean those city limits as they existed on January 1, 1999.

23. "Operating property" means all property owned by or leased to an electric company, electric cooperative, municipal utility, or natural gas company, not otherwise taxed separately, which is necessary to and without which the company could not perform the activities of an electric company, electric cooperative, municipal utility, or natural gas company.

24. "Pole miles" means miles measured along the line of poles, structures, or towers carrying electric conductors regardless of the number of conductors or circuits carried, and miles of conduit bank, regardless of number of conduits or ducts, of all sizes and types, including manholes and handholes. "Conduit bank" means a length of one or more underground conduits or ducts, whether or not enclosed in concrete, designed to contain underground cables, including a gallery or cable tunnel for power cables.

25. "Purchasing member" means a municipal utility which purchases electricity from a municipal electric cooperative association of which it is a member.

26. "Replacement tax" means the excise tax imposed on the generation, transmission, delivery, consumption, or use of electricity or natural gas under section 437A.4, 437A.5, 437A.6, or 437A.7.

27. "Self-generator" means a person, other than an electric company, natural gas company, electric cooperative, or municipal utility, who generates, by means of an on-site facility wholly owned by or leased in its entirety to such person, electricity solely for its own consumption, except for inadvertent unscheduled deliveries to the electric utility furnishing electric service to that self-generator. A person who generates electricity which is consumed by any other person, including any owner, shareholder, member, beneficiary, partner, or associate of the person who generates electricity, is not a self-generator. For purposes of this subsection, "on-site facility" means an electric power generating plant that is wholly owned by or leased in its entirety to a person and used to generate electricity solely for consumption by such person on the same parcel of land on which such plant is located or on a contiguous parcel of land. For purposes of this subsection, "parcel of land" includes each separate parcel of land shown on the tax list.

28. "Statewide amount" means the acquisition cost of any major addition which is not a local amount.

29. "Taxable value" means as defined in section 437A.19, subsection 2, paragraph "f".

30. "Taxpayer" means an electric company, natural gas company, electric cooperative, municipal utility, or other person subject to the replacement tax imposed under section 437A.4, 437A.5, 437A.6, or 437A.7.

31. "Tax year" means a calendar year beginning January 1 and ending December 31.

32. "Transfer replacement tax" means the excise tax imposed in a competitive service area of a municipal utility which replaces transfers made by the municipal utility in accordance with section 384.89.

33. "Transmission line" means a line, wire, or cable which is capable of operating at an electric voltage of at least thirty-four and one-half kilovolts.

34. "Utilities board" means the utilities board created in section 474.1.

2007 Acts, ch 150, §1  
Subsection 11, unnumbered paragraph 1 editorially designated as paragraph a

Subsection 11, unnumbered paragraph 2 amended, divided, and editorially redesignated as paragraph b, unnumbered paragraph 1 and subparagraphs (1) and (2)

#### 437A.15 Allocation of revenue.

1. The director and the department of management shall compute the allocation of all replacement tax revenues other than transfer replacement tax revenues among the local taxing districts in accordance with this section and shall report such allocation by local taxing districts to the county treasurers on or before August 15 following a tax year.

2. The director shall determine and report to the department of management the total replacement taxes to be collected from each taxpayer for the tax year on or before July 30 following such tax year.

3. a. All replacement taxes owed by a taxpayer shall be allocated among the local taxing districts in which such taxpayer's property is located in accordance with a general allocation formula determined by the department of management on the basis of general property tax equivalents. General property tax equivalents shall be determined by applying the levy rates reported by each local taxing district to the department of management on or before June 30 following a tax year to the taxable value of taxpayer property allocated to each such local taxing district as adjusted and reported to the department of management in such tax year by the director pursuant to section 437A.19, subsection 2. The general allocation formula for a tax year shall allocate to each local taxing district that portion of the replacement taxes owed by each taxpayer which bears the same ratio as such taxpayer's general property tax equivalents for each local taxing district bears to such taxpayer's total general property tax equivalents

for all local taxing districts in Iowa.

When allocating natural gas delivery taxes on deliveries of natural gas to a new electric power generating plant, ten percent of those natural gas delivery taxes shall be allocated over new gas property built to directly serve the new electric power generating plant and ninety percent of those natural gas delivery taxes shall be allocated to the general property tax equivalents of all gas property within the natural gas competitive service area or areas where the new gas property is located.

b. Notwithstanding other provisions of this section, if excess property tax liability has been assigned pursuant to section 437A.4, subsection 3, paragraph “c”, subparagraph (4), and has not been removed, the allocation of electric delivery replacement tax attributable to the excess property tax liability shall be made by the director and the department of management so as to allocate the electric delivery replacement tax attributable to the excess property tax liability among those local taxing districts in which the property associated with the excess property tax liability is located. In order to ensure that the electric delivery replacement tax attributable to the excess property tax liability is paid to the appropriate county treasurer for disposition to the local taxing districts, each distribution electric cooperative member and each municipal utility purchasing member subject to section 437A.4, subsection 3, paragraph “c”, subparagraph (4), shall pay to the appropriate generation and transmission electric cooperative the electric delivery replacement tax attributable to the excess property tax liability by September 10. The amount of electric delivery replacement tax attributable to the excess property tax liability shall equal that percentage of total electric delivery replacement tax liability that the excess property tax liability bears to the total property tax liability contained in the electric delivery tax component. The generation and transmission electric cooperative shall pay the electric delivery replacement tax attributable to the excess property tax liability to the appropriate county treasurer.

c. If paragraph “b” is applicable, on or before August 1, the director shall notify each distribution electric cooperative member, each municipal utility purchasing member, and each generation and transmission electric cooperative of the amount of electric delivery replacement tax to be paid to the generation and transmission electric cooperative. On or before August 1, the director shall notify the generation and transmission electric cooperative of the amount of replacement tax liability attributable to the excess property tax liability that is payable to each county treasurer. The director shall determine the amount of any special utility property tax levy or tax credit attributable to the excess property tax liability which shall be reflected in the amount required to be paid by each distribution electric cooperative member and each

municipal utility purchasing member to the generation and transmission electric cooperative.

d. If, during the tax year, a taxpayer transferred operating property or an interest in operating property to another taxpayer, the transferee taxpayer’s replacement tax associated with that property shall be allocated, for the tax year in which the transfer occurred, under this section in accordance with the general allocation formula on the basis of the general property tax equivalents of the transferor taxpayer.

e. Notwithstanding the provisions of this section, if during the tax year a person who was not a taxpayer during the prior tax year acquires a new major addition, as defined in section 437A.3, subsection 18, paragraph “a”, subparagraph (4), the replacement tax associated with that major addition shall be allocated, for that tax year, under this section in accordance with the general allocating formula on the basis of the general property tax equivalents established under paragraph “a” of this subsection, except that the levy rates established and reported to the department of management on or before June 30 following the tax year in which the major addition was acquired shall be applied to the prorated assessed value of the major addition and provided that section 437A.19, subsection 2, paragraph “b”, subparagraph (2), is in any event applicable. For purposes of this paragraph, “*prorated assessed value of the major addition*” means the assessed value of the major addition as of January 1 of the year following the tax year in which the major addition was acquired multiplied by the percentage derived by dividing the number of months that the major addition existed during the tax year by twelve, counting any portion of a month as a full month.

f. Notwithstanding the provisions of this section, if a taxpayer is a municipal utility or a municipal owner of an electric power facility financed under the provisions of chapter 28F or 476A, the assessed value, other than the local amount, of a new electric power generating plant shall be allocated to each taxing district in which the municipal utility or municipal owner is serving customers and has electric meters in operation in the ratio that the number of operating electric meters of the municipal utility or municipal owner located in the taxing district bears to the total number of operating electric meters of the municipal utility or municipal owner in the state as of January 1 of the tax year. If the municipal utility or municipal owner of an electric power facility financed under the provisions of chapter 28F or 476A has a new electric power generating plant but the municipal utility or municipal owner has no operating electric meters in this state, the municipal utility or municipal owner shall pay the replacement generation tax associated with the new electric power generating plant allocation of the local amount to the county treasurer of the county in which the local amount is located and shall remit the remain-

ing replacement generation tax, if any, to the director at the times contained in section 437A.8, subsection 4, for remittance of the tax to the county treasurers. All remaining replacement generation tax revenues received by the director shall be deposited in the property tax relief fund created in section 426B.1, and shall be distributed as provided in section 426B.2.

4. On or before August 31 following tax years 1999, 2000, and 2001, each county treasurer shall compute a special utility property tax levy or tax credit for each taxpayer for which a replacement tax liability for each such tax year is reported to the county treasurer pursuant to subsection 1, and shall notify the taxpayer of the amount of such tax levy or tax credit. The amount of the special utility property tax levy or credit shall be determined for each taxpayer by the county treasurer by comparing the taxpayer's total replacement tax liability allocated to taxing districts in the county pursuant to this section with the anticipated tax revenues from the taxpayer for all taxing districts in the county. If the taxpayer's total replacement tax liability allocated to taxing districts in the county is less than the anticipated tax revenues from the taxpayer for all taxing districts in the county, the county treasurer shall levy a special utility property tax equal to the shortfall which shall be added to and collected with the replacement tax owed by the taxpayer to the county treasurer for the tax year pursuant to section 437A.8, subsection 4. If the taxpayer's total replacement tax liability allocated to taxing districts in the county exceeds the anticipated tax revenues from the taxpayer for all taxing districts in the county, the county treasurer shall issue a credit to the taxpayer which shall be applied to reduce the taxpayer's replacement tax liability to the county treasurer for the tax year. If the taxpayer's total replacement tax liability allocated to taxing districts in the county equals the anticipated tax revenues from the taxpayer for all taxing districts in the county, no levy or credit is required. Replacement tax liability for purposes of this subsection means replacement tax liability before credits allowed by section 437A.8, subsection 7. A recalculation of a special utility property tax levy or credit shall not be made as a result of a subsequent recalculation of replacement tax liability under section 437A.8, subsection 7, or adjustment to assessed value under section 437A.19, subsection 2, paragraph "f". "*Anticipated tax revenues from a taxpayer*" means the product of the total levy rates imposed by the taxing districts and the value of taxpayer property allocated to the taxing districts and reported to the county auditor. Special utility property tax levies and credits shall be treated as replacement taxes for purposes of section 437A.11. If a special utility property tax levy payment becomes delinquent, the delinquent payment shall accrue interest and penalty in the same manner and amount as the replacement tax under section 437A.13.

It is the intent of the general assembly that the general assembly evaluate the impact of the imposition of the replacement tax for purposes of determining whether this subsection shall remain in effect and whether a determination shall be made as to the necessity of a recalculation as provided in this subsection for tax years beginning after tax year 2000.

5. The replacement tax, as adjusted by any special utility property tax levy or credit and remitted to a county treasurer by each taxpayer, shall be treated as a property tax when received and shall be disposed of by the county treasurer as taxes on real estate. Notwithstanding the allocation provisions of this section, nothing in this section shall deny any affected taxing entity, as defined in section 403.17, subsection 1, which has enacted an ordinance or entered into an agreement for the division and allocation of taxes authorized under section 403.19 and under which ordinance or agreement the taxes collected in respect of properties owned by any of the taxpayers remitting replacement taxes pursuant to the provisions of this chapter are being divided and allocated, the right to receive its share of the replacement tax revenues collected for any year which would otherwise be paid to such affected taxing entity under the terms of any such ordinance or agreement had this chapter not been enacted. To the extent that adjustment must be made to the allocation described in this section to give effect to the terms of such ordinances or agreements, the department of management and the county treasurer shall make such adjustments.

6. In lieu of the adjustment provided for in subsection 5, the assessed value of property described in section 403.19, subsection 1, may be reduced by the city or county by the amount of the taxable value of the property described in section 437A.16 included in such area on January 1, 1997, pursuant to amendment of the ordinance adopted by such city or county pursuant to section 403.19.

7. *a.* The department of management, in consultation with the department of revenue, shall coordinate the utility replacement tax task force and provide staffing assistance to the task force. It is the intent of the general assembly that the task force include representatives of the department of management, department of revenue, electric companies, natural gas companies, municipal utilities, electric cooperatives, counties, cities, school boards, and industrial, commercial, and residential consumers, and other appropriate stakeholders. The director of the department of management and the director of revenue shall serve as co-chairpersons of the task force.

*b.* The task force shall study the effects of the replacement tax on local taxing authorities, local taxing districts, consumers, and taxpayers through January 1, 2010. If the task force recommends modifications to the replacement tax that will further the purposes of tax neutrality for local

taxing authorities, local taxing districts, taxpayers, and consumers, consistent with the stated purposes of this chapter, the department of management shall transmit those recommendations to the general assembly.

2007 Acts, ch 150, §2  
Subsection 7, unnumbered paragraph 1 editorially designated as paragraph a  
Subsection 7, unnumbered paragraph 2 amended and editorially designated as paragraph b

**437A.19 Adjustment to assessed value — reporting requirements.**

1. *a.* A taxpayer whose property is subject to the statewide property tax shall report to the director by July 1, 1999, and by May 1 of each subsequent tax year, on forms prescribed by the director, the book value, as of the beginning and end of the preceding calendar year, of all of the following:

(1) The local amount of any major addition by local taxing district.

(2) The statewide amount of any major addition without notation of location.

(3) Any building in Iowa at acquisition cost of more than ten million dollars that was originally placed in service by the taxpayer prior to January 1, 1998, and that was transferred or disposed of in the preceding calendar year, by local taxing district.

(4) Any electric power generating plant in Iowa at acquisition cost of more than ten million dollars that was originally placed in service by the taxpayer prior to January 1, 1998, and that was transferred or disposed of in the preceding calendar year, by local taxing district.

(5) All other taxpayer property without notation of location.

(6) The local amount of any major addition eligible for the urban revitalization exemption provided for in chapter 404, by situs.

(7) All other transferred taxpayer property, in addition to any transferred property reported under subparagraphs (3) and (4), by local taxing district.

*b.* For purposes of this section:

(1) “*Book value*” means acquisition cost less accumulated depreciation determined under generally accepted accounting principles.

(2) “*Taxpayer property*” means property described in section 437A.16.

(3) “*To dispose of*” means to sell, abandon, de-commission, or retire an asset.

(4) “*Transfer*” means a transaction which results in a change of ownership of taxpayer property and includes a capital lease transaction.

*c.* For purposes of this subsection, “*taxpayer*” includes a person who would have been a taxpayer in calendar year 1998 had the provisions of this chapter been in effect for the 1998 assessment year.

*d.* If a taxpayer owns or leases pursuant to a capital lease less than the entire interest in a major addition, the local amount and statewide

amount, if any, of such major addition shall be apportioned to the taxpayer on the basis of its percentage interest in such major addition.

2. Beginning January 1, 1999, the assessed value of taxpayer property shall be adjusted annually as provided in this section. The director, with respect to each taxpayer, shall do all of the following:

*a.* Adjust the assessed value of taxpayer property in each local taxing district by the change in book value during the preceding calendar year of the local amount of any major addition reported within such local taxing district.

*b.* Adjust the assessed value of taxpayer property in each local taxing district by allocating the change in book value during the preceding calendar year of the statewide amount and all other taxpayer property described in subsection 1, paragraph “*a*”, subparagraph (5), to the assessed value of all taxpayer property in the state pro rata according to its preadjustment value. Any value for a taxpayer owning, or owning an interest in, a new electric power generating plant in excess of a local amount, where such taxpayer owns no other taxpayer property in this state, shall not be allocated to any local taxing districts.

*c.* In the case of taxpayer property described in subsection 1, paragraph “*a*”, subparagraphs (3), (4), and (7), decrease the assessed value of taxpayer property in each local taxing district by the assessed value reported within such local taxing district.

*d.* In the event of a merger or consolidation of two or more taxpayers, to determine the assessed value of the surviving taxpayer, combine the assessed values of such taxpayers immediately prior to the merger or consolidation.

*e.* In the event any taxpayer property is eligible for the urban revitalization tax exemption described in chapter 404, adjust the assessed value of taxpayer property within each affected local taxing district to reflect such exemption.

*f.* In the event the base year assessed value of taxpayer property is adjusted as a result of taxpayer appeals, reduce the assessed value of taxpayer property in each local taxing district to reflect such adjustment. The adjustment shall be allocated in proportion to the allocation of the taxpayer’s assessed value among the local taxing districts determined without regard to this adjustment. An adjustment to the base year assessed value of taxpayer property shall be made as of January 1 of the year following the date on which the adjustment is finally determined.

In no event shall the adjustments set forth in this subsection reduce the assessed value of taxpayer property in any local taxing district below zero.

The director, on or before August 31 of each assessment year, shall report to the department of management and to the auditor of each county the adjusted assessed value of taxpayer property as of



January 1 of such assessment year for each local taxing district. For purposes of this subsection, the assessed value of taxpayer property in each local taxing district subject to adjustment under this section by the director means the assessed value of such property as of the preceding January 1 as determined and allocated among the local taxing districts by the director.

Nothing in this chapter shall be interpreted to authorize local taxing authorities to exclude from the calculation of levy rates the taxable value of taxpayer property reported to county auditors pursuant to this subsection.

In addition to reporting the assessed values as described in this subsection, the director, on or before October 31 of each assessment year, shall also report to the department of management and to the auditor of each county the taxable value of taxpayer property as of January 1 of such assessment year for each local taxing district. For purposes of this chapter, “taxable value” means the value for all property subject to the replacement tax annually determined by the director, by dividing the estimated annual replacement tax liability for that property by the prior year’s consolidated taxing district rate for the taxing district where that property is located, then multiplying the quotient by one thousand. A taxpayer who paid more than five hundred thousand dollars in replacement tax in the previous tax year or who believes their replacement tax liability will vary more than ten percent from the previous tax year shall report to the director by October 1 of the current calendar

year, on forms prescribed by the director, the estimated replacement tax liability that will be attributable to all of the taxpayer’s property subject to replacement tax for the current tax year. The department shall utilize the estimated replacement tax liability as reported by the taxpayer or the taxpayer’s prior year’s replacement tax amounts to estimate the current tax year’s taxable value for that property. Furthermore, a taxpayer who has a new major addition of operating property which is put into service for the first time in the current calendar year shall report to the director by October 1 of the current calendar year, or at the time the major addition is put into service, whichever time is later, on forms prescribed by the director, the cost of the major addition and, if not previously reported, shall report the estimated replacement taxes which that asset will generate in the current calendar year. For the purposes of computing the taxable value of property in a taxing district, the taxing district’s share of the estimated replacement tax liability shall be the taxing district’s percentage share of the “assessed value allocated by property tax equivalent” multiplied by the total estimated replacement tax. “Assessed value allocated by property tax equivalent” shall be determined by dividing the taxpayer’s current year assessed valuation in a taxing district by one thousand, and then multiplying by the prior year’s consolidated tax rate.

2007 Acts, ch 150, §3, 4  
Subsection 1, paragraph a amended  
Subsection 2, paragraphs b and c amended

## CHAPTER 441

### ASSESSMENT AND VALUATION OF PROPERTY

#### 441.73 Litigation expense fund.

1. A litigation expense fund is created in the state treasury. The litigation expense fund shall be used for the payment of litigation expenses incurred by the state to defend property valuations established by the director of revenue pursuant to section 428.24 and chapters 433, 434, 437, 437A, and 438, and for the payment of litigation expenses incurred by the state to defend the imposition of replacement taxes and statewide property taxes under chapter 437A.

2. If the director of revenue determines that foreseeable litigation expenses will exceed the amount available from appropriations made to the department of revenue, the director of revenue may apply to the executive council for use of funds on deposit in the litigation expense fund. The initial application for approval shall include an estimate of potential litigation expenses, allocated to each of the next four succeeding calendar quarters

and substantiated by a breakdown of all anticipated costs for legal counsel, expert witnesses, and other applicable litigation expenses.

3. The executive council may approve expenditures from the litigation expense fund on a quarterly basis. Prior to each quarter, the director of revenue shall report to the executive council and give a full accounting of actual litigation expenses to date as well as estimated litigation expenses for the remaining calendar quarters of the fiscal year. The executive council may adjust quarterly expenditures from the litigation expense fund based on this information.

4. The executive council shall transfer for the fiscal year beginning July 1, 1992, and each fiscal year thereafter, from funds established in sections 425.1 and 426.1, an amount necessary to pay litigation expenses. The amount of the fund for each fiscal year shall not exceed seven hundred thousand dollars. The executive council shall deter-

mine annually the proportionate amounts to be transferred from the two separate funds. At any time when no litigation is pending or in progress the balance in the litigation expense fund shall not exceed one hundred thousand dollars. Any excess

moneys shall be transferred in a proportionate amount back to the funds from which they were originally transferred.

2007 Acts, ch 185, §4  
Subsection 1 amended

## CHAPTER 445

### TAX COLLECTION

#### 445.3 Actions authorized.

In addition to all other remedies and proceedings now provided by law for the collection of taxes, the county treasurer may bring or cause an ordinary suit at law to be commenced and prosecuted in the treasurer's name for the use and benefit of the county for the collection of taxes from any person, as shown by the county system in the treasurer's office, and the suit shall be in all respects commenced, tried, and prosecuted to final judgment the same as provided for ordinary actions.

The commencement of actions for ad valorem taxes authorized under this section shall not begin until the issuance of a tax sale certificate under the requirements of section 446.19. The commencement of actions for all other taxes authorized under this section shall not begin until ten days after the publication of tax sale under the requirements of section 446.9, subsection 2. This paragraph does not apply to the collection of ad valorem taxes under section 445.32, and grain handling taxes under section 428.35.

Notwithstanding the provisions in section 535.3, interest on the judgment shall be at the rate provided in section 447.1 and shall commence from the month of the commencement of the ac-

tion. This interest shall be in lieu of the interest assessed under section 445.39 from and after the month of the commencement of the action.

An appeal may be taken to the Iowa supreme court as in other civil cases regardless of the amount involved.

Notwithstanding any other provisions in this section, if the treasurer is unable or has reason to believe that the treasurer will be unable to offer land at the annual tax sale to collect the total amount due, the treasurer may immediately collect the total amount due by the commencement of an action under this section.

Notwithstanding any other provision of law, if a statute authorizes the collection of a delinquent tax, assessment, rate, or charge by tax sale, the tax, assessment, rate, or charge, including interest, fees, and costs, may also be collected under this section and section 445.4.

This section is remedial and shall apply to all delinquent taxes included in a tax sale certificate of purchase issued to a county. Upon assignment of a county-held tax sale certificate, this section shall not apply to the assignee.

2007 Acts, ch 185, §5  
Limitations of actions, see §614.1  
Unnumbered paragraph 2 amended

## CHAPTER 446

### TAX SALES

#### 446.7 Annual tax sale.

1. Annually, on the third Monday in June the county treasurer shall offer at public sale all parcels on which taxes are delinquent. The sale shall be made for the total amount of taxes, interest, fees, and costs due. If for good cause the treasurer cannot hold the annual tax sale on the third Monday of June, the treasurer may designate a different date in June for the sale.

2. Parcels against which the county holds a tax sale certificate or a municipality holds a tax sale certificate acquired under section 446.19, parcels of municipal and political subdivisions of the state of Iowa, or parcels of the state or its agencies, shall not be offered or sold at tax sale and a tax sale of

those parcels is void from its inception. When taxes are owing against parcels owned or claimed by a municipal or political subdivision of the state of Iowa, or parcels of the state or its agencies, the treasurer shall give notice to the appropriate governing body which shall then pay the total amount due. If the governing body fails to pay the total amount due, the board of supervisors shall abate the total amount due.

2007 Acts, ch 54, §37  
Former unnumbered paragraph 1 designated as subsection 1  
Former unnumbered paragraph 2 amended and designated as subsection 2

#### 446.17 Sale continued.

1. The county treasurer shall continue the sale

from day to day as long as there are bidders or until all delinquent parcels have been offered for sale.

2. If notice of annual tax sale has been published under section 446.9, Code 1991, the notice is valid and further notice is not required for an adjourned sale held under this section, unless it is a public bidder sale.

2007 Acts, ch 22, §77  
Section amended and unnumbered paragraphs 1 and 2 numbered editorially as subsections 1 and 2

**446.19A Purchase by county or city for use as housing.**

1. The board of supervisors of a county may adopt an ordinance authorizing the county and each city in the county to bid on and purchase delinquent taxes and to assign tax sale certificates of abandoned property or vacant lots. This section may only be used by a county or by a city in the county if such an ordinance is in effect.

2. On the day of the regular tax sale or any continuance or adjournment of the tax sale, the county or a city may bid for abandoned property assessed as residential property or as commercial multifamily housing property or for a vacant lot a sum equal to the total amount due. Money shall not be paid by the county or city for the purchase, but each of the tax-levying and tax-certifying bodies having any interest in the taxes shall be charged with the total amount due the tax-levying or tax-certifying body as its just share of the purchase price. Prior to the purchase, the county or city shall file with the county treasurer a verified statement that a parcel to be purchased is abandoned property and that the parcel is suitable for use as housing following rehabilitation or that a parcel to be purchased is a vacant lot.

3. If after the date that a parcel is sold pursuant to this chapter, or after the date that a parcel is sold under section 446.18, the parcel assessed as residential property or as commercial multifamily housing property is identified as abandoned or as a vacant lot pursuant to a verified statement filed with the county treasurer by a city or county in the form set forth in subsection 2, a city or county may require the assignment of the tax sale certificate that had been issued for such parcel by paying to the holder of such certificate the total amount due on the date the assignment of the certificate is made to the county or city and recorded with the county treasurer. If a certificate holder fails to assign the certificate of purchase to the city or county, the county treasurer is authorized to issue a duplicate certificate of purchase, which shall take the place of the original certificate, and assign the duplicate certificate to the city or county. If the certificate is not assigned by the county or city pursuant to subsection 4, the county or city, whichever is applicable, is liable for the tax sale interest that was due the certificate holder pursuant to section 447.1, as of the date of assignment.

4. *a.* The city or county may assign the tax sale certificate obtained pursuant to this section. Persons who purchase certificates from the city or county under this subsection are liable for the total amount due the certificate holder pursuant to section 447.1.

*b.* All persons who purchase certificates from the city or county under this subsection shall demonstrate the intent to rehabilitate the abandoned property for habitation or build a residential structure on the vacant lot if the property is not redeemed. In the alternative, the county or city may, if title to the property has vested in the county or city under section 448.1, dispose of the property in accordance with section 331.361 or 364.7, as applicable.

5. For purposes of this section:

*a.* “*Abandoned property*” means a lot or parcel containing a building which is used or intended to be used for residential purposes and which has remained vacant and has been in violation of the housing code of the city in which the property is located or of the housing code applicable in the county in which the property is located if outside the limits of a city, for a period of six consecutive months.

*b.* “*Vacant lot*” means a lot or parcel located in a city or outside the limits of a city in a county that contains no buildings or structures and that is zoned to allow for residential structures.

2007 Acts, ch 54, §38; 2007 Acts, ch 126, §72  
2004 amendments to subsections 2 and 4 are effective May 17, 2004, and apply to delinquent property taxes sold at a tax sale held on or after that date; 2004 Acts, ch 1165, §11, 12

2005 amendments to this section take effect April 19, 2005, and apply to parcels sold at tax sales occurring on or after June 1, 2005; 2005 Acts, ch 34, §26

See Code editor’s note to §29A.28  
Subsection 3 amended

**446.20 Remedies.**

1. Without limiting the county’s rights under section 445.3, once a certificate is issued to a county, a county may collect the total amount due by the alternative remedy provided in section 445.3 by converting the total amount due to a personal judgment. Entrance of the judgment shall be shown on the county system. Collection of the judgment may then be initiated as provided in section 445.4. The county attorney shall, upon request of the county treasurer, assist in prosecution of action authorized under this section and sections 445.3 and 445.4.

The remedies associated with tax sale and personal judgment may be simultaneously pursued until such time as the total amount due has been collected or otherwise discharged. If the total amount due is collected pursuant to a personal judgment, the tax sale shall be canceled by the treasurer. If a tax deed is issued, any personal judgment shall be released and a satisfaction of judgment shall be filed with the clerk of the appropriate district court.

2. If the board or council determines that any

property located on a parcel purchased by the county or city pursuant to section 446.19 requires removal, dismantling, or demolition, the board or council shall, at the same time and in the same manner that the notice of expiration of right of redemption is served, cause to be served on the person in possession of the parcel and also upon the person in whose name the parcel is taxed a separate notice stating that if the parcel is not redeemed within the time period specified in the notice of expiration of right of redemption, the property described in the notice shall be removed, dismantled, or demolished. The notice shall further state that the costs of removal, dismantling, or demolition shall be assessed against the person in whose name the parcel is taxed and a lien for the costs shall be placed against any other parcel taxed in that person's name within the county.

Service of the notice shall also be made by mail on any mortgagee having a lien upon the parcel, a vendor of the parcel under a recorded contract of sale, a lessor who has a recorded lease or memo-

randum of a recorded lease, and any other person who has an interest of record, at the person's last known address, if the mortgagee, vendor, lessor, or other person has filed a request for notice, as prescribed in section 446.9, subsection 3. The notice shall also be served on any city where the parcel is situated. Failure to receive a mailed notice is not a defense to the payment of the total amount due.

3. This section is remedial and shall apply to all delinquent taxes included in a tax sale certificate of purchase issued to a county. Upon assignment of a county-held tax sale certificate, this section shall not apply to the assignee.

2007 Acts, ch 126, §73  
Subsection 2, unnumbered paragraph 2 amended

**446.38 Suspended taxes of supplementary assistance recipients.** Repealed by 2007 Acts, ch 126, § 115.

**446.39 Iowa finance authority statement.** Repealed by 2007 Acts, ch 54, § 45.

## CHAPTER 447

### TAX REDEMPTION

#### 447.1 Redemption — terms.

A parcel sold under this chapter and chapter 446 may be redeemed at any time before the right of redemption expires, by payment to the county treasurer, to be held by the treasurer subject to the order of the purchaser, of the amount for which the parcel was sold, including the fee for the certificate of purchase, and interest of two percent per month, counting each fraction of a month as an entire month, from the month of sale, and the total amount paid by the purchaser or the purchaser's assignee for any subsequent year, with interest at the same rate added on the amount of the payment for each subsequent year from the month of payment, counting each fraction of a month as an entire month. The amount of interest must be at least one dollar and shall be rounded to the nearest whole dollar. Interest shall accrue on subsequent amounts as provided in section 446.32. The redemption must be received by the treasurer on or before the last day of the month to avoid additional interest being added to the amount necessary to redeem. However, if the last day of a month falls on a Saturday, Sunday, or a holiday, the payment must be received by the treasurer by the close of business on the first business day of the following month.

When the county or city is the certificate holder of the parcel redeemed from a sale held under section 446.19, the redemption amount shall be apportioned among the several funds for which the taxes were levied. All interest, costs, and fees

shall be apportioned to the general fund of the county regardless of who is the certificate holder. If a city is the certificate holder of the parcel redeemed from a sale held under section 446.7 or 446.28, the city shall be entitled to the total amount redeemed.

Tax sale certificate fee, §331.552(23)  
2006 amendment to unnumbered paragraph 1 takes effect April 20, 2006, and applies to parcels sold at tax sales held on or after June 1, 2006;  
2006 Acts, ch 1070, §31  
Section not amended; footnote revised

#### 447.9 Notice of expiration of right of redemption — county right of redemption.

1. After one year and nine months from the date of sale, or after nine months from the date of a sale made under section 446.18, or after three months from the date of a sale made under section 446.19A or 446.19B, the holder of the certificate of purchase may cause to be served upon the person in possession of the parcel, and also upon the person in whose name the parcel is taxed, a notice signed by the certificate holder or the certificate holder's agent or attorney, stating the date of sale, the description of the parcel sold, the name of the purchaser, and that the right of redemption will expire and a deed for the parcel be made unless redemption is made within ninety days from the completed service of the notice. The notice shall be served by both regular mail and certified mail to the person's last known address and such service is deemed completed when the notice by certified mail is deposited in the mail and postmarked for

delivery. The ninety-day redemption period begins as provided in section 447.12. When the notice is given by a county as a holder of a certificate of purchase the notice shall be signed by the county treasurer or the county attorney, and when given by a city, it shall be signed by the city officer designated by resolution of the council. When the notice is given by the Iowa finance authority or a city or county agency holding the parcel as part of an Iowa homesteading project, it shall be signed on behalf of the agency or authority by one of its officers, as authorized in rules of the agency or authority.

2. Service of the notice shall be made by mail on any mortgagee having a lien upon the parcel, a vendor of the parcel under a recorded contract of sale, a lessor who has a recorded lease or recorded memorandum of a lease, and any other person who has an interest of record, at the person's last known address. The notice shall be served on any city where the parcel is situated. Notice shall not be served after the filing of the affidavit required by section 447.12. Only those persons who are required to be served the notice of expiration as provided in this section or who have acquired an interest in or possession of the parcel subsequent to the filing of the notice of expiration of the right of redemption are eligible to redeem a parcel from tax sale.

3. The county in which the parcel is located has the right of redemption for owner-occupied residential parcels as provided in this subsection. If a person is unable to contribute to the public revenue, the person may file a petition, duly sworn to, with the board of supervisors, stating that fact and giving a statement of parcels, as defined in section 445.1, owned or possessed by the petitioner, and other information as the board may require. The board of supervisors may order the county auditor to redeem a parcel owned or possessed by the petitioner from the holder of a certificate of purchase upon payment by the county to the certificate holder of the amount necessary to redeem under section 447.1. Each of the tax-levying and tax-certifying bodies having any interest in the taxes shall be charged with the total amount due the tax-levying or tax-certifying body as its just share of the purchase price, and that amount shall be deducted from the next month's disbursement made by the county to the tax-levying or tax-certifying body. Interest paid by the county to the certificate holder pursuant to section 447.1 shall be paid solely by the county and shall not be charged against the other tax-levying and tax-certifying bodies. Taxes charged and paid by the tax-levying or tax-certifying body in this manner shall be treated as suspended taxes pursuant to sections 427.8 through 427.12. Notwithstanding section 447.14, a county may redeem pursuant to this subsection for tax sales held before, on, or after July 1, 1998. A county may limit the number of times a taxpayer

may file a petition for assistance under this subsection.

2007 Acts, ch 54, §39  
Management when county acquires deed, chapter 569  
Service of original notice, R.C.P. 1.302 – 1.315  
Subsection 1 amended

#### **447.12 When service deemed complete — presumption.**

Service is complete only after an affidavit has been filed with the county treasurer, showing the making of the service, the manner of service, the time when and place where made, under whose direction the service was made, and costs incurred as provided in section 447.13. Costs not filed with the treasurer before a redemption is complete shall not be collected by the treasurer. Costs shall not be filed with the treasurer prior to the filing of the affidavit. The affidavit shall be made by the holder of the certificate or by the holder's agent or attorney, and in either of the latter cases stating that the affiant is the agent or attorney of the holder of the certificate. The affidavit shall be filed by the treasurer and entered in the county system and is presumptive evidence of the completed service of the notice. The right of redemption shall not expire until ninety days after service is complete. A redemption shall not be considered valid unless received by the treasurer prior to the close of business on the ninetieth day from the date of completed service except in the case of a public bidder certificate held by the county in which case the county may accept a redemption at any time prior to the issuance of the tax deed. However, if the ninetieth day falls on a Saturday, Sunday, or a holiday, payment of the total redemption amount must be received by the treasurer before the close of business on the first business day following the ninetieth day. The date of postmark of a redemption shall not be considered as the day the redemption was received by the treasurer for purposes of the ninety-day time period.

2007 Acts, ch 54, §40  
Section amended

#### **447.13 Cost — fee — report.**

1. The cost of serving the notice, including the cost of sending certified mail notices, and the cost of publication under section 447.10, if publication is required, shall be added to the amount necessary to redeem. The cost of a record search shall also be added to the amount necessary to redeem. However, if the certificate holder is other than a county, the search must be performed by an abstractor who is an active participant in the title guaranty program under section 16.91 or by an attorney licensed to practice law in the state of Iowa, and the amount of the cost of the record search that may be added to the amount necessary to redeem shall not exceed three hundred dollars.

2. The county treasurer shall file the proof of service and statement of costs and record these costs against the parcel. The certificate holder or

the holder’s agent shall report in writing to the treasurer the amount of authorized costs incurred, and the treasurer shall file the statement. Costs not filed with the treasurer before a redemption is complete shall not be collected by the trea-

surer and may be recovered through a court action against the parcel owner by the certificate holder.

2007 Acts, ch 54, §41  
Unnumbered paragraph 1 editorially designated as subsection 1  
Former unnumbered paragraph 2 amended and editorially designated as subsection 2

## CHAPTER 448

### TAX DEEDS

#### 448.15 Affidavit by tax-title holder.

1. After taking possession of the parcel, after the issuance and recording of a tax deed or an instrument purporting to be a tax deed issued by a county treasurer of this state, the then owner or holder of the title or purported title may file with the county recorder of the county in which the parcel is located an affidavit substantially in the following form:

State of Iowa, )  
..... County. ) ss.

I, ....., being first duly sworn, on oath depose and say that on ..... (date) the county treasurer issued a tax deed to ..... (grantee) for the following described parcel: ..... ; that the tax deed was filed for record in the office of the county recorder of ..... county, Iowa, on ..... (date), and appears in the records of that office in ..... county as document reference number ..... ; and that ..... claims title to an undivided ..... percent interest in the parcel by virtue of the tax deed, or purported tax title.

Any person claiming any right, title, or interest in or to the parcel adverse to the title or purported title by virtue of the tax deed referred to shall file a claim with the recorder of the county where the parcel is located, within one hundred twenty days after the filing of this affidavit, the claim to set forth the nature of the interest, also the time and manner in which the interest claimed was acquired. A person who files such a claim shall commence an action to enforce the claim within sixty days after the filing of the claim. If a claimant fails to file a claim within one hundred twenty days after the filing of this affidavit, or files a claim but fails to commence an action to enforce the claim within sixty days after the filing of the claim, the

claim thereafter shall be forfeited and canceled without any further notice or action, and the claimant thereafter shall be forever barred and estopped from having or claiming any right, title, or interest in the parcel adverse to the tax title or purported tax title.

.....  
Subscribed and sworn to before me this ..... day of ..... (month), ..... (year).  
.....  
Notary Public in and for  
..... County, Iowa.

2. An owner or holder of a title or purported title who has entered into a lease agreement conveying possessory rights in the parcel to a tenant in possession shall be deemed to be in possession for purposes of filing an affidavit under this section.

3. For purposes of this section, if a tax deed or instrument purporting to be a tax deed has been issued to convey an undivided interest in the parcel of less than one hundred percent, the owner or holder of the tax title or purported tax title shall be deemed to be in possession and entitled to file the affidavit in subsection 1. However, before filing the affidavit, the owner or holder of the tax title or purported tax title shall serve a copy of the affidavit on any other person in possession of the parcel by sending a copy of the affidavit by both regular and certified mail to the person at the address of the parcel or at the person’s last known address if different from the address of the parcel. Such service is deemed completed when the affidavit mailed by certified mail is postmarked for delivery. An affidavit of service shall be attached to, and filed with, the affidavit in subsection 1. The affidavit of service shall include the names and addresses of all persons served and the time of mailing.

2007 Acts, ch 101, §1  
Subsection 1 amended

**448.17 Indexing and recording of affidavits and claims.**

All affidavits and claims as provided for in sections 448.15 and 448.16, filed with the county recorder, shall be recorded as other instruments affecting parcels, and the entries required in those

sections and any applicable entries specified in sections 558.49 and 558.52 shall be indexed by the recorder.

2007 Acts, ch 101, §2  
Section amended

## CHAPTER 450

### INHERITANCE TAX

**450.4 Exemptions.**

The tax imposed by this chapter shall not be collected:

1. When the entire estate of the decedent does not exceed the sum of twenty-five thousand dollars after deducting the liabilities, as defined in this chapter.

2. When the property passes for a charitable, educational, or religious purpose as defined in sections 170(c) and 2055 of the Internal Revenue Code.

3. When the property passes to public libraries or public art galleries within this state, open to the use of the public and not operated for gain, or to hospitals within this state, or to trustees for such uses within this state, or to municipal corporations for purely public purposes.

4. On bequests for the care and maintenance of the cemetery or burial lot of the decedent or the decedent's family, and bequests not to exceed five hundred dollars in any estate of a decedent for the performance of a religious service or services by some person regularly ordained, authorized, or licensed by some religious society to perform such service, which service or services are to be performed for or in behalf of the testator or some person named in the testator's last will.

5. On the value of that portion of any lump sum or installment payments which will be includable as net income as defined in section 422.7 as received by a beneficiary under an annuity which

was purchased under an employee's pension or retirement plan.

6. On property in an individual development account in the name of the decedent that passes to another individual development account. For purposes of this subsection, "individual development account" means an account that has been certified as an individual development account pursuant to chapter 541A.

7. On the value of that portion of any lump sum or installment payments which are received by a beneficiary under an annuity which was purchased under an employee's pension or retirement plan where the employee is a nonresident of Iowa at the time of death.

8. On the value of that portion of any lump sum or installment payments which are received by a beneficiary under an annuity which was purchased under an employee's pension or retirement plan which was excluded from net income as set forth in section 422.7, subsection 31.

9. On the value of tangible personal property as defined in section 633.276 which is distributed in kind from the estate if the aggregate of all tangible personal property in the estate does not exceed five thousand dollars.

2007 Acts, ch 134, §2, 28  
2006 amendment to subsection 6 is effective March 29, 2006, and applies retroactively on and after January 1, 2006; 2006 Acts, ch 1016, §8

2007 amendment adding new subsection 9 applies to estates of decedents dying on or after July 1, 2007; 2007 Acts, ch 134, §28  
NEW subsection 9

## CHAPTER 452A

### MOTOR FUEL AND SPECIAL FUEL TAXES

**452A.3 Levy of excise tax.**

1. Except as otherwise provided in this section and in this division, until June 30, 2012, this subsection shall apply to the excise tax imposed on each gallon of motor fuel used for any purpose for the privilege of operating motor vehicles in this state.

a. The rate of the excise tax shall be based on the number of gallons of ethanol blended gasoline

that is distributed in this state as expressed as a percentage of the number of gallons of motor fuel distributed in this state, which is referred to as the distribution percentage. The department shall determine the percentage basis for each determination period beginning January 1 and ending December 31. The rate for the excise tax shall apply for the period beginning July 1 and ending June 30 following the end of the determination period.

b. The rate for the excise tax shall be as follows:

(1) If the distribution percentage is not greater than fifty percent, the rate shall be nineteen cents for ethanol blended gasoline and twenty cents for motor fuel other than ethanol blended gasoline.

(2) If the distribution percentage is greater than fifty percent but not greater than fifty-five percent, the rate shall be nineteen cents for ethanol blended gasoline and twenty and one-tenth cents for motor fuel other than ethanol blended gasoline.

(3) If the distribution percentage is greater than fifty-five percent but not greater than sixty percent, the rate shall be nineteen cents for ethanol blended gasoline and twenty and three-tenths cents for motor fuel other than ethanol blended gasoline.

(4) If the distribution percentage is greater than sixty percent but not greater than sixty-five percent, the rate shall be nineteen cents for ethanol blended gasoline and twenty and five-tenths cents for motor fuel other than ethanol blended gasoline.

(5) If the distribution percentage is greater than sixty-five percent but not greater than seventy percent, the rate shall be nineteen cents for ethanol blended gasoline and twenty and seven-tenths cents for motor fuel other than ethanol blended gasoline.

(6) If the distribution percentage is greater than seventy percent but not greater than seventy-five percent, the rate shall be nineteen cents for ethanol blended gasoline and twenty-one cents for motor fuel other than ethanol blended gasoline.

(7) If the distribution percentage is greater than seventy-five percent but not greater than eighty percent, the rate shall be nineteen and three-tenths cents for ethanol blended gasoline and twenty and eight-tenths cents for motor fuel other than ethanol blended gasoline.

(8) If the distribution percentage is greater than eighty percent but not greater than eighty-five percent, the rate shall be nineteen and five-tenths cents for ethanol blended gasoline and twenty and seven-tenths cents for motor fuel other than ethanol blended gasoline.

(9) If the distribution percentage is greater than eighty-five percent but not greater than ninety percent, the rate shall be nineteen and seven-tenths cents for ethanol blended gasoline and twenty and four-tenths cents for motor fuel other than ethanol blended gasoline.

(10) If the distribution percentage is greater than ninety percent but not greater than ninety-five percent, the rate shall be nineteen and nine-tenths cents for ethanol blended gasoline and twenty and one-tenth cents for motor fuel other than ethanol blended gasoline.

(11) If the distribution percentage is greater

than ninety-five percent, the rate shall be twenty cents for ethanol blended gasoline and twenty cents for motor fuel other than ethanol blended gasoline.

1A. Except as otherwise provided in this section and in this division, after June 30, 2012, an excise tax of twenty cents is imposed on each gallon of motor fuel used for any purpose for the privilege of operating motor vehicles in this state.

1B. An excise tax of seventeen cents is imposed on each gallon of E-85 gasoline as defined in section 214A.1, subject to the determination provided in subsection 1C.

1C. The rate of the excise tax on E-85 gasoline imposed in subsection 1B shall be determined based on the number of gallons of E-85 gasoline that are distributed in this state during the previous calendar year. The department shall determine the actual tax paid for E-85 gasoline for each period beginning January 1 and ending December 31. The amount of the tax paid on E-85 gasoline during the past calendar year shall be compared to the amount of tax on E-85 gasoline that would have been paid using the tax rate for gasoline imposed in subsection 1 or 1A and a difference shall be established. If this difference is equal to or greater than twenty-five thousand dollars, the tax rate for E-85 gasoline for the period beginning July 1 following the end of the determination period shall be the rate in effect as stated in subsection 1 or 1A.

2. For the privilege of operating aircraft in this state an excise tax of eight cents per gallon is imposed on the use of all aviation gasoline.

3. For the privilege of operating motor vehicles or aircraft in this state, there is imposed an excise tax on the use of special fuel in a motor vehicle or aircraft. The tax rate on special fuel for diesel engines of motor vehicles is twenty-two and one-half cents per gallon. The rate of tax on special fuel for aircraft is three cents per gallon. On all other special fuel, unless otherwise specified in this section, the per gallon rate is the same as the motor fuel tax. Indelible dye meeting United States environmental protection agency and internal revenue service regulations must be added to fuel before or upon withdrawal at a terminal or refinery rack for that fuel to be exempt from tax and the dyed fuel may be used only for an exempt purpose.

3A. For liquefied petroleum gas used as a special fuel, the rate of tax shall be twenty cents per gallon.

4. For compressed natural gas used as a special fuel, the rate of tax that is equivalent to the motor fuel tax shall be sixteen cents per hundred cubic feet adjusted to a base temperature of sixty degrees Fahrenheit and a pressure of fourteen and seventy-three hundredths pounds per square inch absolute.

5. The tax shall be paid by the following:

a. The supplier, upon the invoiced gross gal-



lonage of all motor fuel or undyed special fuel withdrawn from a terminal for delivery in this state.

Tax shall not be paid when the sale of alcohol occurs within a terminal from an alcohol manufacturer to an Iowa licensed supplier. The tax shall be paid by the Iowa licensed supplier when the invoiced gross gallonage of the alcohol or the alcohol part of ethanol blended gasoline is withdrawn from a terminal for delivery in this state.

b. The person who owns the fuel at the time it is brought into the state by a restrictive supplier or importer, upon the invoiced gross gallonage of motor fuel or undyed special fuel imported.

c. The blender on total invoiced gross gallonage of alcohol or other product sold to be blended with gasoline or special fuel.

d. Any other person who possesses taxable fuel upon which the tax has not been paid to a licensee.

However, the tax shall not be imposed or collected under this division with respect to motor fuel or special fuel sold for export or exported from this state to any other state, territory, or foreign country.

6. Thereafter, except as otherwise provided in this division, the per gallon amount of the tax shall be added to the selling price of every gallon of such motor fuel or undyed special fuel sold in this state and shall be collected from the purchaser so that the ultimate consumer bears the burden of the tax.

7. All excise taxes collected under this chapter by a supplier, restrictive supplier, importer, dealer, blender, user, or any individual are deemed to be held in trust for the state of Iowa.

2007 Acts, ch 215, §113, 114  
Subsection 1, unnumbered paragraph 1 amended  
Subsection 1A amended

#### **452A.31 Special terms.**

For purposes of this division, all of the following shall apply:

1. A determination period is any twelve-month period beginning on January 1 and ending on December 31.

2. a. A retail dealer's total gasoline gallonage is the total number of gallons of gasoline which the retail dealer sells and dispenses from all motor fuel pumps operated by the retail dealer in this state during a twelve-month period beginning January 1 and ending December 31. The retail dealer's total gasoline gallonage is divided into the following classifications:

(1) The total ethanol blended gasoline gallonage which is the retail dealer's total number of gallons of ethanol blended gasoline and which includes all of the following subclassifications:

(a) The total E-xx gasoline gallonage which is the total number of gallons of ethanol blended gasoline other than E-85 gasoline.

(b) The total E-85 gasoline gallonage which is the total number of gallons of E-85 gasoline.

(2) The total nonblended gasoline gallonage which is the total number of gallons of nonblended ethanol gasoline.

b. A retail dealer's total ethanol gallonage is the total number of gallons of ethanol which is a component of ethanol blended gasoline which the retail dealer sells and dispenses from motor fuel pumps as provided in paragraph "a" during a twelve-month period beginning January 1 and ending December 31.

3. a. A retail dealer's total diesel fuel gallonage is the total number of gallons of diesel fuel which the retail dealer sells and dispenses from all motor fuel pumps operated by the retail dealer in this state during a twelve-month period beginning January 1 and ending December 31. The retail dealer's total diesel fuel gallonage is divided into the following classifications:

(1) The total biodiesel blended fuel gallonage which is the retail dealer's total number of gallons of biodiesel blended fuel.

(2) The total nonblended diesel fuel gallonage which is the total number of gallons of diesel fuel which is not biodiesel or biodiesel blended fuel.

b. A retail dealer's total biodiesel gallonage is the total number of gallons of biodiesel which may or may not be a component of biodiesel blended fuel, and which the retail dealer sells and dispenses from motor fuel pumps as provided in paragraph "a" during a twelve-month period beginning January 1 and ending December 31.

4. a. The aggregate gasoline gallonage is the total number of gallons of gasoline which all retail dealers sell and dispense from all motor fuel pumps operated by the retail dealers in this state during a twelve-month period beginning January 1 and ending December 31. The aggregate gasoline gallonage is divided into the following classifications:

(1) The aggregate ethanol blended gasoline gallonage which is the aggregate total number of gallons of ethanol blended gasoline and which includes all of the following subclassifications:

(a) The aggregate E-xx gasoline gallonage which is the aggregate total number of gallons of ethanol blended gasoline other than E-85 gasoline.

(b) The aggregate E-85 gasoline gallonage which is the aggregate total number of gallons of E-85 gasoline.

(2) The aggregate nonblended gasoline gallonage, which is the aggregate number of gallons of nonblended ethanol gasoline.

b. The aggregate ethanol gallonage is the total number of gallons of ethanol which is a component of ethanol blended gasoline which all retail dealers sell and dispense from motor fuel pumps as provided in paragraph "a" during a twelve-month period beginning January 1 and ending December 31.

5. a. The aggregate diesel fuel gallonage is the

total number of gallons of diesel fuel which all retail dealers sell and dispense from all motor fuel pumps operated by the retail dealers in this state during a twelve-month period beginning January 1 and ending December 31. The aggregate diesel fuel gallonage is divided into the following classifications:

(1) The aggregate biodiesel blended fuel gallonage which is the aggregate number of gallons of biodiesel blended fuel.

(2) The aggregate nonblended diesel fuel gallonage which is the aggregate number of gallons of diesel fuel which is not biodiesel or biodiesel blended fuel.

*b.* The aggregate biodiesel gallonage is the total number of gallons of biodiesel which may or may not be a component of biodiesel blended fuel, and which all retail dealers sell and dispense from motor fuel pumps as provided in paragraph “*a*” during a twelve-month period beginning January 1 and ending December 31.

6. *a.* The aggregate ethanol distribution percentage is the aggregate ethanol gallonage expressed as a percentage of the aggregate gasoline gallonage calculated for a twelve-month period beginning January 1 and ending December 31.

*b.* The aggregate per gallon distribution percentage is the aggregate ethanol blended gasoline gallonage expressed as a percentage of the aggregate gasoline gallonage calculated for a twelve-month period beginning January 1 and ending December 31.

7. *a.* The aggregate biodiesel distribution percentage is the aggregate biodiesel gallonage expressed as a percentage of the aggregate diesel fuel gallonage calculated for a twelve-month period beginning January 1 and ending December 31.

*b.* The aggregate per gallon distribution percentage is the aggregate biodiesel blended fuel gallonage expressed as a percentage of the aggregate diesel fuel gallonage calculated for a twelve-month period beginning January 1 and ending December 31.

8. The aggregate biofuel distribution percentage is the sum of the aggregate ethanol gallonage plus the aggregate biodiesel gallonage expressed as a percentage of the sum of the aggregate gasoline gallonage plus the aggregate diesel fuel gallonage calculated for a twelve-month period beginning January 1 and ending December 31.

2007 Acts, ch 22, §78

Subsection 6, paragraph b amended

#### **452A.54 Fuel tax computation — refund — reporting and payment.**

1. Fuel tax liability under this division shall be computed on the total number of gallons of each kind of motor fuel and special fuel consumed in the operation in Iowa by commercial motor vehicles subject to this division at the same rate for each kind of fuel as would be applicable if taxed under division I of this chapter. A refund against the fuel

tax liability so computed shall be allowed, on excess Iowa motor fuel purchased, in the amount of fuel tax paid at the prevailing rate per gallon set out under division I of this chapter on motor fuel and special fuel consumed by commercial motor vehicles, the operation of which is subject to this division.

2. Notwithstanding any provision of this chapter to the contrary, except as provided in this section, the holder of a permanent international fuel tax agreement permit or license may make application to the state department of transportation for a refund, not later than the last day of the third month following the quarter in which the overpayment of Iowa fuel tax paid on excess purchases of motor fuel or special fuel was reported as provided in section 452A.8, and which application is supported by such proof as the state department of transportation may require. The state department of transportation shall refund Iowa fuel tax paid on motor fuel or special fuel purchased in excess of the amount consumed by such commercial motor vehicles in their operation on the highways of this state.

3. Application for a refund of fuel tax under this division must be made for each quarter in which the excess payment was reported, and will not be allowed unless the amount of fuel tax paid on the fuel purchased in this state, in excess of that consumed for highway operation in this state in the quarter applied for, is in an amount exceeding ten dollars. An application for a refund of excess Iowa fuel tax paid under this division which is filed for any period or in any manner other than herein set out shall not be allowed.

4. To determine the amount of fuel taxes due under this division and to prevent the evasion thereof, the state department of transportation shall require a quarterly report on forms prescribed by the state department of transportation. It shall be filed not later than the last day of the month following the quarter reported, and each quarter thereafter. These reports shall be required of all persons who have been issued a permit or license under this division and shall cover actual operation and fuel consumption in Iowa on the basis of the permit or license holder’s average consumption of fuel in Iowa, determined by the total miles traveled and the total fuel purchased and consumed for highway use by the permittee’s or licensee’s commercial motor vehicles in the permittee’s or licensee’s entire operation in all states to establish an overall miles per gallon ratio, which ratio shall be used to compute the gallons used for the miles traveled in Iowa. Failure to receive a quarterly report or fuel credentials by mail, facsimile transmission, or any other means of delivery does not relieve a person from the person’s fuel tax liability or from the requirement to display current fuel credentials.

5. Subject to compliance with rules adopted by the department, annual reporting may be permit-

ted in lieu of quarterly reporting. A licensee permitted to report annually shall maintain records in compliance with this chapter.

2007 Acts, ch 143, §29

Unnumbered paragraphs 1 – 3 editorially designated as subsections 1 – 3

Unnumbered paragraph 4 amended and designated as subsection 4

Unnumbered paragraph 5 designated as subsection 5

**452A.68 Power of department of revenue or the state department of transportation to cancel licenses.**

1. If a licensee files a false return of the data or information required by this chapter, or fails, refuses, or neglects to file a return required by this chapter, or to pay the full amount of fuel tax as required by this chapter, or is substantially delinquent in paying a tax due, owing, and administered by the department of revenue, and interest and penalty if appropriate, or if the person is a corporation and if any officer having a substantial legal or equitable interest in the ownership of the corporation owes any delinquent tax of the licensee corporation, or interest or penalty on the tax, administered by the department, then after ten days' written notice by mail directed to the last known address of the licensee setting a time and place at which the licensee may appear and show cause why the license should not be canceled, and if the licensee fails to appear or if upon the hearing it is shown that the licensee failed to correctly report or pay the tax, the appropriate state agency may cancel the license and shall notify the licensee of the cancellation by mail to the licensee's last known address.

2. If a licensee abuses the privileges for which the license was issued, fails to produce records reasonably requested, fails to extend reasonable cooperation to the appropriate state agency, or has been suspended for nonpayment of fees under chapter 326 and still owes fees to the department, the licensee shall be advised in writing of a hearing scheduled to determine if the license shall be canceled. The appropriate state agency upon the presentation of a preponderance of evidence may cancel a license for cause.

3. The director of the appropriate state agency may reissue a license which has been canceled for cause. As a condition of reissuance of a license, in addition to requirements for issuing a new license, the director may require a waiting period not to exceed ninety days before a license can be reissued or a new license issued. The director shall adopt rules specifying those instances for which a waiting period will be required.

4. Upon receipt of written request from any licensee the appropriate state agency shall cancel the license of the licensee effective on the date of receipt of the request. If, upon investigation, the appropriate state agency finds that a licensee is no longer engaged in the activities for which a license was issued and has not been so engaged for a peri-

od of six months, the state agency shall cancel the license and give thirty days' notice of the cancellation mailed to the last known address of the licensee.

2007 Acts, ch 143, §30

Unnumbered paragraph 1 editorially designated as subsection 1

Unnumbered paragraph 2 amended and designated as subsection 2

Unnumbered paragraphs 3 and 4 designated as subsections 3 and 4

**452A.79 Use of revenue.**

Except as provided in sections 452A.79A, 452A.82, and 452A.84, the net proceeds of the excise tax on the diesel special fuel and the excise tax on motor fuel and other special fuel, and penalties collected under the provision of this chapter, shall be credited to the road use tax fund.

2006 Acts, ch 1179, §59, 66

See §24.14

2006 amendment to this section takes effect July 1, 2007; 2006 Acts, ch 1179, §66

Section stricken and rewritten

**452A.79A Marine fuel tax fund.**

1. A marine fuel tax fund is created under the authority of the department of natural resources.

a. The fund shall consist of all revenues derived from the excise tax on the sale of motor fuel used in watercraft as provided in section 452A.84 and other moneys appropriated to the fund.

b. Notwithstanding section 12C.7, subsection 2, interest or earnings on moneys in the fund shall be credited to the fund. Notwithstanding section 8.33, any moneys credited to the fund from another fund shall not revert to the fund from which appropriated at the close of a fiscal year.

2. Moneys in the marine fuel tax fund are appropriated to the department of natural resources for use by the department in its recreational boating program, which may include but is not limited to any of the following:

a. Dredging and renovation of lakes of this state.

b. Acquisition, development, and maintenance of access to public boating waters.

c. Development and maintenance of boating facilities and navigation aids.

d. Administration, operation, and maintenance of recreational boating activities of the department of natural resources.

e. Acquisition, development, and maintenance of recreation facilities associated with recreational boating.

2006 Acts, ch 1179, §60, 66; 2007 Acts, ch 211, §44, 45

2006 enactment of this section is effective July 1, 2007; 2006 Acts, ch 1179, §66

NEW section

**452A.82 Aviation fuel tax fund.**

The portion of the moneys collected under this chapter received on account of aviation gasoline and special fuel used in aircraft shall be deposited in a separate fund to be maintained by the treasurer. All moneys remaining in the separate fund af-

ter the cost of administering the fund has been paid shall be credited to the state aviation fund created in section 328.56.

2006 Acts, ch 1179, §61, 66  
 2006 amendment to this section takes effect July 1, 2007; fifty percent of funds remaining after cost of administering this fund to be credited to general fund in fiscal year beginning July 1, 2007; 2006 Acts, ch 1179, §65, 66

Section amended

**452A.84 Transfer to marine fuel tax fund.**

The treasurer of state shall transfer from the motor fuel tax fund to the marine fuel tax fund that portion of moneys collected under this chapter attributable to motor fuel used in watercraft computed as follows:

1. Determine monthly the total amount of motor fuel tax collected under this chapter and multiply the amount by nine-tenths of one percent.

2. Subtract from the figure computed pursuant to subsection 1 of this section three percent of the figure for administrative costs and further subtract from the figure the amounts refunded to commercial fishers pursuant to section 452A.17, subsection 1, paragraph “a”, subparagraph (7). All moneys remaining after claims for refund and the cost of administration have been made shall be transferred to the marine fuel tax fund.

2006 Acts, ch 1179, §62, 66  
 2006 amendment to this section takes effect July 1, 2007; 2006 Acts, ch 1179, §66

Section amended

**CHAPTER 453A**

**CIGARETTE AND TOBACCO TAXES**

**453A.6 Tax imposed.**

1. There is imposed, and shall be collected and paid to the department, a tax on all cigarettes used or otherwise disposed of in this state for any purpose equal to six and eight-tenths cents on each cigarette.

2. The said tax shall be paid only once by the person making the “first sale” in this state, and shall become due and payable as soon as such cigarettes are subject to a “first sale” in Iowa, it being intended to impose the tax as soon as such cigarettes are received by any person in Iowa for the purpose of making a “first sale” of same. If the person making the “first sale” did not pay such tax, it shall be paid by any person into whose possession such cigarettes come until said tax has been paid in full. No person, however, shall be required to pay a tax on cigarettes brought into this state on or about the person in quantities of forty cigarettes or less, when such cigarettes have had the individual packages or seals thereof broken and when such cigarettes are actually used by said person and not sold or offered for sale.

3. Payment of the tax shall be evidenced by stamps purchased from the department by a distributor or manufacturer and securely affixed to each individual package of cigarettes in amounts equal to the tax as imposed by this chapter, or by the impressing of an indicium upon individual packages of cigarettes, under regulations prescribed by the director.

4. Any other person who purchases or is in possession of unstamped cigarettes shall pay the tax directly to the department.

5. The per cigarette amount of the tax shall be added to the selling price of every package of cigarettes sold in this state and shall be collected from the purchaser so that the ultimate consumer bears the burden of the tax.

6. All excise taxes collected under this division

by a distributor, manufacturer, or any individual are deemed to be held in trust for the state of Iowa.

7. Cigarettes shall be sold only in packages of twenty or more cigarettes.

2007 Acts, ch 17, §3, 4, 12  
 Inventory tax, §453A.40  
 Subsection 1 amended  
 NEW subsection 7

**453A.7 Printing and custody of stamps.**

1. The director of the department of administrative services shall have printed or manufactured, cigarette and little cigar tax stamps of such design, size, denomination, and type and in such quantities as may be determined by the director of revenue. The stamps shall be so manufactured as to render them easy to be securely attached to each individual package of cigarettes and little cigars or cigarette papers. The cigarette and little cigar tax stamps shall be in the possession of and under the control of the director of revenue and the director shall keep accurate records of all cigarette and little cigar tax stamps.

2. There is appropriated annually from the state treasury from funds not otherwise appropriated an amount sufficient to carry out the provisions of this section.

2007 Acts, ch 186, §33  
 See annual Iowa Acts for temporary exceptions, changes, or other non-codified enactments modifying the funding provided under this section  
 Unnumbered paragraph 1 editorially designated as subsection 1  
 Unnumbered paragraph 2 amended and designated as subsection 2

**453A.13 Distributor’s, wholesaler’s, and retailer’s permits.**

1. *Permits required.* Every distributor, wholesaler, cigarette vendor, and retailer, now engaged or who desires to become engaged in the sale or use of cigarettes, upon which a tax is required to be paid, shall obtain a state or retail cigarette permit as a distributor, wholesaler, cigarette vendor, or retailer, as the case may be.

2. *Issuance or denial.*

a. The department shall issue state permits to distributors, wholesalers, and cigarette vendors subject to the conditions provided in this division. Cities may issue retail permits to dealers within their respective limits. County boards of supervisors may issue retail permits to dealers in their respective counties, outside of the corporate limits of cities.

b. The department may deny the issuance of a permit to a distributor, wholesaler, vendor or retailer who is substantially delinquent in the payment of a tax due, or the interest or penalty on the tax, administered by the department at the time of application. If the applicant is a partnership, a permit may be denied if a partner is substantially delinquent on any delinquent tax, penalty or interest. If the applicant is a corporation, a permit may be denied if any officer having a substantial legal or equitable interest in the ownership of the corporation owes any delinquent tax, interest or penalty of the applicant corporation.

c. The department, or a city or county, shall submit a duplicate of any application for a retail permit and any retail permit issued by the entity under this subsection to the Iowa department of public health within thirty days of the issuance.

3. *Fees — expiration.* All permits provided for in this division shall expire on June 30 of each year. A permit shall not be granted or issued until the applicant has paid for the period ending June 30 next, to the department or the city or county granting the permit, the fees provided for in this division. The annual state permit fee for a distributor, cigarette vendor, and wholesaler is one hundred dollars when the permit is granted during the months of July, August, or September. However, whenever a state permit holder operates more than one place of business, a duplicate state permit shall be issued for each additional place of business on payment of five dollars for each duplicate state permit, but refunds as provided in this division do not apply to any duplicate permit issued.

The fee for retail permits is as follows when the permit is granted during the months of July, August, or September:

a. In places outside any city, fifty dollars.

b. In cities of less than fifteen thousand population, seventy-five dollars.

c. In cities of fifteen thousand or more population, one hundred dollars.

If any permit is granted during the months of October, November, or December, the fee shall be three-fourths of the above maximum schedule; if granted during the months of January, February, or March, one-half of the maximum schedule, and if granted during the months of April, May, or June, one-fourth of the maximum schedule.

4. *Refunds.*

a. An unrevoked permit for which the holder

has paid the full annual fee may be surrendered during the first nine months of said year to the officer issuing it, and the department, or the city or county granting the permit shall make refunds to the said holder as follows:

Three-fourths of the annual fee if the surrender is made during July, August, or September.

One-half of the annual fee if the surrender is made during October, November, or December.

One-fourth of the annual fee if the surrender is made during January, February, or March.

b. An unrevoked permit for which the holder has paid three-fourths of a full annual fee may be so surrendered during the first six months of the period covered by said payment and the said department, city or county shall make refunds to the holder as follows:

A sum equal to one-half of an annual fee if the surrender is made during October, November or December.

A sum equal to one-fourth of an annual fee if the surrender is made during January, February or March.

c. An unrevoked permit for which the holder has paid one-half of a full annual fee may be so surrendered during the first three months of the period covered by said payment, and the department, city or county, shall refund to the holder a sum equal to one-fourth of an annual fee.

5. *Application — bond.* Permits shall be issued only upon applications accompanied by the fee indicated above, and by an adequate bond as provided in section 453A.14, and upon forms furnished by the department upon written request. The failure to furnish such forms shall be no excuse for the failure to file the forms unless absolute refusal is shown. The forms shall set forth all of the following:

a. The manner under which the distributor, wholesaler, or retailer, transacts or intends to transact such business as a distributor, wholesaler, or retailer.

b. The principal office, residence, and place of business where the permit is to apply.

c. If the applicant is not an individual, the principal officers or members and their addresses.

d. Any other information as the director shall by rules prescribe.

6. *No sales without permit.* No distributor, wholesaler, cigarette vendor, or retailer shall sell any cigarettes until such application has been filed and the fee prescribed paid for a permit and until such permit is obtained and only while such permit is unrevoked and unexpired.

7. *Number of permits — trucks.* An application shall be filed and a permit obtained for each place of business owned or operated by a distributor, wholesaler, or retailer, excepting that no permit need be obtained for a delivery or sales truck of a distributor or wholesaler holding a permit, provided that the director may by regulation re-

quire that said truck bear the distributor's or wholesaler's name, and that the permit number of the place of business for and from which it operates be conspicuously displayed on the outside of the body of the truck, immediately under the name.

8. *Group business.* Any person who operates both as a distributor and wholesaler in the same place of business shall only be required to obtain a state permit for the particular place of business where such operation of said business is conducted. A separate retail permit, however, shall be required if any distributor or wholesaler sells cigarettes at both retail and wholesale.

9. *Permit — form and contents.* Each permit issued shall describe clearly the place of business for which it is issued, shall be nonassignable, consecutively numbered, designating the kind of permit, and shall authorize the sale of cigarettes in this state subject to the limitations and restrictions herein contained. The retail permits shall be upon forms furnished by the department or on forms made available or approved by the department.

10. *Permit displayed.* The permit shall, at all times, be publicly displayed by the distributor, wholesaler, or retailer at the place of business so as to be easily seen by the public and the persons authorized to inspect the place of business. The proprietor or keeper of any building or place where cigarettes and other tobacco products are kept for sale, or with intent to sell, shall upon request of any agent of the department or any peace officer exhibit the permit. A refusal or failure to exhibit the permit is prima facie evidence that the cigarettes or other tobacco products are kept for sale or with intent to sell in violation of this division.

2007 Acts, ch 186, §34, 35  
Subsections 5 and 9 amended  
NEW subsection 10

#### **453A.15 Records and reports of permit holders.**

1. The director may prescribe the forms necessary for the efficient administration of this division and may require uniform books and records to be used and kept by each permit holder or other person as deemed necessary. The director may also require each permit holder or other person to keep and retain in the director's possession evidence on prescribed forms of all transactions involving the purchase and sale of cigarettes or the purchase and use of stamps. The evidence shall be kept for a period of three years from the date of each transaction, for the inspection at all times by the department.

2. Where a state permit holder sells cigarettes at retail, the holder shall be required to maintain detailed records for sales of cigarettes to be sold at retail and the cigarette sales records shall be kept separate and apart.

3. The director may by regulation require ev-

ery holder of a manufacturer's or state permit or other person to make and deliver to the department on or before the tenth day of each month a report or reports for the preceding calendar month, upon a form or forms prescribed by the director, and may require that the reports shall be properly sworn to and executed by the permit holder or the holder's duly authorized representative or other person.

4. Every permit holder or other person shall, when requested by the department, make additional reports as the department deems necessary and proper and shall at the request of the department furnish full and complete information pertaining to any transaction of the permit holder or other person involving the purchase or sale or use of cigarettes or purchase of cigarette stamps.

5. Every person engaged in the business of selling cigarettes in interstate commerce only, who has, by furnishing the bond required in section 453A.14, been permitted to set aside or store cigarettes in this state for the conduct of such interstate business without the stamps affixed thereto, shall be required to keep such records and make such reports to the department as are required by the department.

6. If any distributor, manufacturer, or other person fails or refuses to pay any tax, penalties, or cost of audit hereinafter provided, and it becomes necessary to bring suit or to intervene in any manner for the establishment or collection of said claims, in any judicial proceedings, any report filed in the office of the director by the distributor, manufacturer, or other person, or the distributor's, manufacturer's, or other person's representative, or a copy thereof, certified to by the director, showing the number of cigarettes sold by the distributor, the distributor's representative, the manufacturer, or the other person, upon which a tax, penalty, or cost of audit has not been paid, or any audit made by the department from the books or records of the distributor, manufacturer, or other person when signed and sworn to by the agent of the department making the audit as being made from the records of the distributor, manufacturer, or other person from or to whom the distributor, manufacturer, or other person has bought, received, or delivered cigarettes, whether from a transportation company or otherwise, such report or audit shall be admissible in evidence in such proceedings and shall be prima facie evidence of the contents thereof. However, the incorrectness of the report or audit may be shown.

7. The director may require by rule that reports required to be made under this division be filed by electronic transmission.

2007 Acts, ch 186, §36, 37  
Subsection 2 amended  
NEW subsection 7

#### **453A.18 Forms for records and reports.**

The department shall furnish or make available

in electronic form, without charge, to holders of the various permits, forms in sufficient quantities to enable permit holders to make the reports required to be made under this division. The permit holders shall furnish at their own expense the books, records, and invoices, required to be used and kept, but the books, records, and invoices shall be in exact conformity to the forms prescribed for that purpose by the director, and shall be kept and used in the manner prescribed by the director. However, the director may, by express order in certain cases, authorize permit holders to keep their records in a manner and upon forms other than those prescribed. The authorization may be revoked at any time.

2007 Acts, ch 186, §38  
Section amended

#### **453A.24 Carrier to permit access to records.**

1. Every common carrier or person in this state having custody of books or records showing the transportation of cigarettes both interstate and intrastate shall give and allow the department free access to those books and records.

2. The director may require by rule that common carriers or the appropriate persons provide monthly reports to the department detailing all information the department deems necessary on shipments into and out of Iowa of cigarettes and tobacco products as set forth in this division I and division II of this chapter. The director may require by rule that the reports be filed by electronic transmission.

2007 Acts, ch 186, §39  
Section amended

#### **453A.25 Administration.**

1. The director shall administer the provisions of this chapter, and shall collect, supervise, and enforce the collection of all taxes and penalties that may be due under the provisions of this chapter.

2. The director may make and publish rules, not inconsistent with this chapter, necessary and advisable for its detailed administration, enforce the provisions thereof, and collect the taxes and fees herein imposed. The director may promulgate rules hereunder providing for the refund on stamps which by reason of damage become unfit for sale or use.

3. The director may designate employees to administer and enforce the provisions of this chapter, including the collection of all taxes provided for in this chapter. In the enforcement, the director may request aid from the attorney general, the special agents of the state, any county attorney, or any peace officer. The director may appoint clerks and additional help as may be needed to administer this chapter.

2007 Acts, ch 186, §40  
Subsection 3 amended

#### **453A.30 Assessment of cost of audit.**

The department may employ auditors or other persons to audit and examine the books and records of any permit holder or other person dealing in cigarettes to ascertain whether the permit holder or other person has paid the amount of the taxes required to be paid by the holder or person or filed all reports containing all required information as specified by the department under the provisions of this chapter. If such taxes have not been paid or such reports not filed, as required, the department shall assess against the permit holder or other person, as additional penalty, the reasonable expenses and costs of the investigation and audit.

2007 Acts, ch 186, §41  
Section amended

#### **453A.31 Civil penalty for certain violations.**

If a permit holder fails to keep any of the records required to be kept by the provisions of this division, or sells cigarettes upon which a tax is required to be paid by this division without at the time having a valid permit, or if a distributor, wholesaler, manufacturer, or distributing agent fails to make reports to the department as required, or makes a false or incomplete report to the department, or if a distributing agent stores unstamped cigarettes in the state or distributes or delivers unstamped cigarettes within this state without at the time of storage or delivery having a valid permit, or if a person purchases or is in possession of unstamped cigarettes, or if a person affected by this division fails or refuses to abide by any of its provisions or the rules adopted under this division, the person is civilly liable to the state for a penalty as follows:

1. For possession of unstamped cigarettes:
  - a. A two hundred dollar penalty for the first violation if a person is in possession of more than forty but not more than four hundred unstamped cigarettes.
  - b. A five hundred dollar penalty for the first violation if a person is in possession of more than four hundred but not more than two thousand unstamped cigarettes.
  - c. A twenty-five dollar per pack penalty for the first violation if a person is in possession of more than two thousand unstamped cigarettes.
  - d. For a second violation within three years of the first violation, the penalty is four hundred dollars if a person is in possession of more than forty but not more than four hundred unstamped cigarettes; one thousand dollars if a person is in possession of more than four hundred but not more than two thousand unstamped cigarettes; and thirty-five dollars per pack if a person is in possession of more than two thousand unstamped cigarettes.
  - e. For a third or subsequent violation within three years of the first violation, the penalty is six

hundred dollars if a person is in possession of more than forty but not more than four hundred unstamped cigarettes; one thousand five hundred dollars if a person is in possession of more than four hundred but not more than two thousand unstamped cigarettes; and forty-five dollars per pack if a person is in possession of more than two thousand unstamped cigarettes.

2. For all other violations of this section:

a. A two hundred dollar penalty for the first violation.

b. A five hundred dollar penalty for a second violation within three years of the first violation.

c. A thousand dollar penalty for a third or subsequent violation within three years of the first violation.

The penalty imposed under this section shall be assessed and collected pursuant to section 453A.28 and is in addition to the tax, penalty, and interest imposed in that section.

If a cigarette distributor fails to file a return or to report timely, stamps shall not be provided to that cigarette distributor until all returns and reports are filed properly and all tax, penalties, and interest are paid.

2007 Acts, ch 186, §42

NEW unnumbered paragraph 3

#### **453A.32 Seizure and forfeiture — procedure.**

1. All cigarettes on which taxes are imposed or required to be imposed by this division, which are found in the possession or custody, or within the control of any person, for the purpose of being sold, distributed, or removed by the person in violation of this division, and all cigarettes which are removed, stored, transported, deposited, or concealed in any place without the proper taxes paid, and any automobile, truck, boat, conveyance, or other vehicle whatsoever, used in the removal, storage, deposit, concealment, or transportation of cigarettes for the purpose of avoiding the payment of the proper tax, and all equipment or other tangible personal property incident to and used for the purpose of avoiding the payment of the proper tax, found in the place, building, or vehicle where cigarettes are found, and all counterfeit cigarettes may be seized by the department, with or without process and shall be from the time of the seizure forfeited to the state of Iowa. A proceeding in the nature of a proceeding in rem shall be filed in a court of competent jurisdiction in the county of seizure to maintain the seizure and declare and perfect the forfeiture. All cigarettes, counterfeit cigarettes, vehicles, and property seized, remaining in the possession or custody of the department, sheriff or other officer for forfeiture or other disposition as provided by law, are not subject to replevin.

2. The department, when taking the seizure aforesaid, shall immediately make a written report thereof showing the name of the agent or representative making the seizure, the place and per-

son where and from whom such property was seized and an inventory of same and appraisement thereof at the reasonable value of the article seized, which report shall be prepared in duplicate, signed by the agent or representative so seizing, the original of which shall be given to the person from whom said property is taken, and a duplicate copy of which shall be filed in the office of the director and shall be open to public inspection.

3. The county attorney of the county of seizure, shall, at the request of the director, file in the county and court aforesaid forfeiture proceeding in the name of the state as plaintiff, and in the name of the owner or person in possession as defendant, if known, and if unknown, then in the name of said property seized and sought to be forfeited. Upon the filing of said proceeding, the clerk of said court shall issue notice to the owner or person in possession of such property to appear before such court upon the date named therein, which shall not be less than two days from service of such notice, to show cause why the forfeiture aforesaid should not be declared, which notice shall be served by the sheriff of said county. In the event the defendant in said proceeding is a nonresident of the state or the defendant's residence is unknown, or in the event the name of such defendant is unknown, upon affidavit by the director to this effect, notice shall be given as ordered by the court.

4. In the event final judgment is rendered in the forfeiture proceedings aforesaid, maintaining the seizure, and declaring and perfecting the forfeiture of said seized property, the court shall order and decree the sale of the seized property, other than the counterfeit cigarettes, to the highest bidder, by the sheriff at public auction in the county of seizure after notice is given in the manner provided in the case of the sale of personal property under execution, and the proceeds of such sale, less expense of seizure and court costs, shall be paid into the state treasury. Counterfeit cigarettes shall be destroyed or disposed of in a manner determined by the director.

5. In the event the cigarettes seized and sought to be sold upon forfeiture are unstamped, the cigarettes shall be sold by the director or the director's designee to the highest bidder among the permitted distributors in this state after written notice has been mailed to all distributors. If there is no bidder, or in the opinion of the director the quantity of cigarettes to be sold is insufficient or for any other reason such disposition of the cigarettes is impractical, the cigarettes shall be destroyed or disposed of in a manner as determined by the director. The proceeds from the sales shall be paid into the state treasury.

6. The provisions of this section applying to cigarettes shall also apply to tobacco products taxed under division II of this chapter.

2007 Acts, ch 186, §43

Counterfeit cigarettes, see §453A.36(10)

NEW subsection 6



**453A.35 Tax and fees paid to general fund — standing appropriation to health care trust fund.**

1. The proceeds derived from the sale of stamps and the payment of taxes, fees, and penalties provided for under this chapter, and the permit fees received from all permits issued by the department, shall be credited to the general fund of the state. However, beginning July 1, 2007, of the revenues generated from the tax on cigarettes pursuant to section 453A.6, subsection 1, and from the tax on tobacco products as specified in section 453A.43, subsections 1, 2, 3, and 4, and credited to the general fund of the state under this subsection, there is appropriated, annually, to the health care trust fund created in section 453A.35A, the first one hundred twenty-seven million six hundred thousand dollars.

2. All permit fees provided for in this chapter and collected by cities in the issuance of permits granted by the cities shall be paid to the treasurer of the city where the permit is effective, or to another city officer as designated by the council, and credited to the general fund of the city. Permit fees so collected by counties shall be paid to the county treasurer.

2007 Acts, ch 17, §5, 12  
Section amended

**453A.35A Health care trust fund.**

1. A health care trust fund is created in the office of the treasurer of state. The fund consists of the revenues generated from the tax on cigarettes pursuant to section 453A.6, subsection 1, and from the tax on tobacco products as specified in section 453A.43, subsections 1, 2, 3, and 4, that are credited to the general fund of the state and appropriated to the health care trust fund, annually, pursuant to section 453A.35. Moneys in the fund shall be separate from the general fund of the state and shall not be considered part of the general fund of the state. However, the fund shall be considered a special account for the purposes of section 8.53 relating to generally accepted accounting principles. Moneys in the fund shall be used only as specified in this section and shall be appropriated only for the uses specified. Moneys in the fund are not subject to section 8.33 and shall not be transferred, used, obligated, appropriated, or otherwise encumbered, except as provided in this section. Notwithstanding section 12C.7, subsection 2, interest or earnings on moneys deposited in the fund shall be credited to the fund.

2. Moneys in the fund shall be used only for purposes related to health care, substance abuse treatment and prevention, and tobacco use prevention, cessation, and control.

2007 Acts, ch 17, §6, 12  
NEW section

**453A.36 Unlawful acts.**

1. Except as otherwise provided in this divi-

sion, it is unlawful for any person to have in the person's possession for sale, distribution, or use, or for any other purpose, in excess of forty cigarettes, or to sell, distribute, use, or present as a gift or prize cigarettes upon which a tax is required to be paid by this division, without having affixed to each individual package of cigarettes, the proper stamp evidencing the payment of the tax and the absence of the stamp on the individual package of cigarettes is notice to all persons that the tax has not been paid and is prima facie evidence of the nonpayment of the tax.

2. No person, other than a common carrier and a distributor's truck bearing the distributor's name and permit number in plain view on the outside of such truck, shall transport within this state cigarettes upon which a tax is required to be paid, without having stamps affixed to each individual package of said cigarettes; and no person shall fail or refuse, upon demand of agent of the department, or any peace officer to stop any vehicle transporting cigarettes for a full and complete inspection of the cargo carried.

3. No person shall use, sell, offer for sale, or possess for the purpose of use or sale, within this state, any previously used stamp or stamps, or attach any such previously used stamps to an individual package of cigarettes, nor shall any person purchase stamps from any person other than the department or sell stamps purchased from the department.

4. No person shall knowingly use, consume, or smoke, within this state, cigarettes upon which a tax is required to be paid, without said tax having been paid.

5. No person, unless the person be the holder of a permit, or the holder's representative, shall solicit the sale of cigarettes, provided that this section shall not prevent solicitation by a nonpermit holder for the sale of cigarettes to any state permit holder.

6. Any sales of cigarettes or tobacco products made through a cigarette vending machine are subject to rules and penalties relative to retail sales of cigarettes and tobacco products provided for in this chapter. Cigarettes shall not be sold through any cigarette vending machine unless the cigarettes have been properly stamped or metered as provided by this division, and in case of violation of this provision, the permit of the dealer authorizing retail sales of cigarettes shall be revoked. Payment of the permit fee as provided in section 453A.13 authorizes a cigarette vendor to sell cigarettes or tobacco products through vending machines. However, cigarettes or tobacco products shall not be sold through a vending machine unless the vending machine is located in a place where the retailer ensures that no person younger than eighteen years of age is present or permitted to enter at any time. Cigarettes or tobacco products shall not be sold through any ciga-

rette vending machine if such products are placed together with any nontobacco product, other than matches, in the cigarette vending machine. This section does not require a retail permit holder to buy a cigarette vendor's permit if the retail permit holder is in fact the owner of the cigarette vending machines and the machines are operated in the location described in the retail permit.

7. It shall be unlawful for a person other than a holder of a retail permit to sell cigarettes at retail. No state permit holder shall sell or distribute cigarettes at wholesale to any person in the state of Iowa who does not hold a permit authorizing the retail sale of cigarettes or who does not hold a state permit as a manufacturer, distributing agent, wholesaler, or distributor.

8. It shall be unlawful for a holder of a retail permit to sell or distribute any cigarettes or tobacco products, including but not limited to a single or loose cigarette, that are not contained within a sealed carton, pack, or package as provided by the manufacturer, which carton, pack, or package bears the health warning that is required by federal law.

9. It is unlawful for a person to ship or import into the state, or to offer for sale, sell, distribute, transport, or possess within this state, cigarettes or tobacco products previously exported from or manufactured for use outside the United States.

10. *a.* It is unlawful for a person to ship or import into this state or to offer for sale, sell, distribute, transport, or possess counterfeit cigarettes, knowing such cigarettes are counterfeit cigarettes or having reasonable cause to believe that such cigarettes are counterfeit cigarettes.

*b.* For purposes of this subsection and section 453A.32, "counterfeit cigarettes" means cigarettes, packages of cigarettes, cartons of cigarettes or other containers of cigarettes with a label, trademark, service mark, trade name, device, design, or word adopted or used by a cigarette manufacturer to identify its product that is false or used without authority of the cigarette manufacturer.

11. Violation of this section by the holder of a distributor's, wholesaler's or manufacturer's permit shall be grounds for the revocation of such permit.

2007 Acts, ch 186, §44, 45

Subsection 6 amended

NEW subsection 8 and former subsections 8 and 9 renumbered as 9 and

10

Unnumbered paragraph 1 editorially designated as subsection 11

#### 453A.40 Inventory tax.

1. All persons required to obtain a permit or to be licensed under section 453A.13 or section 453A.44 having in their possession and held for resale on the effective date of an increase in the tax rate cigarettes, little cigars, or tobacco products upon which the tax under section 453A.6 or 453A.43 has been paid, unused cigarette tax

stamps which have been paid for under section 453A.8, unused metered imprints which have been paid for under section 453A.12, or tobacco products for which the tax has not been paid under section 453A.46 shall be subject to an inventory tax on the items as provided in this section.

2. Persons subject to the inventory tax imposed under this section shall take an inventory as of the close of the business day next preceding the effective date of the increased tax rate of those items subject to the inventory tax for the purpose of determining the tax due. These persons shall report the tax on forms provided by the department of revenue and remit the tax due within thirty days of the prescribed inventory date. The department of revenue shall adopt rules as are necessary to carry out this section.

3. The rate of the inventory tax on each item subject to the tax as specified in subsection 1 is equal to the difference between the amount paid on each item under section 453A.6, 453A.8, 453A.12, or 453A.43 prior to the tax increase and the amount that is to be paid on each similar item under section 453A.6, 453A.8, 453A.12, or 453A.43 after the tax increase except that in computing the rate of the inventory tax any discount allowed or allowable under section 453A.8 shall not be considered.

2007 Acts, ch 17, §7, 11, 12

Persons required to obtain a permit or license as specified in this section shall not be subject to an inventory tax on the items as provided in this section as a result of the tax increases contained in 2007 Acts, ch 17; 2007 Acts, ch 17, §11

Subsection 1 amended

#### 453A.42 Definitions.

When used in this division, unless the context clearly indicates otherwise, the following terms shall have the meanings, respectively, ascribed to them in this section:

1. "Business" means any trade, occupation, activity, or enterprise engaged in for the purpose of selling or distributing tobacco products in this state.

2. "Consumer" means any person who has title to or possession of tobacco products in storage, for use or other consumption in this state.

3. "Director" means the director of the department of revenue.

4. "Distributor" means any and each of the following:

*a.* Any person engaged in the business of selling tobacco products in this state who brings, or causes to be brought, into this state from without the state any tobacco products for sale;

*b.* Any person who makes, manufactures, or fabricates tobacco products in this state for sale in this state;

*c.* Any person engaged in the business of selling tobacco products without this state who ships or transports tobacco products to retailers in this state, to be sold by those retailers.

5. “*Little cigar*” means any roll for smoking which:

*a.* Is made wholly or in part of tobacco, irrespective of size or shape and irrespective of tobacco being flavored, adulterated, or mixed with any other ingredient;

*b.* Is not a cigarette as defined in section 453A.1, subsection 3; and

*c.* Either weighs not more than three pounds per thousand, irrespective of retail price, or weighs more than three pounds per thousand and has a retail price of not more than two and one-half cents per little cigar. For purposes of this subsection, the retail price is the ordinary retail price in this state, not including retail sales tax, use tax, or the tax on little cigars imposed by section 453A.43.

6. “*Manufacturer*” means a person who manufactures and sells tobacco products.

7. “*Person*” means any individual, firm, association, partnership, joint stock company, joint adventure, corporation, trustee, agency, or receiver, or any legal representative of any of the foregoing.

8. “*Place of business*” means any place where tobacco products are sold or where tobacco products are manufactured, stored, or kept for the purpose of sale or consumption, including any vessel, vehicle, airplane, train, or vending machine.

9. “*Retail outlet*” means each place of business from which tobacco products are sold to consumers.

10. “*Retailer*” means any person engaged in the business of selling tobacco products to ultimate consumers.

11. “*Sale*” means any transfer, exchange, or barter, in any manner or by any means whatsoever, for a consideration, and includes and means all sales made by any person. It includes a gift by a person engaged in the business of selling tobacco products, for advertising, as a means of evading the provisions of this division, or for any other purposes whatsoever.

12. “*Snuff*” means any finely cut, ground, or powdered tobacco that is not intended to be smoked.

13. “*Storage*” means any keeping or retention of tobacco products for use or consumption in this state.

14. “*Subjobber*” means any person, other than a manufacturer or distributor, who buys tobacco products from a distributor and sells them to persons other than the ultimate consumers.

15. “*Tobacco products*” means cigars; little cigars as defined herein; cheroots; stogies; periques; granulated, plug cut, crimp cut, ready rubbed, and other smoking tobacco; snuff; cavendish; plug and twist tobacco; fine-cut and other chewing tobaccos; shorts; refuse scraps, clippings, cuttings and sweepings of tobacco, and other kinds and forms of tobacco, prepared in such manner as to be suitable for chewing or smoking in a pipe or otherwise, or both for chewing and smoking; but shall not in-

clude cigarettes as defined in section 453A.1, subsection 3.

16. “*Use*” means the exercise of any right or power incidental to the ownership of tobacco products.

17. “*Wholesale sales price*” means the established price for which a manufacturer sells a tobacco product to a distributor, exclusive of any discount or other reduction.

2007 Acts, ch 17, §§, 9, 12  
NEW subsection 12 and former subsections 12 and 13 renumbered as 13 and 14

Former subsection 14 amended and renumbered as 15  
Former subsections 15 and 16 renumbered as 16 and 17

#### 453A.43 Tax on tobacco products.

1. *a.* A tax is imposed upon all tobacco products in this state and upon any person engaged in business as a distributor of tobacco products, at the rate of twenty-two percent of the wholesale sales price of the tobacco products, except little cigars and snuff as defined in section 453A.42.

*b.* In addition to the tax imposed under paragraph “*a*”, a tax is imposed upon all tobacco products in this state and upon any person engaged in business as a distributor of tobacco products, at the rate of twenty-eight percent of the wholesale sales price of the tobacco products, except little cigars and snuff as defined in section 453A.42.

*c.* Notwithstanding the rate of tax imposed pursuant to paragraphs “*a*” and “*b*”, if the tobacco product is a cigar, the total amount of the tax imposed pursuant to paragraphs “*a*” and “*b*” combined shall not exceed fifty cents per cigar.

*d.* Little cigars shall be subject to the same rate of tax imposed upon cigarettes in section 453A.6, payable at the time and in the manner provided in section 453A.6; and stamps shall be affixed as provided in division I of this chapter. Snuff shall be subject to the tax as provided in subsections 3 and 4.

*e.* The taxes on tobacco products, excluding little cigars and snuff, shall be imposed at the time the distributor does any of the following:

(1) Brings, or causes to be brought, into this state from outside the state tobacco products for sale.

(2) Makes, manufactures, or fabricates tobacco products in this state for sale in this state.

(3) Ships or transports tobacco products to retailers in this state, to be sold by those retailers.

2. *a.* A tax is imposed upon the use or storage by consumers of tobacco products in this state, and upon the consumers, at the rate of twenty-two percent of the cost of the tobacco products.

*b.* In addition to the tax imposed in paragraph “*a*”, a tax is imposed upon the use or storage by consumers of tobacco products in this state, and upon the consumers, at a rate of twenty-eight percent of the cost of the tobacco products.

*c.* Notwithstanding the rate of tax imposed pursuant to paragraphs “*a*” and “*b*”, if the tobacco

product is a cigar, the total amount of the tax imposed pursuant to paragraphs “a” and “b” combined shall not exceed fifty cents per cigar.

d. The taxes imposed by this subsection shall not apply if the taxes imposed by subsection 1 on the tobacco products have been paid.

e. The taxes imposed under this subsection shall not apply to the use or storage of tobacco products in quantities of:

(1) Less than twenty-five cigars.

(2) Less than one pound smoking or chewing tobacco or other tobacco products not specifically mentioned herein, in the possession of any one consumer.

3. A tax is imposed upon all snuff in this state and upon any person engaged in business as a distributor of snuff at the rate of one dollar and nineteen cents per ounce, with a proportionate tax at the same rate on all fractional parts of an ounce of snuff. The tax shall be computed based on the net weight listed by the manufacturer. The tax on snuff shall be imposed at the time the distributor does any of the following:

a. Brings or causes to be brought into this state from outside the state, snuff for sale.

b. Makes, manufactures, or fabricates snuff in this state for sale in this state.

c. Ships or transports snuff to retailers in this state, to be sold by those retailers.

4. a. A tax is imposed upon the use or storage by consumers of snuff in this state, and upon the consumers, at the rate of one dollar and nineteen cents per ounce with a proportionate tax at the same rate on all fractional parts of an ounce of snuff. The tax shall be computed based on the net weight as listed by the manufacturer.

b. The tax imposed by this subsection shall not apply if the tax imposed by subsection 3 on snuff has been paid.

c. The tax shall not apply to the use or storage of snuff in quantities of less than ten ounces.

5. Any tobacco product with respect to which a tax has once been imposed under this division shall not again be subject to tax under this division, except as provided in section 453A.40.

6. The tax imposed by this section shall not apply with respect to any tobacco product which under the Constitution and laws of the United States may not be made the subject of taxation by this state.

7. The tax imposed by this section shall be in addition to all other occupation or privilege taxes or license fees now or hereafter imposed by any city or county.

8. All excise taxes collected under this chapter by a distributor or any individual are deemed to be held in trust for the state of Iowa.

2007 Acts, ch 17, §10, 12; 2007 Acts, ch 186, §46, 55  
Inventory tax, §453A.40

Claims for refunds of taxes which result from amendments to subsections 1 and 2 by 2007 Acts, ch 186, §46, relating to the limitation on taxes imposed on cigars occurring between March 15, 2007, and May 24, 2007, to

be made by October 1, 2007; interest on refunds not allowed; retroactive applicability to March 15, 2007; 2007 Acts, ch 186, §54, 55  
Section amended

#### 453A.45 Licensees, duties.

1. Every distributor shall keep at each licensed place of business complete and accurate records for that place of business, including itemized invoices, of tobacco products held, purchased, manufactured, brought in or caused to be brought in from without the state, or shipped or transported to retailers in this state, and of all sales of tobacco products made, except sales to the ultimate consumer.

When a licensed distributor sells tobacco products exclusively to the ultimate consumer at the address given in the license, an invoice of those sales is not required, but itemized invoices shall be made of all tobacco products transferred to other retail outlets owned or controlled by that licensed distributor. All books, records and other papers and documents required by this subdivision to be kept shall be preserved for a period of at least three years after the date of the documents or the date of the entries appearing in the records, unless the director, in writing, authorized their destruction or disposal at an earlier date. At any time during usual business hours, the director, or the director's duly authorized agents or employees, may enter any place of business of a distributor, without a search warrant, and inspect the premises, the records required to be kept under this subdivision, and the tobacco products contained therein, to determine if all the provisions of this division are being fully complied with. If the director, or any such agent or employee, is denied free access or is hindered or interfered with in making the examination, the license of the distributor at that premises is subject to revocation by the director.

2. Every person who sells tobacco products to persons other than the ultimate consumer shall render with each sale itemized invoices showing the seller's name and address, the purchaser's name and address, the date of sale, and all prices and discounts. The person shall preserve legible copies of all these invoices for three years from the date of sale.

3. Every retailer and subjobber shall procure itemized invoices of all tobacco products purchased. The invoices shall show the name and address of the seller and the date of purchase. The retailer and subjobber shall preserve a legible copy of each invoice for three years from the date of purchase. Invoices shall be available for inspection by the director or the director's authorized agents or employees at the retailer's or subjobber's place of business.

4. Records of all deliveries or shipments of tobacco products from any public warehouse of first destination in this state which is subject to the provisions of and licensed under chapter 554 shall

be kept by the warehouse and be available to the director for inspection. They shall show the name and address of the consignee, the date, the quantity of tobacco products delivered, and such other information as the commissioner may require. These records shall be preserved for three years from the date of delivery of the tobacco products.

5. The transportation of tobacco products into this state by means other than common carrier must be reported to the director within thirty days with the following exceptions:

*a.* The transportation of not more than fifty cigars, not more than ten ounces of snuff or snuff powder, or not more than one pound of smoking or chewing tobacco or other tobacco products not specifically mentioned herein;

*b.* Transportation by a person with a place of business outside the state, who is licensed as a distributor under section 453A.44, or tobacco products sold by such person to a retailer in this state.

The report shall be made on forms provided by the director or the director may require by rule that the report be filed by electronic transmission.

Common carriers transporting tobacco products into this state shall file with the director reports of all such shipments other than those which are delivered to public warehouses of first destination in this state which are licensed under the provisions of chapter 554. Such reports shall be filed on or before the tenth day of each month and shall show with respect to deliveries made in the preceding month; the date, point of origin, point of delivery, name of consignee, description and quantity of tobacco products delivered, and such information as the director may otherwise require.

Any person who fails or refuses to transmit to the director the required reports or whoever refuses to permit the examination of the records by the director shall be guilty of a serious misdemeanor.

2007 Acts, ch 186, §47

Subsection 5, unnumbered paragraphs 2 and 4 amended

#### **453A.46 Distributors, monthly returns — interest, penalties.**

1. On or before the twentieth day of each calendar month every distributor with a place of business in this state shall file a return with the director showing for the preceding calendar month the quantity and wholesale sales price of each tobacco product brought, or caused to be brought, into this state for sale; made, manufactured, or fabricated in this state for sale in this state; and any other information the director may require. Every licensed distributor outside this state shall in like manner file a return with the director showing for the preceding calendar month the quantity and wholesale sales price of each tobacco product shipped or transported to retailers in this state to be sold by those retailers and any other information the director may require. Returns shall be made upon forms furnished or made available in electronic form and prescribed by the director and

shall contain other information as the director may require. Each return shall be accompanied by a remittance for the full tax liability shown on the return, less a discount as fixed by the director not to exceed five percent of the tax. Within three years after the return is filed or within three years after the return became due, whichever is later, the department shall examine it, determine the correct amount of tax, and assess the tax against the taxpayer for any deficiency. The period for examination and determination of the correct amount of tax is unlimited in the case of a false or fraudulent return made with the intent to evade tax, or in the case of a failure to file a return.

The three-year limitation period may be extended by a taxpayer by signing a waiver agreement form provided by the department. The agreement must stipulate the extension period and the tax period to which the extension applies. The agreement must also stipulate that a claim for refund may be filed by the taxpayer at any time during the extension period.

2. All taxes shall be due and payable not later than the twentieth day of the month following the calendar month in which they were incurred, and shall bear interest at the rate in effect under section 421.7 counting each fraction of a month as an entire month, computed from the date the tax was due.

The director may reduce or abate interest when in the director's opinion the facts warrant the reduction or abatement. The exercise of this power shall be subject to the approval of the attorney general.

3. In addition to the tax or additional tax, the taxpayer shall also pay a penalty as provided in section 421.27 and be subject to the civil penalties set forth in sections 421.27; 453A.31, subsection 2; and 453A.50, subsection 3, as applicable.

4. The department shall notify any person assessed pursuant to this section by sending a written notice of the determination by mail to the principal place of business of the person as shown on the person's application for permit, and if an application was not filed by the person, to the person's last known address. A determination by the department of the amount of tax, penalty, and interest due, or the amount of refund for excess tax paid, is final, unless the person aggrieved by the determination appeals to the director for a revision of the determination within sixty days from the date of the notice of determination of tax, penalty, and interest or refund owing or unless the taxpayer contests the determination by paying the tax, interest, and penalty and timely filing a claim for refund. The director shall grant a hearing and upon the hearing, the director shall determine the correct tax, penalty, and interest or refund due and notify the appellant of the decision by mail. Judicial review of action of the director may be sought in accordance with chapter 17A and section 422.29.

5. The director may recover the amount of any tax due and unpaid, interest, and any penalty in a civil action. The collection of such a tax, interest, or penalty shall not be a bar to any prosecution under this division.

6. On or before the twentieth day of each calendar month, every consumer who, during the preceding calendar month, has acquired title to or possession of tobacco products for use or storage in this state, upon which tobacco products the tax imposed by section 453A.43 has not been paid, shall file a return with the director showing the quantity of tobacco products so acquired. The return shall be made upon a form furnished and prescribed by the director, and shall contain other information as the director may require. The return shall be accompanied by a remittance for the full unpaid tax liability shown by it. Within three years after the return is filed or within three years after the return became due, whichever is later, the department shall examine it, determine the correct amount of tax, and assess the tax against the taxpayer for any deficiency. The period for examination and determination of the correct amount of tax is unlimited in the case of a false or fraudulent return made with the intent to evade tax, or in the case of a failure to file a return.

7. The director may require by rule that reports\* be filed by electronic transmission.

2007 Acts, ch 186, §48, 49

\*The word "returns" probably intended; corrective legislation is pending  
Subsections 1 and 3 amended  
NEW subsection 7

**453A.50 Violations, penalties.**

1. Any person who in any manner knowingly attempts to evade the tax imposed by this division or who knowingly aids or abets in the evasion or attempted evasion of the tax or who knowingly violates the provisions of section 453A.44, subsection

1, of this division, shall be guilty of a serious misdemeanor.

2. Except as otherwise provided, any person who violates any provisions of this division shall be guilty of a simple misdemeanor.

3. a. The following civil penalties shall be imposed for a violation of this division:

(1) A two hundred dollar penalty for the first violation.

(2) A five hundred dollar penalty for a second violation within three years of the first violation.

(3) A thousand dollar penalty for a third or subsequent violation within three years of the first violation.

b. The penalty imposed in this subsection is in addition to the tax, penalty, and interest imposed in other sections of this division. Each day a violation occurs counts as a new violation for purposes of this subsection.

2007 Acts, ch 186, §50, 51

Seizure and forfeiture of tobacco products, see §453A.32

Subsection 2 amended

NEW subsection 3

**453A.51 Assessment of cost of audit.**

The department may employ auditors or other persons to audit and examine the books and records of a permit holder or other person dealing in tobacco products to ascertain whether the permit holder or other person has paid the amount of the taxes required to be paid by the permit holder or other person under the provisions of this chapter. If the taxes have not been paid, as required, the department shall assess against the permit holder or other person, as additional penalty, the reasonable expenses and costs of the investigation and audit.

2007 Acts, ch 186, §52

NEW section

**453A.52 through 453A.55** Reserved.

**CHAPTER 453C**

**TOBACCO PRODUCT MANUFACTURERS — FINANCIAL OBLIGATIONS**

**453C.1 Definitions.**

1. "Adjusted for inflation" means increased in accordance with the formula for inflation adjustment set forth in exhibit "C" to the master settlement agreement.

2. "Affiliate" means a person who directly or indirectly owns or controls, is owned or controlled by, or is under common ownership or control with, another person. Solely for purposes of this definition, the terms "owns", "is owned", and "ownership" mean ownership of an equity interest, or the equivalent thereof, of ten percent or more, and the term "person" means an individual, partnership, committee, association, corporation, or any other organization or group of persons.

3. "Allocable share" means allocable share as defined in the master settlement agreement.

4. "Cigarette" means any product that contains nicotine, is intended to be burned or heated under ordinary conditions of use, and consists of or contains any of the following:

a. Any roll of tobacco wrapped in paper or in any substance not containing tobacco.

b. Tobacco, in any form, that is functional in the product, which, because of its appearance, the type of tobacco used in the filler, or its packaging and labeling, is likely to be offered to, or purchased by, consumers as a cigarette.

c. Any roll of tobacco wrapped in any substance containing tobacco which, because of its ap-

pearance, the type of tobacco used in the filler, or its packaging and labeling, is likely to be offered to, or purchased by, consumers as a cigarette described in paragraph “a” of this definition.

The term “cigarette” includes “roll-your-own” tobacco, meaning tobacco which, because of its appearance, type, packaging, or labeling, is suitable for use and likely to be offered to, or purchased by, consumers as tobacco for making cigarettes. For purposes of this definition of “cigarette”, 0.09 ounces of “roll-your-own” tobacco shall constitute one individual “cigarette”.

5. “*Master settlement agreement*” means the settlement agreement and related documents entered into on November 23, 1998, by the state and leading United States tobacco product manufacturers.

6. “*Qualified escrow fund*” means an escrow arrangement with a federally or state-chartered financial institution having no affiliation with any tobacco product manufacturer and having assets of at least one billion dollars where such arrangement requires that such financial institution hold the escrowed funds’ principal for the benefit of releasing parties and prohibits the tobacco product manufacturer placing the funds into escrow from using, accessing, or directing the use of the funds’ principal except as consistent with section 453C.2, subsection 2, paragraph “b”.

7. “*Released claims*” means released claims as that term is defined in the master settlement agreement.

8. “*Releasing parties*” means releasing parties as that term is defined in the master settlement agreement.

9. “*Tobacco product manufacturer*” means an entity that on or after May 20, 1999, directly and not exclusively through any affiliate does any of the following:

a. Manufactures cigarettes anywhere that such manufacturer intends to be sold in the United States, including cigarettes intended to be sold in the United States through an importer (except where such importer is an original participating manufacturer, as that term is defined in the master settlement agreement, that will be responsible for the payments under the master settlement agreement with respect to such cigarettes as a result of the provisions of subsection II(mm) of the master settlement agreement and that pays the taxes specified in subsection II(z) of the master settlement agreement and provided that the manufacturer of such cigarettes does not market or advertise such cigarettes in the United States).

b. Is the first purchaser anywhere for resale in the United States of cigarettes manufactured anywhere that the manufacturer does not intend to be sold in the United States.

c. Becomes a successor of an entity described in paragraph “a” or “b”.

The term “*tobacco product manufacturer*” shall not include an affiliate of a tobacco product manufacturer unless such affiliate itself falls within any of paragraphs “a” through “c”.

10. “*Units sold*” means the number of individual cigarettes sold in the state by the applicable tobacco product manufacturer, whether directly or through a distributor, retailer, or similar intermediary or intermediaries, during the year in question, as measured by excise taxes collected by the state on packs bearing the excise stamp of the state or on roll-your-own tobacco containers. The department of revenue shall adopt rules as are necessary to ascertain the amount of state excise tax paid on the cigarettes of such tobacco product manufacturer for each year.

2007 Acts, ch 186, §53  
Subsection 10 amended

## CHAPTER 455A

### DEPARTMENT OF NATURAL RESOURCES

#### 455A.4 General powers and duties of the director.

1. Except as otherwise provided by law and subject to rules adopted by the natural resource commission and the environmental protection commission, the director shall:

a. Plan, direct, coordinate, and execute the functions vested in the department.

b. Provide overall supervision, direction, and coordination of functions to be administered by the administrators under chapters 321G, 321I, 455B, 455C, 456, 456A, 456B, 457A, 458A, 459, 461A, 462A, 462B, 464A, 465C, 473, 481A, 481B, 483A, 484A, and 484B.

c. Annually compile a comprehensive program budget which reflects all fiscal matters related to

the operation of the department and each program, subprogram, and activity in the department in accordance with section 8.23.

d. Submit a biennial or an annual report to the governor and the general assembly, in accordance with chapter 7A.

e. Employ personnel as necessary to carry out the functions vested in the department consistent with chapter 8A, subchapter IV, unless the positions are exempt from that subchapter.

f. Devote full time to the duties of the director’s office.

g. Not be a candidate for nor hold any other public office or trust, nor be a member of a political committee.

h. Maintain an office at the state capitol com-

plex, which is open at all reasonable times for the conduct of public business.

i. Adopt rules in accordance with chapter 17A as necessary or desirable for the organization or reorganization of the department.

j. In the administration of programs relating to water quality improvement and watershed improvements, cooperate with the department of agriculture and land stewardship in order to maximize the receipt of federal funds.

2. All powers and duties vested in the director may be delegated by the director to an employee of the department, but the director retains the responsibility for an employee's acts within the scope of the delegation.

3. The director and other officers and employees of the department are entitled to receive, in addition to salary, their actual and necessary travel and related expenses incurred in the performance of official business.

4. The director shall obtain an adequate public employees fidelity bond to cover those officers and employees of the department accountable for property or funds of this state.

5. The department may accept payment of any fees, interest, penalties, subscriptions, or other payments due or collected by the department, or any portion of such payments, by credit card. The department may adjust the amount of the payment to reflect the costs of processing the payment as determined by the treasurer of state and the payment by credit card shall include, in addition to all other charges, any discount charged by the credit card issuer.

2007 Acts, ch 211, §37  
Subsection 1, NEW paragraph j

**455A.17 Iowa congress on resources enhancement and protection.**

1. Biennially, during even-numbered years,

the director shall schedule and make the necessary arrangements for an Iowa congress on resources enhancement and protection. The congress shall be held within the state capitol complex.

2. Prior to each congress, the director shall make arrangements to hold an assembly in each council of governments area of persons having an interest in resources enhancement and protection. The department shall promote attendance of interested persons at each assembly. The director shall call each assembly and serve as temporary chairperson. The department shall provide those attending with information regarding resource enhancement and protection expenditures. The assemblies shall identify opportunities for regional resource enhancement and protection and review and recommend changes in resource enhancement and protection policies, programs, and funding. The persons meeting at each assembly shall elect five persons as delegates to the congress on resources enhancement and protection.

3. The delegates to the congress on resources enhancement and protection shall organize, discuss, and make recommendations to the governor, the general assembly, and the natural resource commission regarding issues concerning resources enhancement and protection. The director shall call the congress and serve as temporary chairperson. The delegates are entitled to a per diem as specified in section 7E.6 for expenses of office while attending the congress.

4. The expenses of the department in making the arrangements for and the conducting of the council of governments area assemblies and the congress on resources enhancement and protection and the per diem for expenses of the delegates at the congress shall be paid from the funds appropriated for this purpose.

2007 Acts, ch 28, §1  
Subsection 1 amended

**CHAPTER 455B**

**JURISDICTION OF DEPARTMENT OF NATURAL RESOURCES**

**455B.112A Environmental crimes investigation and prosecution fund.**

1. An environmental crimes investigation and prosecution fund is created as a separate fund in the state treasury to be administered by the attorney general. Moneys credited to the fund shall include court-ordered fines and restitution awarded to the attorney general as part of a judgment in an environmental criminal case.

2. For each fiscal year not more than twenty thousand dollars is appropriated from the fund to the department of justice to be used for the investi-

gation and prosecution of environmental crimes, including the reimbursement of expenses incurred by county, municipal, and other local government agencies cooperating with the attorney general in the investigation and prosecution of environmental crimes.

3. Not more than twenty thousand dollars shall be credited to the fund in a fiscal year and any moneys in excess of this amount shall be credited to the general fund of the state.

4. Notwithstanding section 8.33, moneys credited to the fund shall not revert to any other fund.



Notwithstanding section 12C.7, interest or earnings deposited in the fund shall be credited to the fund.

2007 Acts, ch 213, §22  
NEW section

#### 455B.131 Definitions.

When used in this division II, unless the context otherwise requires:

1. “*Air contaminant*” means dust, fume, mist, smoke, other particulate matter, gas, vapor (except water vapor), odorous substance, radioactive substance, or any combination thereof.

2. “*Air contaminant source*” means any and all sources of emission of air contaminants whether privately or publicly owned or operated.

Air contaminant source includes, but is not limited to, all types of businesses, commercial and industrial plants, works, shops, and stores, heating and power plants and stations, buildings and other structures of all types including single and multiple family residences, office buildings, hotels, restaurants, schools, hospitals, churches and other institutional buildings, automobiles, trucks, tractors, buses, aircraft, and other motor vehicles, garages, vending and service locations and stations, railroad locomotives, ships, boats, and other waterborne craft, portable fuel-burning equipment, indoor and outdoor incinerators of all types, refuse dumps and piles, and all stack and other chimney outlets from any of the foregoing.

An air contaminant source does not include a fire truck or other fire apparatus operated by an organized fire department.

3. “*Air pollution*” means presence in the outdoor atmosphere of one or more air contaminants in sufficient quantities and of such characteristics and duration as is or may reasonably tend to be injurious to human, plant, or animal life, or to property, or which unreasonably interferes with the enjoyment of life and property.

4. “*Atmosphere*” means all space outside of buildings, stacks or exterior ducts.

5. “*Earthen waste slurry storage basin*” means an uncovered and exclusively earthen cavity which, on a regular basis, receives waste discharges from a confinement animal feeding operation if accumulated wastes from the basin are completely removed at least twice each year.

6. “*Emission*” means a release of one or more air contaminants into the outside atmosphere.

7. “*Greenhouse gas*” means carbon dioxide, methane, nitrous oxide, hydrofluorocarbons, perfluorocarbons, and sulfur hexafluoride.

8. “*Major stationary source*” means a stationary air contaminant source which directly emits, or has the potential to emit, one hundred tons or more of an air pollutant per year including a major source of fugitive emissions of a pollutant as determined by rule by the department or the administrator of the United States environmental protection agency.

9. “*Person*” means an individual, partnership, copartnership, cooperative, firm, company, public or private corporation, political subdivision, agency of the state, trust, estate, joint stock company, an agency or department of the federal government or any other legal entity, or a legal representative, agent, officer, employee or assigns of such entities.

10. “*Political subdivision*” means any municipality, township, or county, or district, or authority, or any portion, or combination of two or more thereof.

11. “*Potential to emit*” means the maximum capacity of a stationary source to emit a pollutant under its physical and operational design as defined in rules adopted by the department.

12. “*Schedule and timetable of compliance*” means a schedule of remedial measures including an enforceable sequence of actions or operations leading to compliance with an emission limitation, other limitation, prohibition, or standard.

2007 Acts, ch 120, §1

NEW subsection 7 and former subsections 7 – 11 renumbered as 8 – 12

#### 455B.134 Director — duties — limitations.

The director shall:

1. Publish and administer the rules and standards established by the commission. The department shall furnish a copy of such rules or standards to any person upon request.

2. Provide technical, scientific, and other services required by the commission or for the effective administration of this division II and chapter 459, subchapter II.

3. Grant, modify, suspend, terminate, revoke, reissue or deny permits for the construction or operation of new, modified, or existing air contaminant sources and for related control equipment, and conditional permits for electric power generating facilities subject to chapter 476A and other major stationary sources, subject to the rules adopted by the commission. The department shall furnish necessary application forms for such permits.

a. No air contaminant source shall be installed, altered so that it significantly affects emissions, or placed in use unless a construction or conditional permit has been issued for the source.

b. The condition of expected performance shall be reasonably detailed in the construction or conditional permit.

c. All applications for permits other than conditional permits for electric generating facilities shall be subject to such notice and public participation as may be provided by rule by the commission. Upon denial or limitation of a permit other than a conditional permit for an electric generating facility, the applicant shall be notified of such denial and informed of the reason or reasons therefor, and such applicant shall be entitled to a

hearing before the commission.

*d.* (1) All applications for conditional permits for electric power generating facilities shall be subject to such notice and opportunity for public participation as may be consistent with chapter 476A or any agreement pursuant thereto under chapter 28E. The applicant or intervenor may appeal to the commission from the denial of a conditional permit or any of its conditions. For the purposes of chapter 476A, the issuance or denial of a conditional permit by the director or by the commission upon appeal shall be a determination that the electric power generating facility does or does not meet the permit and licensing requirements of the commission. The issuance of a conditional permit shall not relieve the applicant of the responsibility to submit final and detailed construction plans and drawings and an application for a construction permit for control equipment that will meet the emission limitations established in the conditional permit.

(2) In applications for conditional permits for electric power generating facilities, the applicant shall quantify the potential to emit greenhouse gas emissions due to the proposed project.

*e.* A regulated air contaminant source for which a construction permit or conditional permit has been issued shall not be operated unless an operating permit also has been issued for the source. However, if the facility was in compliance with permit conditions prior to the requirement for an operating permit and has made timely application for an operating permit, the facility may continue operation until the operating permit is issued or denied. Operating permits shall contain the requisite conditions and compliance schedules to ensure conformance with state and federal requirements including emission allowances for sulfur dioxide emissions for sources subject to Title IV of the federal Clean Air Act Amendments of 1990. If construction of a new air contaminant source is proposed, the department may issue an operating permit concurrently with the construction permit, if possible and appropriate.

*f.* (1) Notwithstanding any other provision of division II of this chapter or chapter 459, subchapter II, the following siting requirements shall apply to anaerobic lagoons and earthen waste slurry storage basins:

Anaerobic lagoons, constructed or expanded on or after June 20, 1979, but prior to May 31, 1995, or earthen waste slurry storage basins, constructed or expanded on or after July 1, 1990, but prior to May 31, 1995, which are used in connection with animal feeding operations containing less than six hundred twenty-five thousand pounds live animal weight capacity of animal species other than beef cattle or containing less than one million six hundred thousand pounds live animal weight capacity of beef cattle, shall be located at least one thousand two hundred fifty feet from a residence not owned by the owner of the feeding operation or

from a public use area other than a public road. Anaerobic lagoons or earthen waste slurry storage basins, which are used in connection with animal feeding operations containing six hundred twenty-five thousand pounds or more live animal weight capacity of animal species other than beef cattle or containing one million six hundred thousand pounds or more live animal weight capacity of beef cattle, shall be located at least one thousand eight hundred seventy-five feet from a residence not owned by the owner of the feeding operation or from a public use area other than a public road. For the purpose of this paragraph the determination of live animal weight capacity shall be based on the average animal weight capacity during a production cycle and the maximum animal capacity of the animal feeding operation.

Anaerobic lagoons which are used in connection with industrial treatment of wastewater where the average wastewater discharge flow is one hundred thousand gallons per day or less shall be located at least one thousand two hundred fifty feet from a residence not owned by the owner of the lagoon or from a public use area other than a public road. Anaerobic lagoons which are used in connection with industrial treatment of wastewater where the average wastewater discharge flow is greater than one hundred thousand gallons per day shall be located at least one thousand eight hundred seventy-five feet from a residence not owned by the owner of the lagoon or from a public use area other than a public road. These separation distances apply to the construction of new facilities and the expansion of existing facilities.

(2) A person may build or expand an anaerobic lagoon or an earthen waste slurry storage basin closer to a residence not owned by the owner of the anaerobic lagoon or to a public use area than is otherwise permitted by subparagraph (1) of this paragraph, if the affected landowners enter into a written agreement with the anaerobic lagoon owner to waive the separation distances under such terms the parties negotiate. The written agreement becomes effective only upon recording in the office of the recorder of deeds of the county in which the residence is located.

*g.* All applications for construction permits or prevention of significant deterioration permits shall quantify the potential to emit greenhouse gas emissions due to the proposed project.

4. Determine by field studies and sampling the quality of atmosphere and the degree of air pollution in this state or any part thereof.

5. Conduct and encourage studies, investigations, and research relating to air pollution and its causes, effects, abatement, control, and prevention.

6. Provide technical assistance to political subdivisions of this state requesting such aid for the furtherance of air pollution control.

7. Collect and disseminate information, and conduct educational and training programs, relat-

ing to air pollution and its abatement, prevention, and control.

8. Consider complaints of conditions reported to, or considered likely to, constitute air pollution, and investigate such complaints upon receipt of the written petition of any state agency, the governing body of a political subdivision, a local board of health, or twenty-five affected residents of the state.

9. Issue orders consistent with rules to cause the abatement or control of air pollution, or to secure compliance with permit conditions. In making the orders, the director shall consider the facts and circumstances bearing upon the reasonableness of the emissions involved, including but not limited to, the character and degree of injury to, or interference with, the protection of health and the physical property of the public, the practicability of reducing or limiting the emissions from the air pollution source, and the suitability or unsuitability of the air pollution source to the area where it is located. An order may include advisory recommendations for the control of emissions from an air contaminant source and the reduction of the emission of air contaminants.

10. Encourage voluntary co-operation by persons or affected groups in restoring and preserving a reasonable quality of air within the state.

11. Encourage political subdivisions to handle air pollution problems within their respective jurisdictions.

12. Review and evaluate air pollution control programs conducted by political subdivisions of the state with respect to whether the programs are consistent with the provisions of division II of this chapter and chapter 459, subchapter II, and rules adopted by the commission.

13. Hold public hearings, except when the evidence to be received is confidential pursuant to section 455B.137, necessary to accomplish the purposes of division II of this chapter and chapter 459, subchapter II. The director may issue subpoenas requiring the attendance of witnesses and the production of evidence pertinent to the hearings. A subpoena shall be issued and enforced in the same manner as in civil actions.

2007 Acts, ch 120, §2, 3  
Subsection 3, paragraph d amended  
Subsection 3, NEW paragraph g

#### **455B.152 Greenhouse gas inventory and registry.**

1. *Definitions.* For purposes of this section, “greenhouse gas” means carbon dioxide, methane, nitrous oxide, hydrofluorocarbons, perfluorocarbons, or sulfur hexafluoride.

2. *Greenhouse gas inventory.*

a. By January 1, 2008, the department shall establish a method for collecting data from producers of greenhouse gases regarding generated greenhouse gases. The data collection method shall provide for mandatory reporting to collect in-

formation from affected entities individually and shall include information regarding the amount and type of greenhouse gases generated, the type of source, and other information deemed relevant by the department in developing a baseline measure of greenhouse gases produced in the state.

b. The department may allow a series of reporting requirements to be phased in over a period of time and may provide for phasing in by producer sector, geographic area, size of producer, or other factors. The reporting requirements shall apply to the departments, agencies, boards, and commissions of the state, in addition to any other entities subject to the reporting requirements established by the department.

3. *Greenhouse gas registry.*

a. The department shall establish a voluntary greenhouse gas registry for purposes of cooperating with other states in tracking, managing, and crediting entities in the state that reduce their generation of greenhouse gases or that provide increased energy efficiency.

b. The department shall develop a mechanism to coordinate the information obtained in the greenhouse gas inventory with the greenhouse gas registry.

4. *Availability.* By January 1, 2009, the greenhouse gas registry shall be made available on an internet website.

2007 Acts, ch 120, §4  
NEW section

**455B.153 through 455B.160** Reserved.

#### **455B.171 Definitions.**

When used in this part 1 of division III, unless the context otherwise requires:

1. “*Abandoned well*” means a water well which is no longer in use or which is in such a state of disrepair that continued use for the purpose of accessing groundwater is unsafe or impracticable.

2. “*Construction*” of a water well means the physical act or process of making the water well including, but not limited to, siting, excavation, construction, and the installation of equipment and materials necessary to maintain and operate the well.

3. “*Contractor*” means a person engaged in the business of well construction or reconstruction or other well services.

4. “*Credible data*” means scientifically valid chemical, physical, or biological monitoring data collected under a scientifically accepted sampling and analysis plan, including quality control and quality assurance procedures. Data dated more than five years before the department’s date of listing or other determination under section 455B.194, subsection 1, shall be presumed not to be credible data unless the department identifies compelling reasons as to why the data is credible.

5. “*Disposal system*” means a system for disposing of sewage, industrial waste, or other

wastes, or for the use or disposal of sewage sludge. “*Disposal system*” includes sewer systems, treatment works, point sources, dispersal systems, and any systems designed for the usage or disposal of sewage sludge.

6. “*Effluent standard*” means any restriction or prohibition on quantities, rates, and concentrations of chemical, physical, biological, radiological, and other constituents which are discharged from point sources into any water of the state including an effluent limitation, a water quality related effluent limitation, a standard of performance for a new source, a toxic effluent standard, or other limitation.

7. “*Federal Water Pollution Control Act*” means the federal Water Pollution Control Act of 1972, Pub. L. No. 92-500, as published in 33 U.S.C. § 1251 – 1376, as amended through December 31, 1985.

8. “*Historical data*” means data collected more than five years before the department’s date of listing or other determination under section 455B.194, subsection 1.

9. “*Industrial waste*” means any liquid, gaseous, radioactive, or solid waste substance resulting from any process of industry, manufacturing, trade, or business or from the development of any natural resource.

10. “*Manure*” means the same as defined in section 459.102.

11. “*Manure sludge*” means the solid or semi-solid residue produced during the treatment of manure in an anaerobic lagoon.

12. “*Maximum contaminant level*” means the maximum permissible level of any physical, chemical, biological, or radiological substance in water which is delivered to any user of a public water supply system.

13. “*Naturally occurring condition*” means any condition affecting water quality which is not caused by human influence on the environment including, but not limited to, soils, geology, hydrology, climate, wildlife influence on the environment, and water flow with specific consideration given to seasonal and other natural variations.

14. “*New source*” means any building, structure, facility, or installation, from which there is or may be the discharge of a pollutant, the construction of which is commenced after the publication of proposed federal rules prescribing a standard of performance which will be applicable to such source, if such standard is promulgated.

15. “*Other waste*” means heat, garbage, municipal refuse, lime, sand, ashes, offal, oil, tar, chemicals, and all other wastes which are not sewage or industrial waste.

16. “*Person*” means any agency of the state or federal government or institution thereof, any municipality, governmental subdivision, interstate body, public or private corporation, individual, partnership, or other entity and includes any officer or governing or managing body of any mu-

nicipality, governmental subdivision, interstate body, or public or private corporation.

For the purpose of imposing liability for violation of a section of this part, or a rule or regulation adopted by the department of natural resources under this part, “*person*” does not include a person who holds indicia of ownership in contaminated property from which prohibited discharges, deposits, or releases of pollutants into any water of the state have been or are evidenced, if the person has satisfied the requirements of section 455B.381, subsection 7, unnumbered paragraph 2, with respect to the contaminated property, regardless of whether the department has determined that the contaminated property constitutes a hazardous condition site.

17. “*Point source*” means any discernible, confined, and discrete conveyance, including but not limited to any pipe, ditch, channel, tunnel, conduit, well, discrete fissure, container, rolling stock, concentrated animal feeding operation, or vessel or other floating craft, from which pollutants are or may be discharged.

18. “*Pollutant*” means sewage, industrial waste, or other waste.

19. “*Private sewage disposal system*” means a system which provides for the treatment or disposal of domestic sewage from four or fewer dwelling units or the equivalent of less than sixteen individuals on a continuing basis.

20. “*Private water supply*” means any water supply for human consumption which has less than fifteen service connections and regularly serves less than twenty-five individuals.

21. “*Production capacity*” means the amount of potable water which can be supplied to the distribution system in a twenty-four-hour period.

22. “*Public water supply system*” means a system for the provision to the public of piped water for human consumption, if the system has at least fifteen service connections or regularly serves at least twenty-five individuals. The term includes any source of water and any collection, treatment, storage, and distribution facilities under control of the operator of the system and used primarily in connection with the system, and any collection or pretreatment storage facilities not under such control which are used primarily in connection with the system.

23. “*Reconstruction*” of a water well means replacement or removal of all or a portion of the casing of the water well.

24. “*Schedule of compliance*” means a schedule of remedial measures including an enforceable sequence of actions or operations leading to compliance with any effluent standard, water quality standard, or any other requirement of this part of this division or any rule promulgated pursuant thereto.

25. “*Section 303(d) list*” means any list required under 33 U.S.C. § 1313(d).

26. “*Section 305(b) report*” means any report

required under 33 U.S.C. § 1315(b).

27. “*Semipublic sewage disposal system*” means a system for the treatment or disposal of domestic sewage which is not a private sewage disposal system and which is not owned by a city, a sanitary district, or a designated and approved management agency under § 1288 of the federal Water Pollution Control Act (33 U.S.C. § 1288).

28. “*Septage*” means the liquid and solid material pumped from a septic tank, cesspool, or similar domestic sewage treatment system, or from a holding tank, when the system is cleaned or maintained.

29. “*Sewage*” means the water-carried waste products from residences, public buildings, institutions, or other buildings, including the bodily discharges from human beings or animals together with such groundwater infiltration and surface water as may be present.

30. “*Sewage sludge*” means any solid, semisolid, or liquid residue removed during the treatment of municipal waste water or domestic sewage. “*Sewage sludge*” includes, but is not limited to, solids removed during primary, secondary, or advanced waste water treatment, scum septage, portable toilet pumpings, type III marine device pumpings as defined in 33 C.F.R. part 159, and sewage sludge products. “*Sewage sludge*” does not include grit, screenings, or ash generated during the incineration of sewage sludge.

31. “*Sewer extension*” means pipelines or conduits constituting main sewers, lateral sewers, or trunk sewers used for conducting pollutants to a larger interceptor sewer or to a point of ultimate disposal.

32. “*Sewer system*” means pipelines or conduits, pumping stations, force mains, vehicles, vessels, conveyances, injection wells, and all other constructions, devices, and appliances appurtenant thereto used for conducting sewage or industrial waste or other wastes to a point of ultimate disposal or disposal to any water of the state. To the extent that they are not subject to section 402 of the federal Water Pollution Control Act, ditches, pipes, and drains that serve only to collect, channel, direct, and convey nonpoint runoff from precipitation are not considered as sewer systems for the purposes of this part of this division.

33. “*Toilet unit*” means a portable or fixed tank or vessel holding untreated human waste without secondary wastewater treatment that is emptied for disposal. “*Toilet unit*” does not include a portable or fixed tank or vessel holding untreated human waste that is part of a recreational vehicle or marine vessel.

34. “*Total maximum daily load*” means the same as in the federal Water Pollution Control Act.

35. “*Treatment works*” means any plant, disposal field, lagoon, holding or flow-regulating basin, pumping station, or other works installed for the purpose of treating, stabilizing, or disposing of

sewage, industrial waste, or other wastes.

36. “*Viable*” means a disposal system or a public water supply system which is self-sufficient and has the financial, managerial, and technical capability to reliably meet standards of performance on a long-term basis, as required by state and federal law, including the federal Water Pollution Control Act and the federal Safe Drinking Water Act.

37. “*Water of the state*” means any stream, lake, pond, marsh, watercourse, waterway, well, spring, reservoir, aquifer, irrigation system, drainage system, and any other body or accumulation of water, surface or underground, natural or artificial, public or private, which are contained within, flow through or border upon the state or any portion thereof.

38. “*Water pollution*” means the contamination or alteration of the physical, chemical, biological, or radiological integrity of any water of the state by a source resulting in whole or in part from the activities of humans, which is harmful, detrimental, or injurious to public health, safety, or welfare, to domestic, commercial, industrial, agricultural, or recreational use or to livestock, wild animals, birds, fish, or other aquatic life.

39. “*Water supply distribution system extension*” means any extension to the pipelines or conduits which carry water directly from the treatment facility, source or storage facility to the consumer’s service connection.

40. “*Water well*” means an excavation that is drilled, cored, bored, augered, washed, driven, dug, jetted, or otherwise constructed for the purpose of exploring for groundwater, monitoring groundwater, utilizing the geothermal properties of the ground, or extracting water from or injecting water into the aquifer. “*Water well*” does not include an open ditch or drain tiles or an excavation made for obtaining or prospecting for oil, natural gas, minerals, or products mined or quarried.

2007 Acts, ch 126, §74

Former subsections 7, 33, and 44 transferred to §459.102 in Code 2003 pursuant to directive; 2002 Acts, ch 1137, §68, 71; 2002 Acts, 2nd Ex, ch 1003, §260, 262

New subsections 38A and 38B, enacted in 2002 Acts, ch 1138, §3, transferred to §459.102 in Code 2003 pursuant to directive in 2002 Acts, ch 1138, §5

Subsection 27 amended

#### 455B.175 Violations.

If there is substantial evidence that any person has violated or is violating any provision of this part of this division, chapter 459, subchapter III, or chapter 459A, or of any rule or standard established or permit issued pursuant thereto; then:

1. The director may issue an order directing the person to desist in the practice which constitutes the violation or to take such corrective action as may be necessary to ensure that the violation will cease. The person to whom such order is issued may cause to be commenced a contested case within the meaning of the Iowa administrative procedure Act, chapter 17A, by filing with the di-

rector within thirty days a notice of appeal to the commission. On appeal the commission may affirm, modify or vacate the order of the director; or

2. If it is determined by the director that an emergency exists respecting any matter affecting or likely to affect the public health, the director may issue any order necessary to terminate the emergency without notice and without hearing. Any such order shall be binding and effective immediately and until such order is modified or vacated at a hearing before the commission or by a court; or

3. The director, with the approval of the commission, may request the attorney general to institute legal proceedings pursuant to section 455B.191 or 459.604.

2007 Acts, ch 82, §1

Unnumbered paragraph 1 amended

#### 455B.176A Water quality standards.

1. For purposes of this section, unless the context otherwise requires:

*a. "Base flow conditions"* means the flow of a stream segment, as measured during the time period between July 1 and September 30, that occurs during a period of time when the watershed in which the stream segment is located receives no twenty-four-hour rainfall in excess of one-quarter inch total rainfall and not more than one-half inch total rainfall for the watershed in the preceding two weeks.

*b. "Credible data"* means the same as defined in section 455B.171 and is subject to the same requirements as provided in section 455B.193 and may include, but not rely solely on, data that is older than five years and that is obtained pursuant to the best professional judgment of a professional designee or a state or federal agency.

*c. "Ephemeral stream"* means a stream that flows only in response to precipitation and whose channel is primarily above the water table.

*d. "Professional designee"* means the same as defined in section 455B.193.

*e. "Use attainability analysis"* means a structured scientific assessment that includes physical, chemical, biological, and economic factors.

2. A water of the state shall be a designated stream segment when any one of the following is met:

*a.* The most recent ten-year median flow is equal to or in excess of one cubic foot per second based on data collected and evaluated by the United States geological survey between July 1 and September 30 of each year or in the absence of stream segment flow data calculations of flow conducted by extrapolation methods provided by the United States geological survey or based upon a calculation method adopted by rule.

*b.* The water is a critical habitat of a threatened or endangered aquatic specie as determined by the department or the United States fish and wildlife service.

*c.* Credible data developed in accordance with section 455B.193 shows that water flows that are less than set out in paragraph "a" provide a refuge for aquatic life that permits biological recolonization of intermittently flowing segments.

3. All waters of the state not designated as a stream segment shall be identified as a general stream segment and shall be subject to narrative water quality standards.

4. *a.* The commission shall adopt rules to define designated uses of stream segments in accordance with the following categories:

(1) Agricultural water supply use.

(2) Aquatic life support.

(3) Domestic water supply.

(4) Food procurement use.

(5) Industrial water supply use.

(6) Recreational use, including primary, secondary, and children's recreational use.

(7) Seasonal use. The department may allow for a seasonal use designation for streams that would otherwise be categorized under an aquatic or recreational designation if a varying degree of protection would be sufficient to protect the stream during a seasonal time period.

*b.* The commission shall include subcategories of designated uses of the categories listed in paragraph "a", as deemed appropriate by the commission.

*c.* When reviewing whether a designated use is attainable, the department shall consider at a minimum the following:

(1) Whether the natural, ephemeral, intermittent, or low flow conditions or water levels could inhibit recreational activities.

(2) If opposite sides of a stream segment would have different designated recreational uses due to differences in public access, the designated use of the entire stream segment may be the higher attainable use.

(3) The time period for determining primary contact recreation shall be March 15 through November 15.

(4) The degree to which the public has access to the stream segment.

(5) The minimum depth of the deepest pool.

(6) Stream segments shall be protected for all existing uses as defined by the federal Water Pollution Control Act.

5. The commission shall adopt rules designating water quality standards which shall be specific to each designated use adopted pursuant to subsection 4. The standards shall take into account the different characteristics of each designated use and shall provide for only the appropriate level of protection based upon that particular use. The standards shall not be identical for each designated use unless required for the appropriate level of protection. The appropriate level of protection and standards shall be determined on a scientific basis. In the development process for the water quality standards, input shall be received from a

water quality standards advisory committee convened by the department. The water quality standards advisory committee shall be comprised of experts in the scientific fields relating to water quality, such as environmental engineering, aquatic toxicology, fisheries biology, and other life sciences and experts in the development of the appropriate levels of aquatic life protection and standards. The water quality standards shall be reviewed and revised by the department as new scientific data becomes available to support revision.

6. Prior to any changes in a national pollutant discharge elimination system permit effluent limitation based upon a new use designation, the department or a designee of the department shall conduct a use attainability analysis. The commission shall adopt rules that establish procedures and criteria to be used in the development of a use attainability analysis. The rules shall, at a minimum, provide all of the following:

*a.* A designated use, which is not an existing use as defined by the federal Water Pollution Control Act, may be removed due to any of the following:

(1) Naturally occurring pollutant concentrations prevent the attainment of the use.

(2) Natural, ephemeral, intermittent, or low flow conditions or water levels prevent the attainment of the use, unless these conditions may be compensated for by the discharge of sufficient volume of effluent discharges without violating state water conservation requirements to enable uses to be met.

(3) Human-caused conditions or sources of pollution prevent the attainment of the use and cannot be remedied or would cause more environmental damage to correct than to leave in place.

(4) Dams, diversions, or other types of hydrologic modifications preclude the attainment of the use, and it is not feasible to restore the water body to its original condition or to operate such modification in a way that would result in the attainment of the use.

(5) Physical conditions related to the natural features of the water body, such as the lack of a proper substrate, cover, flow, depth, pools, riffles, and the like, unrelated to water quality, preclude attainment of aquatic life protection uses.

(6) Controls more stringent than those required by sections 1311(b) and 1316 of the federal Water Pollution Control Act would result in substantial and widespread economic and social impact.

*b.* A designated use shall not be removed if any of the following occur:

(1) The designated use is an existing use, as defined by the federal Water Pollution Control Act, unless a use requiring more stringent criteria is added.

(2) Such uses will be attained by implementing effluent limits required under sections 1311(b)

and 1316 of the federal Water Pollution Control Act and by implementing cost-effective and reasonable best management practices for nonpoint source control.

*c.* Where existing water quality standards specify designated uses less than those which are presently being attained, the commission shall revise its standards to reflect the uses actually being attained.

7. The department shall consider the substantial and widespread economic and social impact that may occur as a result of a designation. To make this determination, the department shall review circumstances that are unique to each regulated entity to determine whether substantial and widespread economic and social impact would occur. The analysis shall demonstrate whether the regulated entity would face substantial financial impacts due to the costs of compliance and that the affected community would bear significant adverse impacts. The department shall work with the regulated entity to gather necessary information to make this determination.

*a.* The commission shall adopt rules to determine when a regulated entity and the affected community would suffer substantial and widespread economic and social impact due to the costs of complying with a water quality standard. To make this determination, the department shall review the circumstances that are unique to each regulated entity and the affected community. The rules shall include but not be limited to all of the following elements:

(1) A financial analysis of the discharger to determine if the capital, operating, and maintenance costs of pollution control will have a substantial impact.

(2) The financial impact on households resulting from compliance.

(3) The ability of the person releasing a pollutant into a water of the state to obtain pollution control financing and the general economic health of that person.

(4) The change in socioeconomic conditions that would occur as a result of compliance. Factors to consider should include but not be limited to median household income, unemployment, and overall net debt as a percent of full market value of taxable property.

(5) The benefits of improved water quality, such as the expansion of consumptive markets, enhanced recreational use, and increased property values in the community.

*b.* The department may grant a regulated entity a variance from meeting a water quality standard pursuant to section 455B.181 if it is determined that the regulated entity or the affected community would suffer substantial and widespread economic and social impact. The department shall ensure the conditions of any discharge permit variance represent reasonable progress toward complying with water quality standards but

do not result in substantial and widespread economic and social impact.

8. A regulated entity may use an alternative technology system to meet water quality standards for either technology-based or water quality-based effluent limits. The department shall convene a technical advisory committee to assist in the development of rules to allow for the use of appropriate alternative technologies that include but are not limited to all of the following:

- a. Performance-based standards for alternative technology systems.
- b. Effluent reuse standards.
- c. Criteria for large subsurface, midsize treatment, and small cluster wastewater systems.
- d. Setback requirements appropriate to the alternative treatment technology.
- e. Monitoring requirements appropriate to the alternative technology and size of the treatment system.
- f. Sizing factors based on soil morphology.
- g. Design standards for alternative technology system types.

9. The commission shall adopt rules for a review and approval process for standardized treatment systems, and expedited technical reviews for projects that meet the design standards adopted pursuant to subsection 8, paragraph "g", including standardized review checklists for the systems.

10. a. The commission shall adopt rules pursuant to chapter 17A to administer this section. All new or revised stream segment use designations shall be adopted by rule. Any rule that establishes, modifies, or repeals existing water quality standards in this state shall be adopted in conformance with this section.

b. (1) By December 31, 2006, the department shall publish a list of all designated stream segments that receive a permitted discharge for which a use attainability analysis for recreational use and aquatic life has not been completed and a list of all designated stream segments that receive a permitted discharge for which a use attainability analysis for recreational use and aquatic life has been completed and whether a recreational or aquatic use has been determined to be or not to be attainable. By December 31, 2007, a use attainability analysis shall be completed for all newly designated stream segments that receive a permitted discharge.

(2) A use attainability analysis for a designated stream segment receiving a permitted discharge shall be conducted by either the department or a professional designee.

(3) The department shall make public a written determination of whether a new or revised use designation is appropriate for the designated stream segment prior to adoption by rule of the proposed changes.

c. The department shall complete, upon request, a use attainability analysis for recreational

and aquatic uses on any designated stream segment not receiving a permitted discharge or on any previously designated stream segment in accordance with the following provisions:

(1) The department shall make public a written determination of whether a new or revised designated use is appropriate for the designated stream segment within ninety days of completion of the use attainability analysis prior to adoption by rule of the proposed changes.

(2) The department shall accept a use attainability analysis submitted by someone other than a professional designee.

(a) Within thirty days after receipt of submission of a use attainability analysis, the department shall review and provide a written determination of whether the documentation submitted is complete.

(b) Within ninety days after receipt of submission of a completed use attainability analysis, the department shall review and make available to the public a written determination of whether a new or revised use designation is appropriate for the designated stream segment.

d. Any regulated entity or property owner adjacent to the accessed stream segment aggrieved by such a determination may make a written request, within thirty days from the date the written determination of the appropriate use designation is made available to the public, for a meeting with the director or the director's designee. A regulated entity or property owner adjacent to the accessed stream segment shall be allowed to provide evidence that the designation is not appropriate under the criteria as established in this subsection.

11. An operation permit issued pursuant to section 455B.173 that expires before a use attainability analysis is performed shall remain in effect and the department shall not renew the permit until a use attainability analysis is completed. If a use attainability analysis demonstrates that a change in the use designation is warranted, the permit shall remain in effect and the department shall not renew the permit until the stream use designation is changed. In order for an expired permit to remain in effect, the permit holder must meet the requirements for a permit renewal. This subsection does not apply if the permit applicant and the department agree that the performance of a use attainability analysis presents no reasonable likelihood of resulting in a change to the existing stream use designations.

Watershed quality planning task force; report to general assembly by January 1, 2008, regarding recommendations for a voluntary statewide water quality program; 2006 Acts, ch 1145, §4; 2007 Acts, ch 211, §40  
Section not amended; footnote revised

#### **455B.183 Written permits required.**

1. It is unlawful to carry on any of the following activities without first securing a written permit from the director, or from a city or county public works department if the public works department



reviews the activity under this section, as required by the department:

*a.* The construction, installation, or modification of any disposal system or public water supply system or part thereof or any extension or addition thereto except those sewer extensions and water supply distribution system extensions that are subject to review and approval by a city or county public works department pursuant to this section, the use or disposal of sewage sludge, and private sewage disposal systems. Unless federal law or regulation requires the review and approval of plans and specifications, a permit shall be issued for the construction, installation, or modification of a public water supply system or part of a system if a qualified, licensed engineer certifies to the department that the plans for the system or part of the system meet the requirements of state and federal law or regulations. The permit shall state that approval is based only upon the engineer's certification that the system's design meets the requirements of all applicable state and federal laws and regulations and the review of the department shall be advisory.

*b.* The construction or use of any new point source for the discharge of any pollutant into any water of the state.

*c.* The operation of any waste disposal system or public water supply system or any part of or extension or addition to the system. This provision does not apply to a pretreatment system, the effluent of which is to be discharged directly to another disposal system for final treatment and disposal; a semipublic sewage disposal system, the construction of which has been approved by the department and which does not discharge into water of the state; or a private sewage disposal system which does not discharge into a water of the state. Sludge from a semipublic or private sewage disposal system shall be disposed of in accordance with the rules adopted by the department pursuant to chapter 17A. The exemption of this paragraph shall not apply to any industrial waste discharges.

2. Upon adoption of standards by the commission pursuant to section 455B.173, subsections 5 to 8, plans and specifications for sewer extensions and water supply distribution system extensions covered by this section shall be submitted to the city or county public works department for approval if the local public works department employs a qualified, licensed engineer who reviews the plans and specifications using the specific state standards known as the Iowa Standards for Sewer Systems and the Iowa Standards for Water Supply Distribution Systems that have been formulated and adopted by the department pursuant to section 455B.173, subsections 5 to 8. The local agency shall issue a written permit to construct if all of the following apply:

*a.* The submitted plans and specifications are

in substantial compliance with departmental rules and the Iowa Standards for Sewer Systems and the Iowa Standards for Water Supply Distribution Systems.

*b.* The extensions primarily serve residential consumers and will not result in an increase greater than five percent of the capacity of the treatment works or serve more than two hundred fifty dwelling units or, in the case of an extension to a water supply distribution system, the extension will have a capacity of less than five percent of the system or will serve fewer than two hundred fifty dwelling units.

*c.* The proposed sewer extension will not exceed the capacity of any treatment works which received a state or federal monetary grant after 1972.

*d.* The proposed water supply distribution system extension will not exceed the production capacity of any public water supply system constructed after 1972.

3. After issuing a permit, the city or county public works department shall notify the director of such issuance by forwarding a copy of the permit to the director. In addition, the local agency shall submit quarterly reports to the director including such information as capacity of local treatment plants and production capacity of public water supply systems as well as other necessary information requested by the director for the purpose of implementing this chapter.

4. Plans and specifications for all other waste disposal systems and public water supply systems, including sewer extensions and water supply distribution system extensions not reviewed by a city or county public works department under this section, shall be submitted to the department before a written permit may be issued. Plans and specifications for public water supply systems and water supply distribution system extensions must be certified by a licensed engineer as provided in subsection 1, paragraph "a". The construction of any such waste disposal system or public water supply system shall be in accordance with standards formulated and adopted by the department pursuant to section 455B.173, subsections 5 to 8. If it is necessary or desirable to make material changes in the plans or specifications, revised plans or specifications together with reasons for the proposed changes must be submitted to the department for a supplemental written permit. The revised plans and specifications for a public water supply system must be certified by a licensed engineer as provided in subsection 1, paragraph "a".

5. Prior to the adoption of statewide standards, the department may delegate the authority to review plans and specifications to those governmental subdivisions if in addition to compliance with subsection 1, paragraph "c", the governmental subdivisions agree to comply with all state and federal regulations and submit plans for the re-

view of plans and specifications including a complete set of local standard specifications for such improvements.

6. The director may suspend or revoke delegation of review and permit authority after notice and hearing as set forth in chapter 17A if the director determines that a city or county public works department has approved extensions which do not comply with design criteria, which exceed the capacity of waste treatment plants or the production capacity of public water supply systems or which otherwise violate state or federal requirements.

7. The department shall exempt any public water supply system from any requirement respecting a maximum contaminant level or any treatment technique requirement of an applicable national drinking water regulation if these regulations apply to contaminants which the department determines are harmless or beneficial to the health of consumers and if the owner of a public water supply system determines that funds are not reasonably available to provide for controlling amounts of those contaminants which are harmless or beneficial to the health of consumers.

2007 Acts, ch 126, §75 – 77  
 Subsection 1, paragraph a amended  
 Subsection 2, unnumbered paragraph 1 amended  
 Subsection 4 amended

**455B.197 National pollutant discharge elimination system permits.**

The department may issue a permit related to the administration of the national pollutant discharge elimination system (NPDES) permit program pursuant to the federal Water Pollution Control Act, 33 U.S.C. ch. 26, as amended, and 40 C.F.R. pt. 124 including but not limited to storm water discharge permits issued pursuant to section 455B.103A. The department may provide for the receipt of applications and the issuance of permits as provided by rules adopted by the department which are consistent with this section. The department shall assess and collect fees for the processing of applications and the issuance of permits as provided in this section. The department shall deposit the fees into the national pollutant discharge elimination system permit fund created in section 455B.196. The fees shall be established as follows:

1. For a permit for the discharge from mining and processing facilities, NPDES general permit no. 5, the following fee schedule shall apply:

a. An annual permit, one hundred twenty-five dollars each year.

b. For a multiyear permit, all of the following shall apply:

(1) A three-year permit, three hundred dollars.

(2) A four-year permit, four hundred dollars.

(3) A five-year permit, five hundred dollars.

2. For coverage under NPDES individual permits for storm water, for a construction permit, an

application fee of one hundred dollars.

3. For coverage under NPDES individual permits for non-storm water, the following annual fees apply:

a. For a major municipal facility, one thousand two hundred seventy-five dollars.

b. For a minor municipal facility, two hundred ten dollars. For a city with a population of two hundred fifty or less, the maximum fee shall be two hundred ten dollars regardless of how many NPDES individual permits for non-storm water the city holds.

c. For a semipublic facility, three hundred forty dollars.

d. For a facility that holds an operation permit, with no wastewater discharge into surface waters, one hundred seventy dollars.

e. For a municipal water treatment facility, a fee shall not be charged.

f. For a major industrial facility, three thousand four hundred dollars.

g. For a minor industrial facility, three hundred dollars.

h. For an open feedlot operation as provided in chapter 459A, an annual fee of three hundred forty dollars.

i. For a new facility that has not been issued a current non-storm water NPDES permit, a prorated amount which shall be calculated by taking the annual fee amount multiplied by the number of months remaining before the next annual fee due date divided by twelve.

j. For a facility covered under an existing non-storm water NPDES permit, a prorated amount which shall be calculated by taking the annual fee amount multiplied by the number of months remaining before the next annual fee due date divided by twelve.

k. For a non-storm water permit as provided in this subsection, a single application fee of eighty-five dollars.

4. A single family home shall not be charged a fee under this section.

2007 Acts, ch 22, §79; 2007 Acts, ch 53, §1, 2  
 See Code editor's note to §29A.28  
 Section amended

**455B.306 Plans filed.**

1. A city, county, and a private agency operating or planning to operate a sanitary disposal project shall file with the director one of two types of comprehensive plans detailing the method by which the city, county, or private agency will comply with this part 1. The first type is a comprehensive plan in which solid waste is disposed of in a sanitary landfill within the planning area. The second type is a comprehensive plan in which all solid waste is consolidated at and transported from a transfer station for disposal at a sanitary landfill in another comprehensive planning area.

All cities and counties shall also file with the director a comprehensive plan detailing the method

by which the city or county will comply with the requirements of section 455B.302 to establish and implement a comprehensive solid waste reduction program for its residents.

For the purposes of this section, a public agency managing the waste stream for cities or counties pursuant to chapter 28E, shall file one comprehensive plan on behalf of its members, which constitutes full compliance by the public agency's members with the filing requirements of this section. If both a public agency managing the waste stream for a city or county pursuant to chapter 28E, and one or more of the public agency's member cities or counties file a comprehensive plan under this subsection, the director shall, following notice to the agency, make a determination that any plan filed by a member city or county is compatible with the comprehensive plan of the chapter 28E public agency. If the director determines that the comprehensive plan of a city or county is not compatible with the comprehensive plan of a chapter 28E public agency, the director shall require the city or county to provide justification for approval of the comprehensive plan based upon the innovative nature of the comprehensive plan, the urgency of implementation, or other unique features of the comprehensive plan of the city or county, and that the plan otherwise complies with the provisions of this chapter.

This subsection does not prevent the director from approving pilot projects which otherwise comply with the provisions of this chapter. The director shall review each comprehensive plan submitted and may reject, suggest modification, or approve the proposed plan. The director shall aid in the development of comprehensive plans for compliance with this part. The director shall make available to a city, county, and private agency appropriate forms for the submission of comprehensive plans and may hold hearings for the purpose of implementing this part. The director and governmental agencies with primary responsibility for the development and conservation of energy resources shall provide research and assistance, when cities and counties operating or planning to operate sanitary disposal projects request aid in planning and implementing resource recovery systems.

A comprehensive plan filed by a private agency operating or planning to operate a sanitary disposal project required pursuant to section 455B.302 shall be developed in cooperation and consultation with the city or county responsible to provide for the establishment and operation of a sanitary disposal project.

A completed plan for the control and treatment of leachate, submitted to meet the requirements of section 455B.305, subsection 6, shall be reviewed by the director, and the director shall reject, suggest modifications, or approve the completed plan within six months of submittal of the plan. If no action is taken within the six-month period, the

plan shall be considered approved. However, the director may require updating of the plan at the time of renewal or reissuance of a previously issued permit.

2. A planning area that closes all of the municipal solid waste sanitary landfills located in the planning area and chooses to use a municipal solid waste sanitary landfill in another planning area that complies with all requirements under subtitle D of the federal Resource Conservation and Recovery Act, with all solid waste generated within the planning area being consolidated at and transported from a permitted transfer station, may elect to retain autonomy as a planning area and shall not be required to join the planning area where the landfill being used for final disposal of solid waste is located. If a planning area makes the election under this subsection, the planning area receiving the solid waste from the planning area making the election shall not be required to include the planning area making the election in a comprehensive plan provided no services are shared between the two planning areas other than the acceptance of solid waste for disposal at a sanitary landfill. The planning area receiving the solid waste shall only be responsible for the permitting, planning, and waste reduction and diversion programs in the planning area receiving the solid waste. If the department determines that solid waste cannot reasonably be consolidated and transported from a particular transfer station, the department may establish permit conditions to address the transport and disposal of the solid waste. An election may be made under this subsection only if the two comprehensive planning areas enter into an agreement pursuant to chapter 28E that includes, at a minimum, all of the following:

*a.* A detailed methodology of the manner in which solid waste will be tracked and reported between the two planning areas.

*b.* A detailed methodology of the manner in which the receiving sanitary landfill will collect, remit, and report tonnage fees, pursuant to section 455B.310, paid by the planning area that is transporting the solid waste. The methodology shall include both the remittances of tonnage fees to the state and the retained tonnage fees.

3. The plan required by subsection 1 for sanitary disposal projects shall be filed with the department at the time of initial application for the construction and operation of a sanitary disposal project and at a minimum shall be updated and refiled with the department at the time of each subsequent application for renewal or reissuance of a previously issued permit. The department may, consistent with rules of the commission, require filing or updating of a plan at other times.

4. A city or county required to file with the director a comprehensive plan detailing the method by which the city or county will comply with the requirements of section 455B.302 to establish and

implement a comprehensive solid waste reduction program for its residents and which seeks approval of the inclusion of refuse-derived fuel as a component of its percentage of waste reduction, shall file an annual report with the director regarding the percentage of reduction attributable to refuse-derived fuel and the justification for such inclusion. The director shall approve or reject the inclusion. The percentage of reduction attributable to refuse-derived fuel and allowable for inclusion shall not exceed fifty percent.

5. A comprehensive plan filed pursuant to this section shall incorporate and reflect the waste management hierarchy of the state solid waste management policy and shall at a minimum address the following general topics:

*a.* The extent to which solid waste is or can be recycled.

*b.* The economic and technical feasibility of using other existing sanitary disposal project facilities in lieu of initiating or continuing the sanitary landfill currently used.

*c.* The expected environmental impact of alternative solid waste disposal methods, including the use of sanitary landfills.

*d.* A specific plan and schedule for implementing technically and economically feasible solid waste disposal methods that will result in minimal environmental impact.

6. The comprehensive plan shall provide details of a local recycling program which shall contain a methodology for meeting the state volume reduction goal pursuant to section 455D.3, and a methodology for implementing a program of separation of wastes including but not limited to glass, plastic, paper, and metal.

7. In addition to the above requirements, the following specific areas must be addressed in detail in a comprehensive plan filed in conjunction with the issuance, renewal, or reissuance of a permit for a sanitary disposal project:

*a.* A closure and postclosure plan detailing the schedule for and the methods by which the operator will meet the conditions for proper closure and postclosure adopted by rule by the commission. The plan shall include, but is not limited to, the proposed frequency and types of actions to be implemented prior to and following closure of an operation, the proposed postclosure actions to be taken to return the area to a condition suitable for other uses, and an estimate of the costs of closure and postclosure and the proposed method of meeting these costs. The postclosure plan shall reflect the thirty-year time period requirement for postclosure responsibility.

*b.* A plan for the control and treatment of leachate, including financial considerations proposed in meeting the costs of control and treatment in order to meet the requirements of section 455B.305, subsection 6.

*c.* A financial plan detailing the actual cost of the sanitary disposal project and including the

funding sources of the project. In addition to the submittal of the financial plan filed pursuant to this subsection, the operator of an existing sanitary landfill shall submit an annual financial statement to the department.

*d.* An emergency response and remedial action plan including established provisions to minimize the possibility of fire, explosion, or any release to air, land, or water of pollutants that could threaten human health and the environment, and the identification of possible occurrences that may endanger human health and environment.

*e.* A description of the planning area and service area to be served by the city, county, or private agency under the comprehensive plan. Except as provided in subsection 2, a comprehensive plan shall not include a planning area or service area, any part of which is included in another comprehensive plan.

8. When a proposed plan is subject to review and approval by several state and local agencies, if the plan is substantially modified after approval by an agency, the plan shall be resubmitted as a new proposal to all other agencies to ensure that all agencies have approved the same plan.

9. In addition to the comprehensive plan filed pursuant to subsection 1, a person operating or proposing to operate a sanitary disposal project shall provide a financial assurance instrument to the department prior to the initial approval of a permit or prior to the renewal of a permit for an existing or expanding facility beginning July 1, 1988.

*a.* The financial assurance instrument shall meet all requirements adopted by rule by the commission, and shall not be canceled, revoked, disbursed, released, or allowed to terminate without the approval of the department. Following the cessation of operation or closure of a sanitary disposal project, neither the guarantor nor the operator shall cancel, revoke, or disburse the financial assurance instrument or allow the instrument to terminate until the operator is released from closure, postclosure, and monitoring responsibilities.

*b.* The operator shall maintain closure, and postclosure accounts. The commission shall adopt by rule the amounts to be contributed to the accounts based upon the amount of solid waste received by the facility. The accounts established shall be specific to the facility.

(1) Money in the accounts shall not be assigned for the benefit of creditors with the exception of the state.

(2) Money in an account shall not be used to pay any final judgment against a licensee arising out of the ownership or operation of the site during its active life or after closure.

(3) Conditions under which the department may gain access to the accounts and circumstances under which the accounts may be released to the operator after closure and postclosure responsibilities have been met, shall be established by the commission.

c. The commission shall adopt by rule the minimum amounts of financial responsibility for sanitary disposal projects.

d. Financial assurance instruments may include instruments such as cash or surety bond, a letter of credit, a secured trust fund, or a corporate guarantee.

e. The annual financial statement submitted to the department pursuant to subsection 7, paragraph “c”, shall include the current amounts established in each of the accounts and the projected amounts to be deposited in the accounts in the following year.

10. If a city, county, or private agency does not incorporate the elements of the solid waste hierarchy of the state solid waste management policy in a proposed initial or adopted comprehensive plan, the city council or county board of supervisors governing the city or county in which the sanitary landfill is proposed to be located or is located shall hold a public hearing to address the basis for not including any of the elements in the plan.

11. A city council or county board of supervisors governing the area in which a sanitary disposal project is proposed to be located or is located shall hold a public hearing to address the issue of including or not including local curbside recycling in the comprehensive plan.

12. This section shall not apply to a sanitary landfill project owned by an electric generating facility and used exclusively for the disposal of coal combustion residue. Notwithstanding section 455B.301, subsection 8, a utility under this subsection may demonstrate financial assurance through the use of a secured trust fund, a cash or surety bond, a corporate financial test as provided by the department, the obtaining of an irrevocable letter of credit, or an alternative method as provided by the department. The financial assurance instrument submitted must ensure the facility’s financial capability to provide reasonable and necessary response during the lifetime of the project and for a specified period of time following closure as required by rules adopted by the commission.

2007 Acts, ch 215, §115  
NEW subsection 12

#### **455B.474 Duties of commission — rules.**

The commission shall adopt rules pursuant to chapter 17A relating to:

1. Release detection, prevention, and correction as may be necessary to protect human health and the environment, applicable to all owners and operators of underground storage tanks. The rules shall include, but are not limited to, requirements for:

a. Maintaining a leak detection system, an inventory control system with a tank testing, or a comparable system or method designed to identify releases in a manner consistent with the protection of human health and the environment.

b. Maintaining records of any monitoring or

leak detection system, inventory control system, tank testing or comparable system, and periodic underground storage tank facility compliance inspections conducted by inspectors certified by the department.

c. Reporting of any releases and corrective action taken in response to a release from an underground storage tank.

d. Establishing criteria for classifying sites according to the release of a regulated substance in connection with an underground storage tank.

(1) The classification system shall consider the actual or potential threat to public health and safety and to the environment posed by the contaminated site and shall take into account relevant factors, including the presence of contamination in soils, groundwaters, and surface waters, and the effect of conduits, barriers, and distances on the contamination found in those areas according to the following factors:

(a) Soils shall be evaluated based upon the depth of the existing contamination and its distance from the ground surface to the contamination zone and the contamination zone to the groundwater; the soil type and permeability, including whether the contamination exists in clay, till or sand and gravel; and the variability of the soils, whether the contamination exists in soils of natural variability or in a disturbed area.

(b) Groundwaters shall be evaluated based upon the depth of the contamination and its distance from the ground surface to the groundwater and from the contamination zone to the groundwater; the flow pattern of the groundwater, the direction of the flow in relation to the contamination zone and the interconnection of the groundwater with the surface or with surface water and with other groundwater sources; the nature of the groundwater, whether it is located in a high yield aquifer, an isolated, low yield aquifer, or in a transient saturation zone; and use of the groundwater, whether it is used as a drinking water source for public or private drinking water supplies, for livestock watering, or for commercial and industrial processing.

(c) Surface water shall be evaluated based upon its location, its distance in relation to the contamination zone, the groundwater system and flow, and its location in relation to surface drainage.

(d) The effect of conduits, barriers, and distances on the contamination found in soils, groundwaters, and surface waters. Consideration should be given to the following: the effect of contamination on conduits such as wells, utility lines, tile lines and drainage systems; the effect of conduits on the transport of the contamination; whether a well is active or abandoned; what function the utility line serves, whether it is a sewer line, a water distribution line, telephone line, or other line; the existence of barriers such as buildings and other structures, pavement, and natural

barriers, including rock formations and ravines; and the distance which separates the contamination found in the soils, groundwaters, or surface waters from the conduits and barriers.

(2) A site shall be classified as either high risk, low risk, or no action required.

(a) A site shall be considered high risk when it is determined that contamination from the site presents an unreasonable risk to public health and safety or the environment under any of the following conditions:

(i) Contamination is affecting or likely to affect groundwater which is used as a source water for public or private water supplies, to a level rendering them unsafe for human consumption.

(ii) Contamination is actually affecting or is likely to affect surface water bodies to a level where surface water quality standards, under section 455B.173, will be exceeded.

(iii) Harmful or explosive concentrations of petroleum substances or vapors affecting structures or utility installations exist or are likely to occur.

(b) A site shall be considered low risk under any of the following conditions:

(i) Contamination is present and is affecting groundwater, but high risk conditions do not exist and are not likely to occur.

(ii) Contamination is above action level standards, but high risk conditions do not exist and are not likely to occur.

(c) A site shall be considered no action required if contamination is below action level standards and high or low risk conditions do not exist and are not likely to occur.

(d) For purposes of classifying a site as either low risk or no action required, the department shall rely upon the example tier one risk-based screening level look-up table of ASTM (American society for testing and materials) international's emergency standard, ES38-94, or other look-up table as determined by the department by rule.

(e) A site cleanup report which classifies a site as either high risk, low risk, or no action required shall be submitted by a groundwater professional to the department with a certification that the report complies with the provisions of this chapter and rules adopted by the department. The report shall be determinative of the appropriate classification of the site. However, if the report is found to be inaccurate or incomplete, and if based upon information in the report the risk classification of the site cannot be reasonably determined by the department based upon industry standards, the department shall work with the groundwater professional to obtain the additional information necessary to appropriately classify the site. A groundwater professional who knowingly or intentionally makes a false statement or misrepresentation which results in a mistaken classification of a site shall be guilty of a serious misdemeanor and shall have the groundwater professional's certification revoked under this section.

e. The closure of tanks to prevent any future release of a regulated substance into the environment. If consistent with federal environmental protection agency technical standard regulations, state tank closure rules shall include, at the tank owner's election, an option to fill the tank with an inert material. Removal of a tank shall not be required if the tank is filled with an inert material pursuant to department of natural resources rules. A tank closed, or to be closed and which is actually closed, within one year of May 13, 1988, shall be required to complete monitoring or testing as required by the department to ensure that the tank did not leak prior to closure, but shall not be required to have a monitoring system installed.

f. Establishing corrective action response requirements for the release of a regulated substance in connection with an underground storage tank. The corrective action response requirements shall include, but not be limited to, all of the following:

(1) A requirement that the site cleanup report do all of the following:

(a) Identify the nature and level of contamination resulting from the release.

(b) Provide supporting data and a recommendation of the degree of risk posed by the site relative to the site classification system adopted pursuant to paragraph "d".

(c) Provide supporting data and a recommendation of the need for corrective action.

(d) Identify the corrective action options which shall address the practical feasibility of implementation, costs, expected length of time to implement, and environmental benefits.

(2) To the fullest extent practicable, allow for the use of generally available hydrological, geological, topographical, and geographical information and minimize site specific testing in preparation of the site cleanup report.

(3) Require that at a minimum the source of a release be stopped either by repairing, upgrading, or closing the tank and that free product be removed or contained on site.

(4) High risk sites shall be addressed pursuant to a corrective action design report, as submitted by a groundwater professional and as accepted by the department. The corrective action design report shall determine the most appropriate response to the high risk conditions presented. The appropriate corrective action response shall be based upon industry standards and shall take into account the following:

(a) The extent of remediation required to reclassify the site as a low risk site.

(b) The most appropriate exposure scenarios based upon residential, commercial, or industrial use or other predefined industry accepted scenarios.

(c) Exposure pathway characterizations including contaminant sources, transport mechanisms, and exposure pathways.

(d) Affected human or environmental receptors and exposure scenarios based on current and projected use scenarios.

(e) Risk-based corrective action assessment principles which identify the risks presented to the public health and safety or the environment by each release in a manner that will protect the public health and safety or the environment using a tiered procedure consistent with ASTM (American society for testing and materials) international's emergency standard, ES38-94.

(f) Other relevant site specific factors such as the feasibility of available technologies, existing background contaminant levels, current and planned future uses, ecological, aesthetic, and other relevant criteria, and the applicability and availability of engineering and institutional controls, including an environmental covenant as established by chapter 455I.

(g) Remediation shall not be required on a site that does not present an increased cancer risk at the point of exposure of one in one million for residential areas or one in ten thousand for nonresidential areas.

(5) A corrective action design report submitted by a groundwater professional shall be accepted by the department and shall be primarily relied upon by the department to determine the corrective action response requirements of the site. However, if the corrective action design report is found to be inaccurate or incomplete, and if based upon information in the report the appropriate corrective action response cannot be reasonably determined by the department based upon industry standards, the department shall work with the groundwater professional to obtain the additional information necessary to appropriately determine the corrective action response requirements. A groundwater professional who knowingly or intentionally makes a false statement or misrepresentation which results in an improper or incorrect corrective action response shall be guilty of a serious misdemeanor and shall have the groundwater professional's certification revoked under this section.

(6) Low risk sites shall be monitored as deemed necessary by the department consistent with industry standards. Monitoring shall not be required on a site which has received a no further action certificate.

(7) An owner or operator may elect to proceed with additional corrective action on the site. However, any action taken in addition to that required pursuant to this paragraph "f" shall be solely at the expense of the owner or operator and shall not be considered corrective action for purposes of section 455G.9.

(8) Notwithstanding other provisions to the contrary and to the extent permitted by federal law, the department shall allow for bioremediation of soils and groundwater. For purposes of this subparagraph, "bioremediation" means the

use of biological organisms, including microorganisms or plants, to degrade organic pollutants to common natural products.

(9) Replacement or upgrade of a tank on a site classified as a high or low risk site shall be equipped with a secondary containment system with monitoring of the space between the primary and secondary containment structures or other board approved tank system or methodology.

(10) The commission and the board shall cooperate to ensure that remedial measures required by the corrective action rules adopted pursuant to this paragraph are reasonably cost-effective and shall, to the fullest extent possible, avoid duplicating and conflicting requirements.

(11) The director may order an owner or operator to immediately take all corrective actions deemed reasonable and necessary by the director if the corrective action is consistent with the prioritization rules adopted under this paragraph. Any order taken by the director pursuant to this subparagraph shall be reviewed at the next meeting of the environmental protection commission.

g. Specifying an adequate monitoring system to detect the presence of a leaking underground storage tank and to provide for protection of the groundwater resources for regulated tanks installed prior to January 14, 1987. The effective date of the rules adopted shall be January 14, 1989. In the event that federal regulations are adopted by the United States environmental protection agency after the commission has adopted state standards pursuant to this subsection, the commission shall immediately proceed to adopt rules consistent with those federal regulations adopted. Unless the federal environmental protection agency adopts final rules to the contrary, rules adopted pursuant to this section shall not apply to hydraulic lift reservoirs, such as for automobile hoists and elevators, containing hydraulic oil.

h. Issuing a no further action certificate or a monitoring certificate to the owner or operator of an underground storage tank site.

(1) A no further action certificate shall be issued by the department for a site which has been classified as a no further action site or which has been reclassified pursuant to completion of a corrective action plan or monitoring plan to be a no further action site.

(2) A monitoring certificate shall be issued by the department for a site which does not require remediation, but does require monitoring of the site.

(3) A certificate shall be recorded with the county recorder. The owner or operator of a site who has been issued a certificate under this paragraph "h" or a subsequent purchaser of the site shall not be required to perform further corrective action solely because action standards are changed at a later date. A certificate shall not prevent the department from ordering corrective action of a new release.

*i.* Establishing a certified compliance inspector program administered by the department for underground storage tank facility compliance inspections.

(1) The certified compliance inspector program shall provide for, but not be limited to, all of the following:

(a) Mandatory periodic underground storage tank facility compliance inspections by owners and operators using inspectors certified by the department.

(b) Compliance inspector qualifications, certification procedures, certification and renewal fees sufficient to cover administrative costs, continuing education requirements, inspector discipline standards including certification suspension and revocation for good cause, compliance inspection standards, professional liability bonding or insurance requirements, and any other requirements as the commission may deem appropriate. Certification and renewal fees received by the department are appropriated to the department for purposes of the administration of the certified compliance inspector program.

(2) The department shall continue to conduct independent inspections as provided in section 455B.475 as deemed appropriate to assure effective compliance and enforcement and for the purpose of auditing the accuracy and completeness of inspections conducted by certified compliance inspectors.

(3) Acts or omissions by a certified compliance inspector, the state, or the department regarding certification, renewal, oversight of the certification process, continuing education, discipline, inspection standards, or any other actions, rules, or regulations arising out of the certification, inspections, or duties imposed by this section shall not be cause for a claim against the state or the department within the meaning of chapter 669 or any other provision of the Iowa Code.

In adopting the rules under this subsection, the commission may distinguish between types, classes, and ages of underground storage tanks. In making the distinctions, the commission may take into consideration factors including, but not limited to, location of the tanks, compatibility of a tank material with the soil and climate conditions, uses of the tanks, history of maintenance, age of the tanks, current industry recommended practices, national consensus codes, hydrogeology, water table, size of the tanks, quantity of regulated substances periodically deposited in or dispensed from the tank, the degree of risk presented by the regulated substance, the technical and managerial capability of the owners and operators, and the compatibility of the regulated substance and the materials of which the underground storage tank is fabricated.

The department may issue a variance, which includes an enforceable compliance schedule, from the mandatory monitoring requirement for an

owner or operator who demonstrates plans for tank removal, replacement, or filling with an inert material pursuant to a department approved variance. A variance may be renewed for just cause.

2. The maintenance of evidence of financial responsibility as the director determines to be feasible and necessary for taking corrective action and for compensating third parties for bodily injury and property damage caused by release of a regulated substance from an underground storage tank.

*a.* Financial responsibility required by this subsection may be established in accordance with rules adopted by the commission by any one, or any combination, of the following methods: insurance, guarantee, surety bond, letter of credit, or qualification as a self-insurer. In adopting requirements under this subsection, the commission may specify policy or other contractual terms, conditions, or defenses which are necessary or are unacceptable in establishing the evidence of financial responsibility.

A person who establishes financial responsibility by self-insurance shall not require or shall not enforce an indemnification agreement with an operator or owner of the tank covered by the self-insurance obligation, unless the owner or operator has committed a substantial breach of a contract between the self-insurer and the owner or operator, and that substantial breach relates directly to the operation of the tank in an environmentally sound manner. This paragraph applies to all contracts between a self-insurer and an owner or operator entered into on or after May 5, 1989.

*b.* If the owner or operator is in bankruptcy, reorganization, or arrangement pursuant to the federal bankruptcy law or if jurisdiction in any state court or federal court cannot be obtained over an owner or operator likely to be solvent at the time of judgment, any claim arising from conduct for which evidence of financial responsibility must be provided under this subsection may be asserted directly against the guarantor providing the evidence of financial responsibility. In the case of action pursuant to this paragraph, the guarantor is entitled to invoke all rights and defenses which would have been available to the owner or operator if an action had been brought against the owner or operator by the claimant and which would have been available to the guarantor if an action had been brought against the guarantor by the owner or operator.

*c.* The total liability of a guarantor shall be limited to the aggregate amount which the guarantor has provided as evidence of financial responsibility to the owner or operator under this subsection. This subsection does not limit any other state or federal statutory, contractual, or common law liability of a guarantor to its owner or operator including, but not limited to, the liability of the guarantor for bad faith in negotiating or in failing to negotiate the settlement of any claim. This subsec-



tion does not diminish the liability of any person under section 107 or 111 of the Comprehensive Environmental Response, Compensation and Liability Act of 1980 or other applicable law.

*d.* For the purpose of this subsection, the term “*guarantor*” means any person, other than the owner or operator, who provides evidence of financial responsibility for an owner or operator under this subsection.

*e.* If an owner or operator is required to uncover or remove an underground storage tank based upon a determination of the department that the underground storage tank presents a hazard to the public health, safety, or the environment, and if upon inspection of the tank the determination is unfounded, the state may reimburse reasonable costs incurred in the inspection of the tank. Claims for reimbursement shall be filed on forms provided by the commission. The commission shall adopt rules pursuant to chapter 17A relating to determinations of reasonableness in approval or rejection of claims in cases of dispute. Claims shall be paid from the general fund of the state. When any one of the tanks or the related pumps and piping at a multiple tank facility are found to be leaking, the state shall not reimburse costs for uncovering or removing any of the other tanks, piping, or pumps that are not found to be leaking.

3. Standards of performance for new underground storage tanks which shall include, but are not limited to, design, construction, installation, release detection, and compatibility standards. Until the effective date of the standards adopted by the commission and after January 1, 1986, a person shall not install an underground storage tank for the purpose of storing regulated substances unless the tank (whether of single or double wall construction) meets all the following conditions:

*a.* The tank will prevent release due to corrosion or structural failure for the operational life of the tank.

*b.* The tank is cathodically protected against corrosion, constructed of noncorrosive material, steel clad with a noncorrosive material, or designed in a manner to prevent the release or threatened release of any stored substance.

*c.* The material used in the construction or lining of the tank is compatible with the substance to be stored. If soil tests conducted in accordance with ASTM (American society for testing and materials) international’s standard G 57-78 or another standard approved by the commission show that soil resistivity in an installation location is twelve thousand ohm/cm or more (unless a more stringent soil resistivity standard is adopted by rule of the commission), a storage tank without corrosion protection may be installed in that location until the effective date of the standards adopted by the commission and after January 1, 1986.

*d.* Rules adopted by the commission shall specify adequate monitoring systems to detect the

presence of a leaking underground storage tank and to provide for protection of the groundwater resources from regulated tanks installed after January 14, 1987. In the event that federal regulations are adopted by the United States environmental protection agency after the commission has adopted state standards pursuant to this subsection, the commission shall immediately proceed to adopt rules consistent with those federal regulations adopted. Tanks installed on or after January 14, 1987, shall continue to be considered new tanks for purposes of this chapter and are subject to state monitoring requirements unless federal requirements are more restrictive.

4. The form and content of the written notices required by section 455B.473.

5. The duties of owners or operators of underground storage tanks to locate and abate the source of release of regulated substances, when in the judgment of the director, the local hydrology, geology and other relevant factors reasonably include a tank as a potential source.

6. Reporting requirements necessary to enable the department to maintain an accurate inventory of underground storage tanks.

7. Designation of regulated substances subject to this part, consistent with section 455B.471, subsection 8. The rules shall be at least as stringent as the regulations of the federal government pursuant to section 311, subsection b, paragraph 2, subparagraph A of the federal Water Pollution Control Act, 33 U.S.C. § 1321(b)(2)(A), pursuant to section 102 of the Comprehensive Environmental Response, Compensation, and Liability Act, 42 U.S.C. § 9602, pursuant to section 307, subsection a of the federal Water Pollution Control Act, 33 U.S.C. § 1317(a), pursuant to section 112 of the Clean Air Act, 42 U.S.C. § 7412, or pursuant to section 7 of the Toxic Substances Control Act, 15 U.S.C. § 2606.

8. Requirements as may be necessary to maintain state program approval and which are consistent with applicable provisions of the federal Energy Policy Act of 2005, Pub. L. No. 109-58, Title XV, Subtitle B, Underground Storage Tank Compliance, as codified in 42 U.S.C. § 6991 et seq.

*a.* The commission shall adopt rules establishing a training program applicable to owners and operators of underground storage tanks. The rules may include provisions for department certification of operators, self-certification by owners and operators, education and training requirements, owner requirements to assure operator qualifications, and assessment of education, training, and certification fees. The rules shall be consistent with and sufficient to comply with the operator training requirements as provided in 42 U.S.C. § 6991i, guidance adopted pursuant to that provision by the administrator of the United States environmental protection agency, and state program approval requirements under 42 U.S.C. § 6991i(b).

b. The commission shall adopt rules related to the prohibition on the delivery of regulated substances consistent with and sufficient to comply with the provisions of 42 U.S.C. § 6991k, guidance adopted by the administrator of the United States environmental protection agency pursuant to that provision, and state program approval requirements under 42 U.S.C. § 6991k(a)(3).

c. The commission shall adopt rules applicable to secondary containment requirements consistent with and sufficient to comply with the provisions of Pub. L. No. 109-58, Title XV, § 1530(a), as codified at 42 U.S.C. § 6991b(i)(1), and guidance adopted by the administrator of the United States environmental protection agency pursuant to that provision. Each new underground storage tank or piping connected to any such new tank installed after July 1, 2007, or any existing underground storage tank or existing piping connected to such existing underground storage tank that is replaced after August 1, 2007, shall be secondarily contained if the installation is within one thousand feet of any existing community water system or any existing potable drinking water well as provided in Pub. L. No. 109-58, Title XV, § 1530(a), as codified at 42 U.S.C. § 6991b(i)(1), and in guidance adopted by the United States environmental protection agency pursuant to that provision. Rules adopted under this paragraph shall not amend or modify the secondary containment requirements in subsection 1, paragraph “f”, subparagraph (9).

9. a. Groundwater professionals shall be certified. The commission shall adopt rules pursuant to chapter 17A for such certifications, and the rules shall include provisions for certification suspension or revocation for good cause.

b. A groundwater professional is a person who provides subsurface soil contamination and groundwater consulting services or who contracts to perform remediation or corrective action services and is one or more of the following:

(1) A person certified by the American institute of hydrology, the national water well association, the American board of industrial hygiene, or the association of groundwater scientists and engineers.

(2) A professional engineer licensed in Iowa.

(3) A professional geologist certified by a national organization.

(4) Any person who has five years of direct and related experience and training as a groundwater professional or in the field of earth sciences.

(5) Any other person with a license, certification, or registration to practice hydrogeology or groundwater hydrology issued by any state in the United States or by any national organization, provided that the license, certification, or registration process requires, at a minimum, all of the following:

(a) Possession of a bachelor’s degree from an accredited college.

(b) Five years of related professional experience.

c. The department of natural resources may provide for a civil penalty of no more than fifty dollars for failure to obtain certification. An interested person may obtain a list of certified groundwater professionals from the department of natural resources. The department may impose and retain a fee for the certification of persons under this subsection sufficient to cover the costs of administration.

d. The certification of groundwater professionals shall not impose liability on the board, the department, or the fund for any claim or cause of action of any nature, based on the action or inaction of a groundwater professional certified pursuant to this subsection.

e. A person who requests certification under this subsection shall be required to attend a course of instruction and pass a certification examination. An applicant who successfully passes the examination shall be certified as a groundwater professional.

f. All groundwater professionals shall be required to complete continuing education requirements as adopted by rule by the commission.

g. The commission may provide for exemption from the certification requirements of this subsection and rules adopted hereunder for a professional engineer licensed pursuant to chapter 542B, if the person is qualified in the field of geotechnical, hydrological, environmental groundwater, or hydrogeological engineering.

h. Notwithstanding the certification requirements of this subsection, a site cleanup report or corrective action design report submitted by a certified groundwater professional shall be accepted by the department in accordance with subsection 1, paragraph “d”, subparagraph (2), subparagraph subdivision (e), and paragraph “f”, subparagraph (5).

10. Requirements that persons and companies performing or providing services for underground storage tank installations, installation inspections, testing, permanent closure of underground storage tanks by removal or filling in place, and other closure activities as defined by rules adopted by the commission be certified by the department. This provision does not apply to persons performing services in their official capacity and as authorized by the state fire marshal’s office or fire departments of political subdivisions of the state. The rules adopted by the commission shall include all of the following:

a. Establishing separate certification criteria applicable to underground storage tank installers and installation inspectors, underground storage tank testers, and persons conducting underground storage tank closure activities as required by commission rules.

b. Establishing minimum qualifications for

certification including but not limited to considerations based on education, character, professional ethics, experience, manufacturer or other private agency certification, training and apprenticeship, and field demonstration of competence. The rules may provide for exemption from education, experience, and training requirements for a licensed engineer for whom underground storage tank installation is within the scope of their license and practice but shall require compliance with other certification requirements.

c. Requiring a written examination developed and administered by the department or by some other qualified public or private entity identified by the department. The department may contract with a public or private entity to administer the department's examination or a department-approved third party examination. The examination shall, at a minimum, be sufficient to establish knowledge of all applicable underground storage tank rules adopted under this section, private industry standards, federal standards, and other applicable standards adopted by the state fire marshal's office pursuant to chapter 101.

d. Providing for a minimum two-year renewable certification period. A person may apply for a combined certificate applicable to underground storage tank installer and installer inspector certification, tester certification, and closure certification.

e. Providing that certificate holders obtain and provide proof of financial responsibility for environmental liability with minimum liability limits of one million dollars per occurrence and in the aggregate. The rules may provide exemptions where the certificate holder is employed by the owner or operator of the underground storage tank system and the underground storage tank system is covered by a financial responsibility mechanism under subsection 2.

f. Providing criteria for the department to take disciplinary action including issuance of warnings, reprimands, suspension and probation, and revocation. Any certificate holder subject to suspension or revocation shall be entitled to notice and an opportunity for an evidentiary hearing as provided in section 17A.18.

g. Providing for certification reciprocity between states upon demonstration that the out-of-state certification criteria is substantially equivalent to rules adopted by the commission.

h. Providing for assessment of fees sufficient to cover the costs of administration of the certification program. A separate fee may be established for persons applying for a combination of installer and installer inspector, testing, or closure certifications. Fees received by the department pursuant to this subsection are appropriated to the department for purposes of the administration of activities under this subsection.

i. Notwithstanding subsection 7, the commis-

sion may adopt rules requiring that all underground storage tank installations, installation inspections, testing, and closure activities be conducted by persons certified in accordance with this subsection.

j. Acts or omissions of a person certified under this subsection, the state, or the department regarding certification, renewal, oversight of the certification process, continuing education, discipline, inspection standards, or any other actions including department onsite supervision of certified activities, rules, or regulations arising out of the certification, shall not be cause for a claim against the state or the department within the meaning of chapter 669 or any other provision of the Code.

The rules adopted by the commission under this section shall be consistent with and shall not exceed the requirements of federal regulations relating to the regulation of underground storage tanks except as provided in subsection 1, paragraph "g" and subsection 3, paragraph "d". It is the intent of the general assembly that state rules adopted pursuant to subsection 1, paragraph "g" and subsection 3, paragraph "d" be consistent with and not more restrictive than federal regulations adopted by the United States environmental protection agency when those rules are adopted.

2007 Acts, ch 171, §1 - 6

Any registration or certification issued to underground storage tank installation inspectors pursuant to former §455G.17 continues in full force and effect until expiration or renewal; 2007 Acts, ch 171, §10

Subsection 1, paragraph b amended

Subsection 1, paragraph d, subparagraph (2), subparagraph subdivision (e) amended

Subsection 1, paragraph f, subparagraph (5) amended

Subsection 1, paragraph h, subparagraph (3) amended

Subsection 1, NEW paragraph i

NEW subsections 8 - 10

#### **455B.803 Plans for removal, collection, and recovery of vehicle mercury-added switches.**

1. Within ninety days of July 1, 2006, each manufacturer of vehicles sold in this state shall, individually or as part of a group, develop and publish a plan for a system to remove, collect, and recover mercury-added switches from end-of-life vehicles that were manufactured by the manufacturer. Publication shall be in accordance with section 455B.807, subsection 2.

2. a. The manufacturer shall implement a system to remove, collect, and recover mercury-added switches from end-of-life vehicles within ninety days of publication of the plan.

b. The system developed and implemented pursuant to this section shall provide, at a minimum, all of the following:

(1) Educational materials about the program to inform the public and other stakeholders about the purpose of the collection program and how to participate in the program.

(2) A method for implementing, operating, maintaining, and monitoring the system, in accor-

dance with subsection 3. This may include the use of third-party contractors that are qualified and fully insured to perform these tasks.

(3) Information about mercury-added switches identifying all of the following:

(a) The make, model, and year of vehicles potentially containing mercury-added switches.

(b) A description of the mercury-added switches.

(c) The location of the mercury-added switches.

(d) The safe, cost-effective, and environmentally sound methods for the removal of the mercury-added switches from end-of-life vehicles.

(4) A method to arrange and pay for the transportation of the collected mercury-added switches to permitted facilities.

(5) A method to arrange and pay for the recycling of the mercury-added switches.

(6) A method to track participation and publish the progress of the mercury-added switch collection in accordance with section 455B.807, subsection 2.

(7) A database of participating vehicle recyclers, including all of the following:

(a) Documentation that the vehicle recycler joined the program.

(b) Records of all submissions by a vehicle recycler of any information required pursuant to subparagraph (6).

(c) Confirmation that the vehicle recycler has submitted switches at least once every twelve months since joining the program.

(8) A target mercury-added switch capture rate for vehicles manufactured by the manufacturer of ninety percent. A description of additional or alternative actions that shall be implemented by the manufacturer to improve the system and its operation in the event that the target capture rate is not met shall be published with the required tracking information no less than annually.

(9) The program shall not include inaccessible mercury-added switches from end-of-life vehicles with significant damage to the vehicle in the area surrounding the mercury-added switch location. All accessible mercury-added switches are expected to be collected under the provisions of this division.

c. In developing a removal, collection, and recovery system for end-of-life vehicles, a manufacturer shall, to the extent practicable, utilize the existing end-of-life vehicle recycling infrastructure.

d. If the commission determines that the manufacturer's plan for a system to remove, collect, and recover mercury-added switches from end-of-life vehicles does not comply with this section, the commission may require the manufacturer to make any necessary modification to the plan.

e. On July 1, 2020, the commission shall cease enforcement of the removal, collection, and recovery

plans under this section. On or before July 1, 2020, the commission shall review the mercury-added switch removal, collection, and recovery portion of this division and submit a recommendation to the general assembly regarding the necessity of continuing the enforcement of the removal, collection, and recovery plans under this section.

3. The total cost of the removal, collection, and recovery system for mercury-added switches shall be paid by the manufacturer. Costs shall include but not be limited to all of the following:

a. Labor to remove mercury-added switches. Labor shall be reimbursed at a minimum rate of four dollars per mercury-added switch removed, or if the vehicle identification number of the source vehicle is required for reimbursement, at a minimum rate of five dollars.

b. Training.

c. Packaging in which to transport mercury-added switches to recycling, storage, or disposal facilities.

d. Shipping of mercury-added switches to recycling, storage, or disposal facilities.

e. Recycling, storage, or disposal of the mercury-added switches.

f. Public education materials and presentations.

g. Maintenance of all appropriate systems and procedures to protect the environment from mercury contamination from collected mercury-added switches.

4. A vehicle recycler that performs as required under a removal, collection, and recovery plan shall be afforded the protections provided in section 613.18.

2007 Acts, ch 126, §78

For future repeal of this section upon development and implementation of national mercury switch recovery program; conditions; see 2006 Acts, ch 1120, §11

Subsection 2, paragraph b, subparagraph (7), subparagraph subdivision (c) amended

**455B.810 through 455B.850** Reserved.

## DIVISION XII

### IOWA CLIMATE CHANGE ADVISORY COUNCIL

Greenhouse gas inventory and  
registry, see §455B.152

**455B.851 Iowa climate change advisory council.**

1. The department shall create an Iowa climate change advisory council consisting of twenty-three voting members serving three-year staggered terms and four nonvoting, ex officio members.

2. a. The voting members shall be appointed by the governor and shall represent the following:

(1) The university of Iowa center for global and regional environmental research.

- (2) The university of northern Iowa center for energy and environmental education.
- (3) The Iowa farm bureau.
- (4) The Iowa public transit association.
- (5) Rural electric cooperatives.
- (6) Investor-owned utilities.
- (7) Municipal utilities.
- (8) The Iowa utilities board.
- (9) One association with environmental interests or activities.
- (10) One association with conservation interests or activities.
- (11) The international brotherhood of electrical workers.
- (12) The Iowa association of business and industry.
- (13) The Iowa energy center.
- (14) The Iowa renewable fuels association.
- (15) The office of consumer advocate of the department of justice.
- (16) A representative from local government.
- (17) The director of the office of energy independence.
- (18) A manufacturer of equipment used for alternative energy production.
- (19) The department of agronomy at Iowa state university of science and technology.
- (20) Four members of the general public.

b. The four nonvoting, ex officio members shall consist of four members of the general assembly, two from the senate and two from the house of representatives, with not more than one member from each chamber being from the same political party. The two senators shall be designated by the majority leader of the senate after consultation with the president and the minority leader of the senate. The two representatives shall be designated by the speaker of the house of representatives after consultation with the majority and minority leaders of the house of representatives.

3. Voting members of the council shall serve at

the pleasure of the governor and shall serve without compensation.

4. The chairperson of the council shall be designated by the governor and may convene the council at any time.

5. A vacancy in the membership shall not impair the right of a quorum to exercise all the rights and perform all the duties of the council. A majority of the council members then appointed constitutes a quorum. A majority vote of the quorum is required for council action.

6. The department shall provide necessary staff assistance to the council.

7. After consideration of a full range of policies and strategies, including the cost-effectiveness of the strategies, the council shall develop multiple scenarios designed to reduce statewide greenhouse gas emissions including one scenario that would reduce such emissions by fifty percent by 2050. The council shall also develop short-term, medium-term, and long-term scenarios designed to reduce statewide greenhouse gas emissions and shall consider the cost-effectiveness of the scenarios. The council shall establish a baseline year for purposes of calculating reductions in statewide greenhouse gas emissions. The council shall submit the proposal to the governor and the general assembly by January 1, 2008.

8. The council may periodically adopt recommendations designed to encourage the reduction of statewide greenhouse gas emissions.

9. By September 1 of each year, the department shall submit a report to the governor and the general assembly regarding the greenhouse gas emissions in the state during the previous calendar year and forecasting trends in such emissions. The first submission by the department shall be filed by September 1, 2008, for the calendar year beginning January 1, 2007.

2007 Acts, ch 120, §5  
NEW section

## CHAPTER 455D

### WASTE VOLUME REDUCTION AND RECYCLING

#### 455D.10A Household batteries — heavy metal content and recycling requirements.

1. *Definitions.* As used in this section and in section 455D.10B unless the context otherwise requires:

a. *“Button cell battery”* means a household battery which resembles a button or coin in size and shape.

b. *“Consumer”* means a person who purchases household batteries for personal or business use.

c. *“Easily removed”* means a battery or battery pack which can be removed from a battery-powered product by the consumer, using common

household tools.

d. *“Household battery”* means any type of dry cell battery used by consumers, including but not limited to mercuric oxide, carbon-zinc, zinc air, silver oxide, nickel-cadmium, nickel-hydride, alkaline, lithium, or sealed lead acid batteries.

e. *“Institutional generator”* means a governmental, commercial, industrial, communications, or medical facility which generates waste mercuric oxide, nickel-cadmium, or sealed lead acid rechargeable batteries.

f. *“Rechargeable consumer product”* means a product that is primarily powered by a recharge-

able battery and is primarily used or purchased to be used for household purposes.

*g.* “Rechargeable household battery” means a small sealed nickel-cadmium or sealed lead acid battery used for nonvehicular purposes and weighing less than twenty-five pounds, which can be recharged by the consumer and reused.

2. *Mercury content limited.*

*a.* A person shall not sell, distribute, or offer for retail sale in this state an alkaline manganese battery that contains more than twenty-five one-thousandths of a percent mercury by weight. A person shall not sell, distribute, or offer for sale at retail in this state an alkaline manganese household battery manufactured on or after January 1, 1996, to which mercury has been added. This paragraph does not apply to alkaline manganese button cell batteries.

*b.* A person shall not sell, distribute, or offer for retail sale in this state an alkaline manganese button cell battery which contains more than twenty-five milligrams of mercury.

3. *Recycling/disposal requirements for household batteries.*

*a.* Beginning July 1, 1996, a system or systems shall be in place to protect the health and safety of Iowans, and the state’s environment, from the toxic components of used household batteries. The system or systems shall include at least one of the following elements:

(1) Elimination or reduction to the extent established by rule of the department, of heavy metals and other toxic components in nickel-cadmium, mercuric oxide, or sealed lead acid household batteries, to ensure protection of public health, safety, and the environment when placed in or disposed of as part of mixed municipal solid waste.

(2) Establishment of a comprehensive recycling program for each type of battery listed in subparagraph (1) that is sold, distributed, or offered for sale in this state. An institutional generator shall provide for the on-site source separation and collection of used mercuric oxide batteries, nickel-cadmium rechargeable batteries, and sealed lead acid rechargeable batteries. All participants in the stream of commerce relating to the batteries, which are listed in subparagraph (1) and which are not designated as exempt pursuant to section 455D.10B, subsection 2, paragraph “c” or “d”, shall, individually or collectively, be responsible for developing and operating a system for collecting and transporting used batteries to the appropriate dry cell battery manufacturer or to a site or facility designated by a manufacturer. Additionally, dry cell battery manufacturers shall be responsible for the recycling of used batteries in an environmentally sound manner.

(3) Provision for collection, transporting, and proper disposal of used household batteries of the types listed in subparagraph (1) which are distributed, sold, or offered for retail sale in the state. For

the purposes of this paragraph, “proper disposal” means disposal which complies with all applicable state and federal laws. All participants in the stream of commerce relating to the batteries, which are listed in subparagraph (1) and which are not designated as exempt pursuant to section 455D.10B, subsection 2, paragraph “c” or “d”, shall, individually or collectively, be responsible for developing and operating a system for collecting and transporting used batteries to the appropriate dry cell battery manufacturer or to a site or facility designated by a manufacturer. Additionally, dry cell battery manufacturers shall be responsible for proper disposal of the used batteries.

*b.* To meet the recycling and disposal requirements of this subsection, participants in the systems established under this subsection, either individually or collectively, shall do all of the following:

(1) Identify a collection entity, other than a local government collection system, unless the local government agrees otherwise, through which the discarded batteries listed in paragraph “a”, subparagraph (1) shall be returned for collection and recycling or disposal.

(2) Inform each customer of the prohibition of disposal of batteries listed in paragraph “a”, subparagraph (1), and a safe and convenient return process available to the customer for recycling or proper disposal.

*c.* After July 1, 1996, nickel-cadmium, sealed lead acid, or mercuric oxide household batteries shall not be sold, distributed, or offered for sale in the state, unless a system required by this section is in operation.

*d.* The department may make recommendations to the commission to include other types of household or rechargeable batteries, not enumerated in paragraph “a”, subparagraph (1), in the requirements of this subsection.

*e.* This subsection does not apply to batteries subject to regulation under the federal Resource Conservation and Recovery Act, 42 U.S.C. § 6901, et seq.

4. *Rules adopted.* The commission shall adopt, upon recommendation of the director, the rules necessary to carry out the provisions of this section pursuant to chapter 17A.

2007 Acts, ch 151, §1  
Subsection 5 stricken

**455D.11 Waste tires — land disposal prohibited.**

1. As used in this section, unless the context otherwise requires:

*a.* “Permit” means a permit issued by the department to establish, construct, modify, own, or operate a tire stockpiling facility.

*b.* “Processing” means producing or manufacturing usable materials from waste tires.

*c.* “Processing site” means a site which is used for the processing of waste tires and which is

owned or operated by a tire processor who has a permit for the site.

*d. "Tire collector"* means either a person who owns or operates a site used for the storage, collection, or deposit of more than five hundred waste tires or an authorized vehicle recycler who is licensed by the state department of transportation pursuant to section 321H.4 and who owns or operates a site used for the storage, collection, or deposit of more than three thousand five hundred waste tires.

*e. "Tire processor"* means a person engaged in the processing of waste tires.

*f. "Waste tire"* means a tire that is no longer suitable for its originally intended purpose due to wear, damage, or defect. "Waste tire" does not include a nonpneumatic tire.

*g. "Waste tire collection site"* means a site which is used for the storage, collection, or deposit of waste tires.

2. Land disposal of waste tires is prohibited beginning July 1, 1991, unless the tire has been processed in a manner established by the department. A sanitary landfill shall not refuse to accept a waste tire which has been properly processed.

3. The department shall conduct a study and make recommendations to the general assembly by January 1, 1991, concerning a waste tire abatement program which includes but is not limited to the following:

*a.* The number and geographic distribution of waste tires generated and existing in the state.

*b.* The development of markets for the recycling and processing of waste tires, in the mid-western states.

*c.* The methods to establish reliable sources of waste tires for users of waste tires.

*d.* The permitting of waste tire collection sites, waste tire processing facilities, and waste tire haulers.

*e.* The methods for the cleanup of existing stockpiles of waste tires.

4. Upon completion of the study pursuant to subsection 3, the department shall determine the number of stockpiling facilities which are necessary and shall develop rules for stockpiling facilities which include but are not limited to the following:

*a.* The prohibition of burning within one hundred yards of a tire stockpile.

*b.* The maximum height, width, and length of a tire stockpile.

*c.* Plans to control mosquitoes and rodents.

*d.* A facility closure plan.

*e.* Specifications for fire lanes between stockpiles.

*f.* Limitations of the total number of tires allowed at a single stockpile site.

5. The department shall develop criteria for the issuance of permits and shall issue permits to qualified stockpiling facilities.

6. The department shall provide financial assistance to persons who establish recycling and processing sites for waste tires, subject to the rules established by the department for the establishment of such sites and subject to the conditions prescribed by the department for application for and awarding of such financial assistance.

7. The commission shall adopt rules which provide the following:

*a.* That a person who contracts with another person to transport more than forty waste tires is required to contract only with a person registered as a waste tire hauler pursuant to section 455D.111.

*b.* That a person who transports waste tires for final disposal is required to only dispose of the tires at a permitted sanitary disposal facility.

*c.* A person who does not comply with this subsection is subject to the penalty imposed pursuant to section 455D.111\* and the moneys allocated shall be deposited and used pursuant to section 455D.111.

8. The department shall adopt rules relating to the storage and disposal of nonpneumatic tires and processed tires.

2007 Acts, ch 151, §2

\*Penalty and deposit provisions in §455D.111 stricken by 2007 Acts, ch 151, §4; corrective legislation is pending  
Subsection 9 stricken

#### **455D.111 Registration of waste tire haulers — bond.**

1. For the purposes of this section, "waste tire hauler" means a person who transports for hire more than forty waste tires in a single load for commercial purposes.

2. A waste tire hauler shall register with, and obtain a certificate of registration from, the department before hauling waste tires in this state. Requirements for registration of a waste tire hauler shall include a provision that waste tire haulers shall pay all amounts due to any individual or group of individuals when due for damages caused by improper disposal of waste tires by the waste tire hauler or the waste tire hauler's employee while acting within the scope of employment. The waste tire hauler may apply for a certificate of registration by submitting the forms provided for that purpose and shall provide the name of the applicant and the address of the applicant's principal place of business and any additional information as deemed appropriate by the department.

3. A certificate of registration issued under this section is valid for one year from the date of issuance. A registered waste tire hauler may renew the certificate by filing a renewal application in the form prescribed by the department, accompanied by any applicable renewal fee.

4. A certificate of registration shall at all times be carried and displayed in the vehicle used for transportation of waste tires and shall be shown to a representative of the department of natural re-

sources or the state department of transportation, upon request. The state department of transportation may inspect vehicles used for the transportation of waste tires and request that the certificate of registration of the waste tire hauler be shown.

5. The department shall establish a reasonable registration fee sufficient to offset expenses incurred in the administration of this section.

6. The department shall require that a waste tire hauler have on file with the department before the issuance or renewal of a registration certificate, a surety bond executed by a surety company authorized to do business in this state in the sum of a minimum of ten thousand dollars, which bond shall be continuous in nature until canceled by the surety. A surety shall provide at least thirty days' notice in writing to the waste tire hauler and to the department indicating the surety's intent to cancel the bond and the effective date of the cancellation. The surety bond shall be for the benefit of the citizens of this state and shall be conditioned upon the waste tire hauler's willingness to comply with this section. The surety's liability under this subsection is limited to the amount of the bond or the amount of the damages or moneys due, whichever is less. However, this subsection does not limit the amount of damages recoverable from a waste tire hauler to the amount of the surety bond. The bond shall be made in a form prescribed by the commissioner of insurance and written by a company authorized by the commissioner of insurance to do business in this state.

7. The department shall adopt rules necessary for the implementation and administration of this section.

2007 Acts, ch 151, §3, 4  
Subsection 7 amended  
Subsection 8 stricken

#### **455D.19 Packaging — heavy metal content.**

1. The general assembly finds and declares all of the following:

*a.* The management of solid waste can pose a wide range of hazards to public health and safety and to the environment.

*b.* Packaging comprises a significant percentage of the overall solid waste stream.

*c.* The presence of heavy metals in packaging is a concern in light of the likely presence of heavy metals in emissions or ash when packaging is incinerated or in leachate when packaging is land-filled.

*d.* Lead, mercury, cadmium, and hexavalent chromium, on the basis of available scientific and medical evidence, are of particular concern.

*e.* It is desirable as a first step in reducing the toxicity of packaging waste to eliminate the addition of heavy metals to packaging.

*f.* The intent of the general assembly is to achieve reduction in toxicity without impeding or

discouraging the expanded use of postconsumer materials in the production of packaging and its components.

2. As used in this section unless the context otherwise requires:

*a.* “*Distributor*” means a person who takes title to one or more packages or packaging components purchased for promotional purposes or resale. A person involved solely in delivering or storing packages or packaging components on behalf of third parties is not a distributor.

*b.* “*Incidental presence*” means the presence of a regulated metal as an unintended or undesired ingredient of a package or packaging component.

*c.* “*Intentional introduction*” means an act of deliberately utilizing a regulated metal in the formulation of a package or packaging component where its continued presence is desired in the final package or packaging component to provide a specific characteristic, appearance, or quality. Intentional introduction does not include the use of a regulated metal as a processing agent or intermediate to impart certain chemical or physical changes during manufacturing, if the incidental presence of a residue of the metal in the final package or packaging component is neither desired nor deliberate, and if the final package or packaging component is in compliance with subsection 4, paragraph “c”. Intentional introduction also does not include the use of recycled materials as feedstock for the manufacture of new packaging materials, if the recycled materials contain amounts of a regulated metal and if the new package or packaging component is in compliance with subsection 4, paragraph “c”.

“*Regulated metal*” means any metal regulated under this section.

*d.* “*Manufacturer*” means a person who produces one or more packages or packaging components.

*e.* “*Manufacturing*” means physical or chemical modification of one or more materials to produce packaging or packaging components.

*f.* “*Package*” means a container which provides a means of marketing, protecting, or handling a product including a unit package, intermediate package, or a shipping container. “*Package*” also includes but is not limited to unsealed receptacles such as carrying cases, crates, cups, pails, rigid foil and other trays, wrappers and wrapping films, bags, and tubs.

*g.* “*Packaging component*” means any individual assembled part of a package including but not limited to interior and exterior blocking, bracing, cushioning, weatherproofing, exterior strapping, coatings, closures, inks, labels, tin-plated steel that meets ASTM (American society for testing and materials) international specification A-623, electro-galvanized coated steel, or hot-dipped-coated galvanized steel that meets ASTM (American society for testing and materials) internation-



al specification A-525 or A-879.

*h. "Reusable entities"* means packaging or packaging components having a controlled distribution and reuse subject to the exemption provided in subsection 5, paragraph "e".

3. A manufacturer or distributor shall not offer for sale or sell or offer for promotional purposes a package or packaging component, in this state, which includes, in the package itself or in any packaging component, inks, dyes, pigments, adhesives, stabilizers, or any other additives, any lead, cadmium, mercury, or hexavalent chromium which has been intentionally introduced as an element during manufacturing or distribution as opposed to the incidental presence of any of these elements and which exceed the concentration level established by the department. A distributor shall only be subject to the assessment of a civil penalty pursuant to section 455D.25, subsection 2, for the knowing violation of this section. Knowledge by the distributor of the violation shall be presumed beginning sixty days from the receipt of notification from the department by certified mail.

4. The concentration levels of lead, cadmium, mercury, and hexavalent chromium present in a package or packaging component shall not exceed the following:

*a.* Six hundred parts per million by weight by July 1, 1992.

*b.* Two hundred fifty parts per million by weight by July 1, 1993.

*c.* One hundred parts per million by weight by July 1, 1994.

Concentration levels of lead, cadmium, mercury, and hexavalent chromium shall be determined using ASTM (American society for testing and materials) international test methods, as revised, or United States environmental protection agency test methods for evaluating solid waste, S-W 846, as revised.

5. The following packaging and packaging components are exempt from the requirements of this section:

*a.* Packaging or packaging components with a code indicating a date of manufacture prior to July 1, 1990, and packaging or packaging components used by the alcoholic beverage industry or the wine industry prior to July 1, 1992.

*b.* Packages or packaging components to which lead, cadmium, mercury, or hexavalent chromium have been added in the manufacturing, forming, printing, or distribution process in order to comply with health or safety requirements of federal law or for which there is no feasible alternative if the manufacturer of a package or packaging component petitions the department for an exemption from the provisions of this paragraph for a particular package or packaging component. The department may grant a two-year exemption, if warranted by the circumstances, and an exemption may, upon meeting either criterion of this paragraph, be renewed for two years. For purposes of

this paragraph, a use for which there is no feasible alternative is one in which the regulated substance is essential to the protection, safe handling, or function of the package's contents.

*c.* Packages and packaging components that would not exceed the maximum contaminant levels established but for the addition of recycled materials.

*d.* Packages or packaging components that are reused, but exceed contaminant levels set forth in subsection 4, paragraph "c", if all of the following criteria are met:

(1) The product being conveyed by the package, including any packaging component, is regulated under federal or state health or safety requirements.

(2) Transportation of the packaged product is regulated under federal or state transportation requirements.

(3) The disposal of the packages or packaging components is performed according to federal or state radioactive or hazardous waste disposal requirements.

The department may grant a two-year exemption if warranted by the circumstances and an exemption may, upon meeting the criteria of this paragraph, be renewed for additional two-year periods.

*e.* Packages or packaging components which qualify as reusable entities that exceed the contaminant levels set forth in subsection 4, paragraph "c", if the manufacturers or distributors of such packages or packaging components petition the department for an exemption and receive approval from the department according to the following standards based upon a satisfactory demonstration that the environmental benefit of the controlled distribution and reuse is significantly greater than if the same package is manufactured in compliance with the contaminant levels set forth in subsection 4, paragraph "c". The department may grant a two-year exemption, if warranted by the circumstances, and an exemption may, upon meeting the four criteria listed in subparagraphs (1) through (4), be renewed for additional two-year periods.

In order to receive an exemption, the application must ensure that reusable entities are used, transported, and disposed of in a manner consistent with the following criteria:

(1) A means of identifying in a permanent and visible manner those reusable entities containing regulated metals for which an exemption is sought.

(2) A method of regulatory and financial accountability so that a specified percentage of the reusable entities manufactured and distributed to another person are not discarded by that person after use, but are returned to the manufacturer or the manufacturer's designee.

(3) A system of inventory and record maintenance to account for the reusable entities placed

in, and removed from, service.

(4) A means of transforming returned entities, that are no longer reusable, into recycled materials for manufacturing or into manufacturing wastes which are subject to existing federal or state laws or regulations governing manufacturing wastes to ensure that these wastes do not enter the commercial or municipal waste stream.

The application for an exemption must document the measures to be taken by the applicant as set out in subparagraphs (1) through (4).

6. By July 1, 1992, a manufacturer or distributor of packaging or packaging components shall make available to purchasers, to the department, and to the general public upon request, certificates of compliance which state that the manufacturer's or distributor's packaging or packaging components comply with, or are exempt from, the requirements of this section.

If the manufacturer or distributor of the package or packaging component reformulates or creates a new package or packaging component, the manufacturer or distributor shall provide an amended or new certificate of compliance for the reformulated or new package or packaging component.

7. The commission shall adopt rules to administer this section and recommend any other toxic substances contained in packaging to be added to the list in order to further reduce the toxicity of packaging waste.

2007 Acts, ch 151, §5 - 7  
Subsection 2, paragraph a amended  
Subsection 3 amended  
Subsection 8 stricken

**455D.22 Civil penalty.**

A person who violates section 455D.6, subsection 6, section 455D.11, 455D.11A, 455D.11B, 455D.11I, or 455D.19, or any rule, permit, or order issued pursuant thereto shall be subject to a civil penalty which shall be established, assessed, and collected in the same manner as provided in section 455B.109. Any civil penalty collected shall be deposited in the general fund of the state.

2007 Acts, ch 151, §8  
NEW section

**455D.23 Violations.**

The director may issue any order necessary to secure compliance with or prevent a violation of the provisions of this chapter or any rule adopted or permit or order issued pursuant to this chapter. The person to whom such compliance order is issued may cause to be commenced a contested case within the meaning of chapter 17A, by filing within thirty days a notice of appeal to the commission. On appeal, the commission may affirm, modify, or vacate the order of the director.

2007 Acts, ch 151, §9  
NEW section

**455D.24 Judicial review.**

Judicial review of any order or other action of the commission or director may be sought in accordance with the terms of chapter 17A. Notwithstanding the terms of chapter 17A, petitions for judicial review may be filed in the district court of the county in which the alleged offense was committed.

2007 Acts, ch 151, §10  
NEW section

**455D.25 Civil actions for compliance — penalties.**

1. The attorney general, on request of the department, shall institute any legal proceedings necessary to obtain compliance with an order of the commission or the director, including proceedings for a temporary injunction, or prosecuting any person for a violation of an order of the commission or the director or the provisions of this chapter or any rules adopted or permit or order issued pursuant to this chapter.

2. Any person who violates section 455D.10A, 455D.11, 455D.11A, 455D.11B, 455D.11I, or 455D.19, or any order or permit issued or rule adopted pursuant to section 455D.6, subsection 6, section 455D.10A, 455D.11, 455D.11A, 455D.11B, 455D.11I, or 455D.19, shall be subject to a civil penalty, not to exceed ten thousand dollars for each day of such violation.

2007 Acts, ch 151, §11  
NEW section

**CHAPTER 455G**

**FUEL STORAGE TANKS AND DISPENSING INFRASTRUCTURE**

**455G.9 Remedial program.**

1. *Limits of remedial account coverage.* Monies in the remedial account shall only be paid out for the following:

a. (1) Corrective action for an eligible release reported to the department of natural resources on or after July 1, 1987, but prior to May 5, 1989. Third-party liability is specifically excluded from remedial account coverage. For a claim for a re-

lease under this subparagraph, the remedial program shall pay in accordance with subsection 4. For a release to be eligible for coverage under this subparagraph the following conditions must be satisfied:

(a) The owner or operator applying for coverage shall not be a person who is maintaining, or has maintained, proof of financial responsibility for federal regulations through self-insurance.

(b) The owner or operator applying for coverage shall not have claimed bankruptcy any time on or after July 1, 1987.

(c) The claim for coverage pursuant to this subparagraph must have been filed with the board prior to January 31, 1990, except that cities and counties must have filed their claim with the board by September 1, 1990.

(d) The owner or operator at the time the release was reported to the department of natural resources must have been in compliance with then current monitoring requirements, if any, or must have been in the process of compliance efforts with anticipated requirements, including installation of monitoring devices, a new tank, tank improvements or retrofit, or any combination.

(2) Corrective action, up to one million dollars total, and subject to prioritization rules as established pursuant to section 455G.12A, for a release reported to the department of natural resources after May 5, 1989, and on or before October 26, 1990. Third-party liability is specifically excluded from remedial account coverage. Corrective action coverage provided pursuant to this paragraph may be aggregated with other financial assurance mechanisms as permitted by federal law to satisfy required aggregate and per occurrence limits of financial responsibility for both corrective action and third-party liability, if the owner's or operator's effective financial responsibility compliance date is prior to October 26, 1990. School districts who reported a release to the department of natural resources prior to December 1, 1990, shall have until July 1, 1991, to report a claim to the board for remedial coverage under this subparagraph.

(3) Corrective action for an eligible release reported to the department of natural resources on or after January 1, 1984, but prior to July 1, 1987. Third-party liability is specifically excluded from remedial account coverage. For a claim for a release under this subparagraph, the remedial program shall pay in accordance with subsection 4. For a release to be eligible for coverage under this subparagraph the following conditions must be satisfied:

(a) The owner or operator applying for coverage must be currently engaged in the business for which the tank connected with the release was used prior to the report of the release.

(b) The owner or operator applying for coverage shall not be a person who is maintaining, or has maintained, proof of financial responsibility for federal regulations through self-insurance.

(c) The owner or operator applying for coverage shall not have claimed bankruptcy any time on or after January 1, 1985.

(d) The claim for coverage pursuant to this subparagraph must have been filed with the board prior to September 1, 1990.

(e) The owner or operator at the time the release was reported to the department of natural resources must have been in compliance with then

current monitoring requirements, if any, or must have been in the process of compliance efforts with anticipated requirements, including installation of monitoring devices, a new tank, tank improvements or retrofit, or any combination.

(4) One hundred percent of the costs of corrective action for a release reported to the department of natural resources on or before July 1, 1991, if the owner or operator is not a governmental entity and is a not-for-profit organization exempt from federal income taxation under section 501(c)(3) of the Internal Revenue Code with a net annual income of twenty-five thousand dollars or less for the year 1990, and if the tank which is the subject of the corrective action is a registered tank and is under one thousand one hundred gallons capacity.

(5) For the purposes of calculating corrective action costs under this paragraph, corrective action shall include the cost of a tank system upgrade required by section 455B.474, subsection 1, paragraph "f", subparagraph (9). Payments under this subparagraph shall be limited to a maximum of ten thousand dollars for any one site.

(6) For the purposes of calculating corrective action costs under this paragraph, corrective action shall include the costs associated with monitoring required by the rules adopted under section 455B.474, subsection 1, paragraph "f", but corrective action shall exclude monitoring used for leak detection required by rules adopted under section 455B.474, subsection 1, paragraph "a".

b. Corrective action and third-party liability for a release discovered on or after January 24, 1989, for which a responsible owner or operator able to pay cannot be found and for which the federal underground storage tank trust fund or other federal moneys do not provide coverage. For the purposes of this section property shall not be deeded or quitclaimed to the state or board in lieu of cleanup. Additionally, the ability to pay shall be determined after a claim has been filed. The board is not liable for any cost where either the responsible owner or operator, or both, have a net worth greater than fifteen thousand dollars, or where the responsible party can be determined. Third-party liability specifically excludes any claim, cause of action, or suit, for personal injury including, but not limited to, loss of use or of private enjoyment, mental anguish, false imprisonment, wrongful entry or eviction, humiliation, discrimination, or malicious prosecution.

c. Corrective action and third-party liability for a tank owned or operated by a financial institution eligible to participate in the remedial account under section 455G.16 if the prior owner or operator is unable to pay, if so authorized by the board as part of a condition or incentive for financial institution participation in the fund pursuant to section 455G.16. Third-party liability specifically excludes any claim, cause of action, or suit, for personal injury including, but not limited to, loss of

use or of private enjoyment, mental anguish, false imprisonment, wrongful entry or eviction, humiliation, discrimination, or malicious prosecution.

d. One hundred percent of the costs of corrective action and third-party liability for a release situated on property acquired by a county for delinquent taxes pursuant to chapters 445 through 448, for which a responsible owner or operator able to pay, other than the county, cannot be found. A county is not a "responsible party" for a release in connection with property which it acquires in connection with delinquent taxes, and does not become a responsible party by sale or transfer of property so acquired. Third-party liability specifically excludes any claim, cause of action, or suit, for personal injury including, but not limited to, loss of use or of private enjoyment, mental anguish, false imprisonment, wrongful entry or eviction, humiliation, discrimination, or malicious prosecution.

e. Corrective action for a release reported to the department of natural resources after May 5, 1989, and on or before October 26, 1990, in connection with a tank owned or operated by a state agency or department which elects to participate in the remedial account pursuant to this paragraph. A state agency or department which does not receive a standing unlimited appropriation which may be used to pay for the costs of a corrective action may opt, with the approval of the board, to participate in the remedial account. As a condition of opting to participate in the remedial account, the agency or department shall pay all registration fees, storage tank management fees, environmental protection charges, and all other charges and fees upon all tanks owned or operated by the agency or department in the same manner as if the agency or department were a person required to maintain financial responsibility. Once an agency has opted to participate in the remedial program, it cannot opt out, and shall continue to pay all charges and fees upon all tanks owned or operated by the agency or department so long as the charges or fees are imposed on similarly situated tanks of a person required to maintain financial responsibility. The board shall by rule adopted pursuant to chapter 17A provide the terms and conditions for a state agency or department to opt to participate in the remedial account. A state agency or department which opts to participate in the remedial account shall be subject to the minimum copayment schedule of subsection 4, as if the state agency or department were a person required to maintain financial responsibility.

f. One hundred percent of the costs up to twenty thousand dollars incurred by the board under section 455G.12A, subsection 2, unnumbered paragraph 2, for site cleanup reports. Costs of a site cleanup report which exceed twenty thousand dollars shall be considered a cost of corrective action and the amount shall be included in the calculations for corrective action cost copayments un-

der subsection 4. The board shall have the discretion to authorize a site cleanup report payment in excess of twenty thousand dollars if the site is participating in community remediation.

g. Corrective action for the costs of a release under all of the following conditions:

(1) The property upon which the tank causing the release was situated was transferred by inheritance, devise, or bequest.

(2) The property upon which the tank causing the release was situated has not been used to store or dispense petroleum since December 31, 1975.

(3) The person who received the property by inheritance, devise, or bequest was not the owner of the property during the period of time when the release which is the subject of the corrective action occurred.

(4) The release was reported to the board by October 26, 1991.

Corrective action costs and copayment amounts under this paragraph shall be paid in accordance with subsection 4.

A person requesting benefits under this paragraph may establish that the conditions of subparagraphs (1), (2), and (3) are met through the use of supporting documents, including a personal affidavit.

h. One hundred percent of the costs of corrective action for a governmental subdivision in connection with a tank which was in place on the date the release was discovered or reported if the governmental subdivision did not own or operate the tank which caused the release and if the governmental subdivision did not obtain the property upon which the tank giving rise to the release is located on or after May 3, 1991. Property acquired pursuant to eminent domain in connection with a United States department of housing and urban development approved urban renewal project is eligible for payment of costs under this paragraph whether or not the property was acquired on or after May 3, 1991.

i. Notwithstanding section 455G.1, subsection 2, corrective action, for a release which was tested prior to October 26, 1990, and for which the site was issued a no-further-action letter by the department of natural resources and which was later determined, due to sale of the property or removal of a nonoperating tank, to require remediation which was reported to the administrator by October 26, 1992, in an amount as specified in subsection 4. In order to qualify for benefits under this paragraph, the applicant must not have operated a tank on the property during the period of time for which the applicant owned the property and the applicant must not be a financial institution.

j. One hundred percent of the costs of corrective action for a governmental subdivision in connection with a tank if the governmental subdivision did not own or operate the tank from which the release occurred, and the property was ac-

quired pursuant to eminent domain after the release occurred. A governmental subdivision which acquires property pursuant to eminent domain in order to obtain benefits under this paragraph is not a responsible party for a release in connection with property which it acquired, and does not become a responsible party by sale or transfer of property so acquired.

k. Pursuant to an agreement between the board and the department of natural resources, assessment and corrective action arising out of releases at sites for which a no further action certificate has been issued pursuant to section 455B.474, when the department determines that an unreasonable risk to public health and safety may still exist. At a minimum, the agreement shall address eligible costs, contracting for services, and conditions under which sites may be re-evaluated.

l. Costs for the permanent closure of an underground storage tank system that was in place on the date an eligible claim was submitted under paragraph "a". Reimbursement is limited to costs approved by the board prior to the closure activities.

2. *Remedial account funding.* The remedial account shall be funded by that portion of the proceeds of the use tax imposed under chapter 423, subchapter III, and other moneys and revenues budgeted to the remedial account by the board.

3. *Trust fund to be established.* When the remedial account has accumulated sufficient capital to provide dependable income to cover the expenses of expected future releases or expected future losses for which no responsible owner is available, the excess capital shall be transferred to a trust fund administered by the board and created for that purpose.

4. *Minimum copayment schedule.* An owner or operator shall be required to pay the greater of five thousand dollars or eighteen percent of the first eighty thousand dollars of the total costs of corrective action for that release.

If a site's actual expenses exceed eighty thousand dollars, the remedial account shall pay the remainder, as required by federal regulations, of the total costs of the corrective action for that release, not to exceed one million dollars, except that a county shall not be required to pay a copayment in connection with a release situated on property acquired in connection with delinquent taxes, as provided in subsection 1, paragraph "d", unless subsequent to acquisition the county actively operates a tank on the property for purposes other than risk assessment, risk management, or tank closure.

5. *Recovery of gain on sale of property.* If an owner or operator ceases to own or operate a tank site for which remedial account benefits were received within ten years of the receipt of any account benefit and sells or transfers a property interest in the tank site for an amount which exceeds

one hundred twenty percent of the precorrective action value, adjusted for equipment and capital improvements, the owner or operator shall refund to the remedial account an amount equal to ninety percent of the amount in excess of one hundred twenty percent of the precorrective action value up to a maximum of the expenses incurred by the remedial account associated with the tank site plus interest, equal to the interest for the most recent twelve-month period for the most recent bond issue for the fund, on the expenses incurred, compounded annually. An owner or operator under this subsection shall notify the board of the sale or transfer of the property interest in the tank site. Expenses incurred by the fund are a lien upon the property recordable and collectible in the same manner as the lien provided for in section 424.11 at the time of sale or transfer, subject to the terms of this section.

This subsection shall not apply if the sale or transfer is pursuant to a power of eminent domain, or benefits. When federal cleanup funds are recovered, the funds are to be deposited to the remedial account of the fund and used solely for the purpose of future cleanup activities.

6. *Recurring releases treated as a newly reported release.* A release shall be treated as a release reported on or after May 5, 1989, if prior to May 5, 1989, a release was reported to the department, corrective action was taken pursuant to a site cleanup report approved by the department, and the work performed was accepted by the department. For purposes of this subsection, work performed is accepted by the department if the department did not order further action within ninety days of the date on which the department had notice that the work was completed, unless the department clearly indicated in writing to the owner, operator, contractor, or other agent that additional work would be required beyond that specified in the site cleanup report or in addition to the work actually performed.

7. *Expenses of cleanup not required.* When an owner or operator who is eligible for benefits under this chapter is allowed by the department of natural resources to monitor in place, the expenses incurred for cleanup beyond the level required by the department of natural resources are not covered under any of the accounts established under the fund. The cleanup expenses incurred for work completed beyond what is required is the responsibility of the person contracting for the excess cleanup.

8. *Owner or operator defined.* For purposes of receiving benefits under this section, "owner or operator" means the then current tank owner or operator or the owner of the land for which a covered release was reported or application for benefits was submitted on or before the relevant application deadlines of this section.

9. *Self-insureds.* For a self-insured as determined under 567 IAC 136.6(455B), to qualify for

remedial benefits under this section, tanks shall be upgraded by January 1, 1995, as specified by the United States environmental protection agency in 40 C.F.R. § 280.21, as amended through January 1, 1989. A self-insured who qualifies for benefits under this section shall repay any benefits received if the upgrade date is not met.

10. *Expenses incurred by governmental subdivisions.* The board may adopt rules for reimbursement for reasonable expenses incurred by a governmental subdivision for treating, handling, or disposing, as required by the department, of petroleum-contaminated soil and groundwater encountered in a public right-of-way during installation, maintenance, or repair of a public improvement. The board may seek full recovery from a responsible party liable for the release for such expenses and for all other costs and reasonable attorney fees and costs of litigation for which moneys are expended by the fund. Any expense described in this subsection incurred by the fund constitutes a lien upon the property from which the release occurred. A lien shall be recorded and an expense shall be collected in the same manner as provided in section 424.11.

2007 Acts, ch 171, §7, 8  
Subsection 1, paragraph k stricken and rewritten  
Subsection 1, NEW paragraph l

**455G.17 Inspectors — education — registration.** Repealed by 2007 Acts, ch 171, § 11, 13. See § 455B.474.

Registrations or certifications issued pursuant to this section shall continue in full force and effect until expiration or renewal; 2007 Acts, ch 171, §10

Code editor received notice on August 15, 2007, that emergency rules providing transition provisions were adopted, effective upon filing on July 6, 2007; 2007 Acts, ch 171, §13

**455G.18 Groundwater professionals — certification.** Repealed by 2007 Acts, ch 171, § 12. See § 455B.474.

With respect to proposed amendments to former §455G.18, see Code editor's note to §29A.28

**455G.31 E-85 gasoline storage and dispensing infrastructure.**

1. As used in this section, unless the context otherwise requires:

a. “E-85 gasoline”, “ethanol blended gasoline”, and “retail dealer” mean the same as defined in section 214A.1.

b. “Gasoline storage and dispensing infra-

structure” means any storage tank located below ground or above ground and any associated equipment including but not limited to a pipe, hose, connection, fitting seal, or pump, which is used to store, measure, and dispense gasoline by a retail dealer.

2. A retail dealer may use gasoline storage and dispensing infrastructure to store and dispense E-85 gasoline if all of the following apply:

a. For gasoline storage and dispensing infrastructure other than the dispenser, the department of natural resources under this chapter or the state fire marshal under chapter 101 must determine that it is compatible with E-85 gasoline.

b. (1) For a dispenser, all of the following shall apply:

(a) The dispenser must be listed by an independent testing laboratory as compatible with ethanol blended gasoline.

(b) The owner or operator or a person authorized by the owner or operator must visually inspect the dispenser and the dispenser sump daily for leaks and equipment failure and maintain a record of such inspection for at least one year after the inspection. The record shall be located on the premises of the retail dealer and shall be made available to the department of natural resources or the state fire marshal upon request. If a leak is detected, the department of natural resources shall be notified pursuant to section 455B.386.

(2) The state fire marshal shall issue an order as soon as practicable after determining that a commercially available dispenser is listed as compatible for use with E-85 gasoline by an independent testing laboratory. The state fire marshal shall publish the order in the Iowa administrative bulletin. A person shall not install a dispenser which would otherwise be permitted under subparagraph (1) after sixty days following the date that the order is published. A person who installed such dispenser before the sixty-day period expired may use the dispenser as provided in subparagraph (1) until four years after the date that the order is published.

3. This section is repealed four years following the date that the order issued by the state fire marshal is published in the Iowa administrative bulletin as provided in this section.

2007 Acts, ch 22, §80; 2007 Acts, ch 211, §47 – 49  
See Code editor's note  
Subsection 1, paragraph a amended  
Subsections 2 and 3 amended

## CHAPTER 455H

### LAND RECYCLING AND REMEDIATION STANDARDS

#### 455H.105 Duties of the commission.

The commission shall do all of the following:

1. Adopt rules pertaining to the assessment, evaluation, and cleanup of the presence of hazard-

ous substances which allow participants to carry out response actions using background standards, statewide standards, or site-specific cleanup standards pursuant to this chapter.

2. Adopt rules establishing statewide standards and criteria for determination of background standards and site-specific cleanup standards.

3. Adopt rules establishing a program intended to encourage and enhance assessment, evaluation, and cleanup of sites which may have been the site of or affected by a release.

4. Adopt rules establishing a program to administer the land recycling fund established in section 455H.401.

5. Adopt rules establishing requirements for the submission, performance, and verification of site assessments, cleanup plans, and certifica-

tions of completion. The rules shall provide that all site assessments, cleanup plans, and certifications of completion submitted by a participant shall be prepared by or under the supervision of an appropriately trained professional, including a groundwater professional certified pursuant to section 455B.474.

6. Adopt rules for public notice of the proposed verification of a certificate of completion by the department where the certificate of completion is conditioned on the use of an institutional or technological control.

2007 Acts, ch 171, §9  
Subsection 5 amended

## CHAPTER 456A

### REGULATION AND FUNDING — NATURAL RESOURCES DEPARTMENT

#### **456A.33B Lake restoration plan and report.**

1. It is the intent of the general assembly that the department of natural resources shall develop annually a lake restoration plan and report that shall be submitted to the joint appropriations subcommittee on transportation, infrastructure, and capitals and the legislative services agency by no later than January 1 of each year. The plan and report shall include the department's plans and recommendations for lake restoration projects to receive funding consistent with the process and criteria provided in this section, and shall include the department's assessment of the progress and results of projects funded with moneys appropriated under this section.

The department shall recommend funding for lake restoration projects that are designed to achieve the following goals:

- a. Ensure a cost-effective, positive return on investment for the citizens of Iowa.
- b. Ensure local community commitment to lake and watershed protection.
- c. Ensure significant improvement in water clarity, safety, and quality of Iowa lakes.
- d. Provide for a sustainable, healthy, functioning lake system.
- e. Result in the removal of the lake from the impaired waters list.

2. The process and criteria the department shall utilize to recommend funding for lake restoration projects shall be as follows:

a. The department shall develop an initial list of not more than thirty-five significant public lakes to be considered for funding based on the feasibility of restoring each lake and the use or potential use of the lake, if restored. The list shall include lake projects under active development that the department shall recommend be given priority for funding so long as progress toward completion

of the projects remains consistent with the goals of this section.

b. The department shall meet with representatives of communities where lakes on the initial list are located to provide an initial lake restoration assessment and to explain the process and criteria for receiving lake restoration funding. Communities with lakes not included on the initial list may petition the director of the department for a preliminary lake restoration assessment and explanation of the funding process and criteria. The department shall work with representatives of each community to develop a joint lake restoration action plan. At a minimum, each joint action plan shall document the causes, sources, and magnitude of lake impairment, evaluate the feasibility of the lake and watershed restoration options, establish water quality goals and a schedule for attainment, assess the economic benefits of the project, identify the sources and amounts of any leveraged funds, and describe the community's commitment to the project, including local funding. The community's commitment to the project may include moneys to fund a lake diagnostic study and watershed assessment, including development of a TMDL (total maximum daily load).

c. Each joint lake restoration plan shall comply with the following guidelines:

(1) Biologic controls will be utilized to the maximum extent, wherever possible.

(2) If proposed, dredging of the lake will be conducted to a mean depth of at least ten feet to gain water quality benefits unless a combination of biologic and structural controls is sufficient to assure water quality targets will be achieved at a shallower average water depth.

(3) The costs of lake restoration will include the maintenance costs of improvements to the lake.

(4) Delivery of phosphorous and sediment

from the watershed will be controlled and in place before lake restoration begins. Loads of phosphorous and sediment, in conjunction with in-lake management, will meet or exceed the following water quality targets:

(a) Clarity. A four-and-one-half-foot Secchi depth will be achieved fifty percent of the time from April 1 through September 30.

(b) Safety. Beaches will meet water quality standards for recreational use.

(c) Biota. A diverse, balanced, and sustainable aquatic community will be maintained.

(d) Sustainability. The water quality benefits from the restoration efforts will be sustained

for at least fifty years.

d. The department shall evaluate the joint action plans and prioritize the plans based on the criteria required in this section. The department's annual lake restoration plan and report shall include the prioritized list and the amounts of state and other funding the department recommends for each lake restoration project. The department may seek public comment on its recommendations prior to submitting the plan and report to the general assembly.

2007 Acts, ch 22, §81, 82  
 Subsection 2, paragraph a amended  
 Subsection 2, paragraph c, subparagraph (4), subparagraph subdivision (d) amended

## CHAPTER 459

### ANIMAL AGRICULTURE COMPLIANCE ACT

#### 459.103 General authority — commission and department.

1. The commission shall establish by rule adopted pursuant to chapter 17A, requirements relating to the construction, including expansion, or operation of animal feeding operations, including related animal feeding operation structures. The requirements shall include but are not limited to minimum manure control, the issuance of permits, and departmental investigations, inspections, and testing.

2. Any provision referring generally to compliance with the requirements of this chapter as applied to animal feeding operations also includes compliance with requirements in rules adopted by the commission pursuant to this section, orders issued by the department as authorized under this chapter, and the terms and conditions applicable to licenses, certifications, permits, or manure management plans required under subchapter III. However, for purposes of approving or disapproving an application for a construction permit as provided in section 459.304, conditions for the approval of an application based on results produced by a master matrix are not requirements of this chapter until the department approves or disapproves an application based on those results.

2007 Acts, ch 82, §2  
 Subsection 3 stricken

#### 459.314B Disciplinary action — commercial manure service.

The department may issue an order to suspend or revoke the license of a commercial manure service as provided in chapter 17A, including an order to immediately suspend or revoke the license pursuant to section 17A.18A. The department may suspend or revoke the license of a commercial manure service for an applicable violation of this chapter. In addition, the department may suspend or revoke a commercial manure service's li-

cense for any of the following:

1. Committing a fraudulent act, including but not limited to engaging in a deceptive act or practice, deliberately misrepresenting or omitting a material fact in the license application, or submitting a statement verifying that an employee may be substituted for certification without paying a fee as provided in section 459.400.

2. Knowingly assisting a person in evading the provisions of this chapter.

3. Knowingly employing or executing a contract with a person who acts as a commercial manure service representative and who is not certified pursuant to section 459.315.

2007 Acts, ch 126, §81  
 Subsection 3 amended

#### 459.601 Animal feeding operations — investigations and enforcement actions.

1. A person may file a complaint alleging that an animal feeding operation is in violation of this chapter,\* including rules adopted by the department, or environmental standards or regulations subject to federal law and enforced by the department.

a. The complaint may be filed with the department according to procedures required by the department or with the county board of supervisors in the county where the violation is alleged to have occurred, according to procedures required by the board. The county auditor may accept the complaint on behalf of the board.

b. If the county board of supervisors receives a complaint, it shall conduct a review to determine if the allegation contained in the complaint constitutes a violation, without investigating whether the facts supporting the allegation are true or untrue.

(1) If the county board of supervisors determines that the allegation does not constitute a violation, it shall notify the complainant, the animal



feeding operation which is the subject of the complaint, and the department, according to rules adopted by the department.

(2) If the county board of supervisors determines that the allegation constitutes a violation, it shall forward the complaint to the department which shall investigate the complaint as provided in this section.

c. If the department receives a complaint from a complainant or a county forwarding a complaint, the department shall conduct an investigation of the complaint if the department determines that the complaint is legally sufficient and an investigation is justified. The department shall receive a complaint filed by a complainant, regardless of whether the complainant has filed a complaint with a county board of supervisors.

(1) The department in its discretion shall determine the urgency of the investigation, and the time and resources required to complete the investigation, based upon the circumstances of the case, including the severity of a threat to the quality of surface or subsurface water.

(2) The department shall notify the county board of supervisors in the county where the violation is alleged to occur prior to investigating the premises of the alleged violation. However, the department is not required to provide notice if the department determines that a clear, present, and impending danger to the public health or environment requires immediate action.

(3) The county board of supervisors may designate a county employee to accompany a departmental official during the investigation of the premises of a confinement feeding operation. The county designee shall have the same right of access to the real estate of the premises as the departmental official conducting the inspection during the period that the county designee accompanies the departmental official.

(4) Upon the completion of an investigation, the department shall notify the complainant of the

results of the investigation, including any anticipated, pending, or completed enforcement action arising from the investigation. The department shall deliver a copy of the notice to the animal feeding operation that is the subject of the complaint and the board of supervisors of the county where the violation is alleged to have occurred.

d. A county board of supervisors or the department is not required to divulge information regarding the identity of the complainant.

2. a. The department and the attorney general shall enforce the provisions of this chapter in the same manner as provided in chapter 455B, division I.

b. The department and the attorney general may enforce the provisions of subchapter III in the same manner as provided in section 455B.175.

3. When entering the premises of an animal feeding operation, a person who is a departmental official, an agent of the department, or a person accompanying the departmental official or agent shall comply with section 455B.103. The person shall also comply with standard biosecurity requirements customarily required by the animal feeding operation which are necessary in order to control the spread of disease among an animal population.

2007 Acts, ch 82, §3

\*Section was enacted in chapter 455B and transferred to this chapter in Code 2003 pursuant to legislative directive in 2002 Acts, ch 1137

NEW subsection 2 and former subsection 2 renumbered as 3

#### **459.603 Water quality violations — civil penalty.**

A person who violates subchapter III shall be subject to a civil penalty which shall be established, assessed, and collected in the same manner as provided in section 455B.109 or 455B.191. Any civil penalty collected shall be deposited in the animal agriculture compliance fund created in section 459.401.

2007 Acts, ch 82, §4

Section amended

## CHAPTER 459A

### ANIMAL AGRICULTURE COMPLIANCE ACT FOR OPEN FEEDLOT OPERATIONS

#### **459A.208 Nutrient management plan — requirements.**

1. The owner of an open feedlot operation which has an animal unit capacity of one thousand animal units or more or which is required to be issued an operating permit shall develop and implement a nutrient management plan meeting the requirements of this section.

2. Not more than one open feedlot operation shall be covered by a single nutrient management plan.

3. A person shall not remove open feedlot effluent from an open feedlot operation structure which is part of an open feedlot operation for which a nutrient management plan is required under this section, unless the department approves a nutrient management plan as required in this section. The department may adopt rules allowing a person to remove open feedlot effluent from an open feedlot operation structure until the nutrient management plan is approved or disapproved by the department according to terms and

conditions required by rules adopted by the department.

4. The department shall not approve an application for a permit to construct a settled open feedlot effluent basin unless the owner of the open feedlot operation applying for approval submits a nutrient management plan together with the application for the construction permit as provided in section 459A.205. The owner shall also submit proof that the owner has published a notice for public comment as provided in this section. The department shall approve or disapprove the nutrient management plan as provided in section 459A.201.

5. Prior to approving or disapproving a nutrient management plan as required in this section, the department may receive comments exclusively to determine whether the nutrient management plan is submitted according to procedures required by the department and that the nutrient management plan complies with the provisions of this chapter.

*a.* The owner of the open feedlot operation shall publish a notice for public comment in a newspaper having a general circulation in the county where the open feedlot operation is or is proposed to be located and in the county where open feedlot effluent, which originates from the open feedlot operation, may be applied under the terms and conditions of the nutrient management plan.

*b.* The notice for public comment shall include all of the following:

(1) The name of the owner of the open feedlot operation submitting the nutrient management plan.

(2) The name of the township where the open feedlot operation is or is proposed to be located and the name of the township where open feedlot effluent originating from the open feedlot operation may be applied.

(3) The animal unit capacity of the open feedlot operation.

(4) The time when and the place where the nutrient management plan may be examined as provided in section 22.2.

(5) Procedures for providing public comment to the department. The notice shall also include procedures for requesting a public hearing conducted by the department. The department is not required to conduct a public hearing if it does not receive a request for the public hearing within ten days after the first publication of the notice for public comment as provided in this subsection. If such a request is received, the public hearing must be conducted within thirty days after the first date that the notice for public comment was published.

(6) A statement that a person may acquire information relevant to making comments under this subsection by accessing the department's internet website. The notice for public comment

shall include the address of the department's internet website as required by the department.

*c.* The department shall maintain an internet website where persons may access information relevant to making comments under this subsection. The department may include an electronic version of the nutrient management plan as provided in section 459A.201. The department shall include information regarding the time when, the place where, and the manner in which persons may participate in a public hearing as provided in this subsection.

6. A nutrient management plan must be authenticated by the owner of the open feedlot operation as required by the department in accordance with section 459A.201.

7. A nutrient management plan shall include all of the following:

*a.* Restrictions on the application of open feedlot effluent based on all of the following:

(1) Calculations necessary to determine the land area required for the application of open feedlot effluent from an open feedlot operation based on nitrogen use levels in order to obtain optimum crop yields according to a crop schedule specified in the nutrient management plan, and according to requirements adopted by the department.

(2) A phosphorus index established pursuant to section 459.312.

*b.* Information relating to the application of the open feedlot effluent, including all of the following:

(1) Nutrient levels of the open feedlot effluent.

(2) Application methods, the timing of the application, and the location of the land where the application occurs.

*c.* If the application is on land other than land owned or rented for crop production by the owner of the open feedlot operation, the plan shall include a copy of each written agreement executed by the owner of the open feedlot operation and the landowner or the person renting the land for crop production where the open feedlot effluent may be applied.

*d.* An estimate of the open feedlot effluent volume or weight produced by the open feedlot operation.

*e.* Information which shows all of the following:

(1) There is adequate storage for open feedlot effluent, including procedures to ensure proper operation and maintenance of the storage structures.

(2) The proper management of animal mortalities to ensure that animals are not disposed of in an open feedlot operation structure or a treatment system that is not specifically designed to treat animal mortalities.

(3) Surface drainage prior to contact with an open feedlot structure is diverted, as appropriate, from the open feedlot operation.

(4) Animals kept in the open feedlot operation do not have direct contact with any waters of the United States.

(5) Chemicals or other contaminants handled on-site are not disposed of in an open feedlot operation structure or a treatment system that is not specifically designed to treat such chemicals or contaminants.

8. If an open feedlot operation uses an alternative technology system as provided in section 459A.303, the nutrient management plan is not required to provide for settled effluent that enters the alternative technology system.

9. The owner of an open feedlot operation who is required to develop and implement a nutrient management plan shall maintain a current nutrient management plan and maintain records sufficient to demonstrate compliance with the nutrient management plan.

Subsection 1, paragraph b stricken effective July 31, 2007, pursuant to its own terms

Subsection 1, paragraph b stricken and former paragraph a redesignated as subsection 1, unnumbered paragraph 1

#### **459A.401 Open feedlot effluent control methods.**

An open feedlot operation shall provide for the management of open feedlot effluent by using an open feedlot effluent control method as follows:

1. All settleable solids from open feedlot effluent shall be removed prior to discharge into a water of the state.

*a.* The settleable solids shall be removed by use of a solids settling facility. The construction of a solids settling facility is not required where existing site conditions provide for removal of settleable solids prior to discharge into a water of the state.

*b.* The removal of settleable solids shall be deemed to have occurred when the velocity of flow of the open feedlot effluent has been reduced to less than point five feet per second for a minimum of five minutes. A solids settling facility shall have sufficient capacity to store settled solids between periods of land application and to provide required flow-velocity reduction for open feedlot effluent flow volumes resulting from a precipitation event of less intensity than a ten-year, one-hour frequency event. A solids settling facility which receives open feedlot effluent shall provide a minimum of one square foot of surface area for each eight cubic feet of open feedlot effluent per hour resulting from a ten-year, one-hour frequency precipitation event.

2. This subsection shall apply to an open feedlot operation which is required to be issued an operating permit.

*a.* An open feedlot operation may discharge open feedlot effluent into any waters of the United

States due to a precipitation event, if any of the following apply:

(1) For an open feedlot operation that houses cattle, other than veal cattle, the operation is designed, constructed, operated, and maintained to not discharge open feedlot effluent resulting from a twenty-five-year, twenty-four-hour precipitation event into any waters of the United States.

(2) For an open feedlot operation that houses veal calves, swine, chickens, or turkeys, the operation is designed, constructed, operated, and maintained to not discharge open feedlot effluent resulting from a one-hundred-year, twenty-four-hour precipitation event into any waters of the United States.

*b.* If the open feedlot operation is designed, constructed, and operated in accordance with the requirements of an open feedlot effluent control system as provided in rules adopted by the department, the operation shall be deemed to be in compliance with this section, unless a discharge from the operation causes a violation of state water quality standards as provided in chapter 455B, division III.

3. The following shall apply to an open feedlot operation which has an animal unit capacity of one thousand animal units or more:

*a.* (1) The open feedlot operation shall not discharge open feedlot effluent from an open feedlot operation structure into any waters of the United States, unless the discharge is pursuant to an operating permit.

(2) The open feedlot operation shall not be required to be issued an operating permit if the operation does not discharge open feedlot effluent into any waters of the United States.

*b.* The control of open feedlot effluent originating from the open feedlot operation may be accomplished by the use of a solids settling facility, settled open feedlot effluent basin, alternative technology system, or any other open feedlot effluent control structure or practice approved by the department. The department may require the diversion of surface drainage prior to contact with an open feedlot operation structure. Solids shall be settled from open feedlot effluent before the effluent enters a settled open feedlot effluent basin or alternative technology system.

2007 Acts, ch 126, §82  
Subsection 1 amended

#### **459A.501 General.**

The department and the attorney general shall enforce the provisions of this chapter in the same manner as provided in chapter 455B, division I and section 455B.175, unless otherwise provided in this chapter.

2007 Acts, ch 82, §5  
Section amended

CHAPTER 460

AGRICULTURAL DRAINAGE WELLS AND SINKHOLES

**460.304 Agricultural drainage well water quality assistance program.**

1. The soil conservation division shall establish an agricultural drainage well water quality assistance program as provided by rules which shall be adopted by the division pursuant to chapter 17A. The program shall be supported from moneys deposited in the agricultural drainage well water quality assistance fund created pursuant to section 460.303.

2. To the extent that moneys are available to support the program, the division shall expend moneys from the fund to do the following:

a. Provide cost-share moneys to persons closing agricultural drainage wells in accordance with the priority system established pursuant to section 460.302. In conjunction with closing agricultural drainage wells, the division shall award cost-share moneys to carry out the following projects:

- (1) Construct alternative drainage systems.
- (2) Establish water quality practices other than constructing alternative drainage systems, including but not limited to converting land to wetlands.

The amount of moneys allocated in cost-share payments to a person qualifying under the program shall not exceed seventy-five percent of the estimated cost of carrying out the project or seventy-five percent of the actual cost of carrying out the project, whichever is less.

b. Contract with persons to obtain technical assessments in agricultural drainage well areas, including but not limited to areas having a predominance of shallow bedrock or karst terrain as the division determines is necessary to carry out a project.

3. a. A person who owns an interest in land within a designated agricultural drainage well area shall not be eligible to participate in the program, if the person is any of the following:

(1) A party to a pending legal or administrative action, including a contested case proceeding under chapter 17A, relating to an alleged violation involving an animal feeding operation as regulated by the department of natural resources, regardless of whether the pending action is brought by the department or the attorney general.

(2) Is classified as a habitual violator for a violation of state law involving an animal feeding operation as regulated by the department of natural resources.

b. Noncrop acres located within a designated agricultural drainage well area shall not be eligible to benefit from the program.

The department of natural resources shall cooperate with the division by providing information necessary to administer this subsection.

2007 Acts, ch 22, §83  
Subsection 2, paragraph a, unnumbered paragraph 1 amended

CHAPTER 461C

PUBLIC USE OF PRIVATE LANDS AND WATERS

**461C.1 Purpose.**

The purpose of this chapter is to encourage private owners of land to make land and water areas available to the public for recreational purposes and for urban deer control by limiting an owner's

liability toward persons entering onto the owner's property for such purposes.

2007 Acts, ch 22, §84  
Section amended

CHAPTER 462A

WATER NAVIGATION REGULATIONS

**462A.2 Definitions.**

As used in this chapter, unless the context clearly requires a different meaning:

- 1. "Alcohol concentration" means the number of grams of alcohol per any of the following:
  - a. One hundred milliliters of blood.

- b. Two hundred ten liters of breath.
- c. Sixty-seven milliliters of urine.
- 2. "Alcoholic beverage" includes alcohol, wine, spirits, beer, or any other beverage which contains ethyl alcohol and is fit for human consumption.
- 3. "Authorized emergency vessel" means any

vessel which is designated or authorized by the commission for use in law enforcement, search and rescue, and disaster work.

4. “*Boat livery*” means a person who holds a vessel for hire, renting, leasing, or chartering including hotels, motels, or resorts which furnish a vessel to guests as part of the services of the business.

5. “*Certificate*” means a certificate of title.

6. “*Chemical test*” means an analysis of a person’s blood, breath, urine, or other bodily substance for the determination of the presence of alcohol, a controlled substance, or a drug.

7. “*Commission*” means the natural resource commission.

8. “*Controlled substance*” means any drug, substance, or compound that is regulated under chapter 124, including any counterfeit substance or simulated controlled substance, as well as any metabolite or derivative of the drug, substance, or compound.

9. “*Cut-off switch*” means an operable factory-installed or dealer-installed emergency cut-off engine stop switch that is installed on a personal watercraft.

10. “*Cut-off switch lanyard*” means the cord used to attach the person of the operator of a personal watercraft to the cut-off switch.

11. “*Dealer*” means a person who engages in whole or in part in the business of buying, selling, or exchanging vessels either outright or on conditional sale, bailment, lease, security interest, or otherwise, and who has an established place of business for sale, trade, and display of vessels. A yacht broker is a dealer.

12. “*Department*” means the department of natural resources.

13. “*Director*” means the director of the department or the director’s designee.

14. “*Established place of business*” means the place actually occupied either continuously or at regular periods by a dealer or manufacturer where the dealer’s or manufacturer’s books and records are kept and a large share of the dealer’s or manufacturer’s business is transacted.

15. “*Farm pond*” means a body of water wholly on the lands of a single owner, or a group of joint owners, which does not have any connection with any public waters and which is less than ten surface acres.

16. “*Inboard*” means a vessel in which the engine is located internally, the propulsion system is rigidly attached to the engine, and the propulsion mechanism is within the confines of the vessel’s extreme length and beam.

17. “*Inboard-outdrive*” means a vessel in which the power plant or engine is located inside of the vessel and the propulsion mechanism is located outside of the transom.

18. “*Inflatable vessel*” means a vessel which

achieves and maintains its intended shape and buoyancy by inflation.

19. “*Lienholder*” means a person holding a security interest.

20. “*Manufacturer*” means a person engaged in the business of manufacturing or importing new and unused vessels, or new and unused outboard motors, for the purpose of sale or trade.

21. “*Motorboat*” means any vessel propelled by an inboard, inboard-outdrive, or outboard engine, whether or not such engine is the principal source of propulsion.

22. “*Navigable waters*” means all lakes, rivers, and streams, which can support a vessel capable of carrying one or more persons during a total of six months period in one out of every ten years.

23. “*Nonresident*” means every person who is not a resident of this state.

24. “*Operate*” means to navigate or otherwise use a vessel or motorboat.

25. “*Operator*” means a person who operates or is in actual physical control of a vessel.

26. “*Owner*” means a person, other than a lienholder, having the property right in or title to a motorboat or vessel. The term includes a person entitled to the use or possession of a vessel or motorboat subject to an interest in another person, reserved or created by agreement and securing payment or performance of an obligation, but the term excludes a lessee under a lease not intended as security.

27. “*Passenger*” means a person carried on board a vessel, including the operator, and anyone towed by a vessel on water skis, surfboards, inner tubes, or similar devices.

28. “*Peace officer*” means:

a. A member of the state patrol.

b. A police officer under civil service as provided in chapter 400.

c. A sheriff.

d. A regular deputy sheriff who has had formal police training.

e. Any other certified law enforcement officer as defined in section 80B.3, who has satisfactorily completed an approved course relating to operating while intoxicated, either at the Iowa law enforcement academy or in a law enforcement training program approved by the department of public safety.

29. “*Person*” means an individual, partnership, firm, corporation, or association.

30. “*Personal watercraft*” means a vessel, less than sixteen feet in length, which is propelled by a water jet pump or similar machinery as its primary source of motor propulsion and is designed to be operated by a person sitting, standing, or kneeling on the vessel rather than being operated by a person sitting, standing, or kneeling inside the vessel.

31. “*Privately owned lake*” means any lake, lo-

cated within the boundaries of this state and not subject to federal control covering navigation owned by an individual, group of individuals, or a nonprofit corporation and which is not open to the use of the general public but is used exclusively by the owners and their personal guests.

32. “*Proceeds*” includes whatever is received when collateral or proceeds are sold, exchanged, collected, or otherwise disposed of. The term also includes the account arising when the right to payment is earned under a contract right. Money, checks, and the like are cash “*proceeds*”. All other proceeds are “*noncash proceeds*”.

33. “*Sailboard*” means a windsurfing vessel with a mount for a sail, a daggerboard, and a small skeg.

34. “*Sailboat*” means any watercraft operated with a sail.

35. “*Security interest*” means an interest which is reserved or created by an agreement which secures payment or performance of an obligation and is valid against third parties generally.

36. “*Serious injury*” means a bodily injury which creates a substantial risk of death, or which causes serious permanent disfigurement, or which causes protracted loss or impairment of the function of any bodily organ or major bodily member, or which causes the loss of any bodily member.

37. “*State of principal use*” means the state on whose waters a vessel is used or to be used most during a calendar year.

38. “*Undocumented vessel*” means any vessel which is not required to have, and does not have, a valid marine document issued by the bureau of customs or a foreign government.

39. “*Use*” means to operate, navigate, or employ a vessel. A vessel is in use whenever it is upon the water.

40. “*Vessel*” means every description of watercraft, other than a seaplane, used or capable of being used as a means of transportation on water or ice. Ice boats are watercraft.

41. “*Vessel for hire or commercial vessel*” means a vessel for the use of which a fee of any nature is imposed, including vessels furnished as a part of lodge, hotel, or resort services.

42. “*Wake*” means any movement of water created by a vessel which adversely affects the activities of another person who is involved in activities approved for that area or which may adversely affect the natural features of the shoreline.

43. “*Watercraft*” means any vessel which through the buoyance force of water floats upon the water and is capable of carrying one or more persons.

44. “*Waters of this state under the jurisdiction of the commission*” means any navigable waters within the territorial limits of this state, and the marginal river areas adjacent to this state, emptying only farm ponds and privately owned lakes.

45. “*Writing fee*” means the amount paid by the boat owner to the county recorder for handling the transaction.

2007 Acts, ch 28, §2  
NEW subsections 9 and 10 and former subsections 9 – 43 renumbered as 11 – 45

#### **462A.5 Registration and identification number.**

1. The owner of each vessel required to be numbered by this state shall register it every three years with the commission through the county recorder of the county in which the owner resides, or, if the owner is a nonresident, the owner shall register it in the county in which such vessel is principally used. The commission shall develop and maintain an electronic system for the registration of vessels pursuant to this chapter. The commission shall establish forms and procedures as necessary for the registration of all vessels.

The owner of the vessel shall file an application for registration with the appropriate county recorder on forms provided by the commission. The application shall be completed and signed by the owner of the vessel and shall be accompanied by the appropriate fee, and the writing fee specified in section 462A.53. Upon applying for registration, the owner shall display a bill of sale, receipt, or other satisfactory proof of ownership as provided by the rules of the commission to the county recorder. If the county recorder is not satisfied as to the ownership of the vessel or that there are no undisclosed security interests in the vessel, the county recorder may register the vessel but shall, as a condition of issuing a registration certificate, require the applicant to follow the procedure provided in section 462A.5A. Upon receipt of the application in approved form accompanied by the required fees, the county recorder shall enter it upon the records of the recorder’s office and shall issue to the applicant a pocket-size registration certificate. The certificate shall be executed in triplicate, one copy to be delivered to the owner, one copy to the commission, and one copy to be retained on file by the county recorder. The registration certificate shall bear the number awarded to the vessel, the passenger capacity of the vessel, and the name and address of the owner. In the use of all vessels except nonpowered sailboats, nonpowered canoes, and commercial vessels, the registration certificate shall be carried either in the vessel or on the person of the operator of the vessel when in use. In the use of nonpowered sailboats, nonpowered canoes, or commercial vessels, the registration certificate may be kept on shore in accordance with rules adopted by the commission. The operator shall exhibit the certificate to a peace officer upon request or, when involved in an occurrence of any nature with another vessel or other personal property, to the owner or operator of the other vessel or personal property.

A vessel that has an expired registration certifi-

cate from another state may be registered in this state upon proper application, payment of all applicable registration and writing fees, and payment of a penalty of five dollars.

On all vessels except nonpowered sailboats the owner shall cause the identification number to be painted on or attached to each side of the bow of the vessel in such size and manner as may be prescribed by the rules of the commission. On nonpowered boats the number may be placed at alternate locations as prescribed by the rules of the commission. All numbers shall be maintained in a legible condition at all times.

No number, other than the number awarded to a vessel under the provisions of this chapter or granted reciprocity pursuant to this chapter, shall be painted, attached or otherwise displayed on either side of the bow of such vessel.

The owner of each vessel must display and maintain, in a legible manner and in a prominent spot on the exterior of such vessel, other than the bow, the passenger capacity of the vessel which must conform with the passenger capacity designated on the registration certificate.

2. When an agency of the United States government shall have in force an overall system of identification numbering for vessels, the numbering system prescribed by the commission pursuant to this chapter, shall be in conformity therewith.

3. The registration fees for vessels subject to this chapter are as follows:

a. For vessels of any length without motor or sail, twelve dollars.

b. For motorboats or sailboats less than sixteen feet in length, twenty-two dollars and fifty cents.

c. For motorboats or sailboats sixteen feet or more, but less than twenty-six feet in length, thirty-six dollars.

d. For motorboats or sailboats twenty-six feet or more, but less than forty feet in length, seventy-five dollars.

e. For motorboats or sailboats forty feet in length or more, one hundred fifty dollars.

f. For all personal watercraft, forty-five dollars.

Every registration certificate and number issued becomes delinquent at midnight April 30 of the last calendar year of the registration period unless terminated or discontinued in accordance with this chapter. After January 1, 2007, an unregistered vessel and a renewal of registration may be registered for the three-year registration period beginning May 1 of that year. When unregistered vessels are registered after May 1 of the second year of the three-year registration period, such unregistered vessels may be registered for the remainder of the current registration period at two-thirds of the appropriate registration fee. When unregistered vessels are registered after

May 1 of the third year of the three-year registration period, such unregistered vessels may be registered for the remainder of the current registration period at one-third of the appropriate registration fee.

If a timely application for renewal is made, the applicant shall receive the same registration number allocated to the applicant for the previous registration period. If the application for registration for the three-year registration period is not made before May 1 of the last calendar year of the registration period, the applicant shall be charged a penalty of five dollars.

4. If a person, after registering a vessel, moves from the address shown on the registration certificate, the person shall, within ten days, notify the county recorder in writing of the old and new address. If appropriate, the county recorder shall forward all past records of the vessel to the recorder of the county in which the owner resides.

If the name of a person, who has registered a vessel, is changed, the person shall, within ten days, notify the county recorder of the former and new name.

No fee shall be paid to the county recorder for making the changes mentioned in this subsection, unless the owner requests a new registration certificate showing the change, in which case a fee of one dollar plus a writing fee shall be paid to the recorder.

If a registration certificate is lost, mutilated or becomes illegible, the owner shall immediately make application for and obtain a duplicate registration certificate by furnishing information satisfactory to the county recorder.

A fee of one dollar plus a writing fee shall be paid to the county recorder for a duplicate registration certificate.

If a vessel, registered under this chapter, is destroyed or abandoned, the destruction or abandonment shall be reported to the county recorder and the registration certificate shall be forwarded to the office of the county recorder within ten days after the destruction or abandonment.

5. All records of the commission and the county recorder, other than those declared by law to be confidential for the use of the commission and the county recorder, shall be open to public inspection during office hours.

6. The owner of each vessel which has a valid marine document issued by the bureau of customs of the United States government or any federal agency successor thereto shall register it every three years with the county recorder in the same manner prescribed for undocumented vessels and shall cause the registration validation decal to be placed on the vessel in the manner prescribed by the rules of the commission. When the vessel bears the identification required in the documentation, it is exempt from the placement of the identification numbers as required on undocumented

vessels. The fee for such registration is twenty-five dollars plus a writing fee.

7. If the owner of a currently registered vessel places the vessel in storage, the owner shall return the registration certificate to the county recorder with an affidavit stating that the vessel is placed in storage and the effective date of the storage. The county recorder shall notify the commission of each registered vessel placed in storage. When the owner of a stored vessel desires to renew the vessel's registration, the owner shall apply to the county recorder and pay the registration fees plus a writing fee as provided in subsections 1 and 3 without penalty. No refund of registration fees shall be allowed for a stored vessel.

8. The registration certificate shall indicate if the vessel is subject to the requirement of a certificate of title and the county from which the certificate of title is issued.

2007 Acts, ch 28, §3, 4  
For applicable scheduled fines, see §805.8B, subsection 1, paragraph A  
Subsection 1, unnumbered paragraphs 1 and 2 amended  
Subsection 3, unnumbered paragraph 2 amended

**462A.7 Occurrences involving vessels.**

1. The operator of a vessel involved in an occurrence that results in personal property damage or the injury or death of a person, shall, so far as possible without serious danger to the operator's own vessel, crew, or passengers, render to other persons affected by the occurrence such assistance as may be practicable and necessary to save them from or minimize any danger caused by the occurrence. The operator shall also give the operator's name, address, and identification of the operator's vessel in writing to any person injured and to the owner of any property damaged in the occurrence.

2. Whenever any vessel is involved in an occurrence that results in personal property damage or the injury or death of a person, except one which results only in property damage not exceeding two thousand dollars, a report of the occurrence shall be filed with the commission. The report shall be filed by the operator of the vessel and shall contain such information as the commission may, by rule, require. The report shall be submitted within forty-eight hours of the occurrence in cases that result in death, disappearance, or personal injuries requiring medical treatment by a licensed health care provider, and within five days of the occurrence in all other cases.

3. Every law enforcement officer who, in the regular course of duty, investigates an occurrence which is required to be reported by this section, shall, after completing such investigation, forward a report of such occurrence to the commission.

4. *a.* All reports shall be in writing. A vessel operator's report shall be without prejudice to the person making the report and shall be for the confidential use of the department. However, upon request the department shall disclose the identities of the persons on board the vessels involved in

the occurrence and their addresses. Upon request of a person who made and filed a vessel operator's report, the department shall provide a copy of the vessel operator's report to the requester. A written vessel operator's report filed with the department shall not be admissible in or used in evidence in any civil or criminal action arising out of the facts on which the report is based.

*b.* All written reports filed by law enforcement officers as required under subsection 3 are confidential to the extent provided in section 22.7, subsection 5, and section 622.11. However, a completed law enforcement officer's report shall be made available by the department or the investigating law enforcement agency to any party to an occurrence involving a vessel, the party's insurance company or its agent, or the party's attorney on written request and payment of a fee.

5. Failure of the operator of any vessel involved in an occurrence to offer assistance and aid to other persons affected by such occurrence, as set forth in this chapter, or to otherwise comply with the requirements of subsection 1, is punishable as follows:

*a.* In the event of an occurrence resulting only in property damage, the operator is guilty upon conviction of a simple misdemeanor.

*b.* In the event of an occurrence resulting in an injury to a person, the operator is guilty upon conviction of a serious misdemeanor.

*c.* In the event of an occurrence resulting in a serious injury to a person, the operator is guilty upon conviction of an aggravated misdemeanor.

*d.* In the event of an occurrence resulting in the death of a person, the operator is guilty upon conviction of a class "D" felony.

2007 Acts, ch 28, §5  
Section amended

**462A.9 Classification and required equipment.**

1. Vessels subject to the provisions of this chapter shall be divided into four classes as follows:

Class I. Less than sixteen feet in length.

Class II. Sixteen feet or over and less than twenty-six feet in length.

Class III. Twenty-six feet or over and less than forty feet in length.

Class IV. Forty feet or over.

2. Every vessel, in all weathers, from sunset to sunrise, shall carry and exhibit the following lights when underway, and during that time shall exhibit no other lights which may be mistaken for those required except that the international lighting system as approved by the United States coast guard will be accepted for use on motorboats on the waters of this state.

*a.* Every motorboat of classes I and II shall carry the following lights:

(1) A bright white light aft to show all around the horizon.



(2) A combined lantern in the fore part of the vessel and lower than the white light aft, showing green to starboard and red to port, so fixed as to throw the light from right ahead to two points abaft the beam on their respective sides.

b. Every motorboat of classes III and IV shall carry the following lights:

(1) A bright white light in the fore part of the vessel as near the bow as practicable, so constructed as to show an unbroken light over an arc of the horizon of twenty points of the compass, so fixed as to throw the light ten points on each side of the vessel; namely, from right ahead to two points abaft the beam on either side.

(2) A bright white light aft to show all around the horizon and higher than the white light forward.

(3) A green light on the starboard side so constructed as to show an unbroken light over an arc of the horizon of ten points of the compass, so fixed as to throw the light from right ahead to two points abaft the beam on the starboard side. A red light on the port side, so constructed as to show an unbroken light over an arc of the horizon of ten points of the compass so fixed as to throw the light from right ahead to two points abaft the beam on the port side. The said side lights shall be fitted with inboard screens of sufficient height so set as to prevent these lights from being seen across the bow.

c. Vessels of classes I and II, when propelled by sail alone, shall carry the combined lantern, but not the white light aft prescribed by this section. Vessels of classes III and IV when so propelled, shall carry the colored side lights, suitably screened, but not the white lights required by this section.

d. Every white light required by this section shall be of such character as to be visible at a distance of at least two miles. Every colored light required by this section shall be of such character as to be visible at a distance of at least one mile. The term "*visible*" in this section, when applied to lights, shall mean visible on a dark night with clear atmosphere.

e. When propelled by sail and machinery, such motorboat shall carry the lights required by this section for a motorboat propelled by machinery only.

3. Every vessel shall carry and exhibit such other lights required by the rules and regulations of the commission.

4. Every motorboat of class II, III or IV shall be provided with an efficient whistle or other sound producing appliance.

5. Every motorboat of class III or IV shall be provided with an efficient bell.

6. Every vessel shall carry at least one life preserver, life belt, ring buoy or other device, of the sort prescribed by the rules of the commission, for each passenger, so placed as to be readily accessible. This does not apply to a vessel which is a rac-

ing shell used in the sport of sculling or to a sailboard while used for windsurfing.

7. Every motorboat shall be provided with such number, size and type of fire extinguishers capable of promptly and effectually extinguishing burning gasoline, as may be prescribed by the regulations of the commission. Such fire extinguishers shall, at all times, be kept in condition for immediate and effective use and shall be so placed as to be readily accessible. Vessels powered by outboard motors of ten horsepower or less, need not carry the extinguishers as provided herein.

8. The provisions of subsections 4, 5 and 7 of this section shall not apply to motorboats while competing in any race conducted pursuant to section 462A.16 or, if such boats are designed and used solely for racing, while engaged in such navigation as is incidental to the tuning up of the boats and engines for the race.

The operator of a motorboat, while engaged in such race, must wear a crash helmet and life preserver.

9. Every motorboat shall have the carburetor or carburetors of every engine therein, except outboard motors, using a liquid of a volatile nature as fuel, equipped with such efficient flame arrestor, backfire trap or other similar device as may be prescribed by the rules and regulations of the commission.

10. Every motorboat, except open boats, using any liquid of a volatile nature as fuel, shall be provided with the means prescribed by the rules of the commission for properly and efficiently ventilating the bilges of the engines and fuel tank compartments so as to remove any explosive or flammable gases.

11. The commission is hereby authorized to make rules and regulations modifying the equipment requirements contained in this section to the extent necessary for the safety of operators and passengers.

12. The commission is hereby authorized to establish such pilot rules as may be necessary for the safe operation of vessels on the waters of this state under the jurisdiction of the commission.

13. An owner of a personal watercraft equipped with a cut-off switch shall maintain the cut-off switch and the accompanying cut-off switch lanyard in an operable, fully functional condition.

14. No person shall operate or give permission for the operation of a vessel which is not equipped as required by this section or modification thereof.

2007 Acts, ch 28, §6  
For applicable scheduled fines, see §805.8B, subsection 1, paragraphs a and b  
NEW subsection 13 and former subsection 13 renumbered as 14

#### **462A.12 Prohibited operation.**

1. No person shall operate any vessel, or manipulate any water skis, surfboard or similar de-

vice in a careless, reckless or negligent manner so as to endanger the life, limb or property of any person.

2. A person shall not operate any vessel, or manipulate any water skis, surfboard or similar device while under the influence of an alcoholic beverage, marijuana, a narcotic, hypnotic or other drug, or any combination of these substances. However, this subsection does not apply to a person operating any vessel or manipulating any water skis, surfboard or similar device while under the influence of marijuana, or a narcotic, hypnotic or other drug if the substances were prescribed for the person and have been taken under the prescription and in accordance with the directions of a medical practitioner as defined in chapter 155A, provided there is no evidence of the consumption of alcohol and further provided the medical practitioner has not directed the person to refrain from operating a motor vehicle, any vessel or from manipulating any water skis, surfboard or similar device.

3. No person shall place, cause to be placed, throw or deposit onto or in any of the public waters, ice or land of this state any cans, bottles, garbage, rubbish, and other debris.

4. No person shall operate on the waters of this state under the jurisdiction of the conservation commission any vessel displaying or reflecting a blue light or flashing blue light unless such vessel is an authorized emergency vessel.

5. No person shall operate a vessel and enter into areas in which search and rescue operations are being conducted or an area affected by a natural disaster unless authorized by the officer in charge of the search and rescue or disaster operation. Any person authorized in an area of operation shall operate the person's vessel at a no wake speed and shall keep clear of all other vessels engaged in the search and rescue or disaster operation. A person who must operate a vessel in a disaster area to gain access or egress from the person's home shall be considered an authorized person by the officer in charge.

6. An owner or operator of a vessel propelled by a motor of more than ten horsepower shall not permit any person under twelve years of age to operate the vessel unless accompanied in or on the same vessel by a responsible person of at least eighteen years of age who is experienced in motorboat operation. A person who is twelve years of age or older but less than eighteen years of age shall not operate any vessel propelled by a motor of more than ten horsepower unless the person has successfully completed a department-approved watercraft safety course and obtained a watercraft safety certificate or is accompanied in or on the same vessel by a responsible person of at least eighteen years of age who is experienced in motorboat operation. A person required to have a watercraft safety certificate shall carry and shall exhibit

or make available the certificate upon request of an officer of the department. A violation of this subsection is a simple misdemeanor as provided in section 462A.13. However, a person charged with violating this subsection shall not be convicted if the person produces in court, within a reasonable time, a department-approved certificate. The cost of a department certificate, or any duplicate, shall not exceed five dollars.

7. A person shall not operate watercraft in a manner which unreasonably or unnecessarily interferes with other watercraft or with the free and proper navigation of the waters of the state. Anchoring under bridges, in a heavily traveled channel, in a lock chamber, or near the entrance of a lock constitutes such interference if unreasonable under the prevailing circumstances.

8. A person shall not operate a vessel in violation of restrictions as given by state-approved buoys or signs marking an area.

9. A person shall not operate on the waters of this state under the jurisdiction of the commission a vessel equipped with an engine of greater horsepower rating than is designated for the vessel by the federally required capacity plate or by the manufacturer's plate on those vessels not covered by federal regulations.

10. A person shall not leave an unattended vessel tied or moored to a dock which is placed immediately adjacent to a public boat launching ramp or to a dock which is posted for loading and unloading.

11. A person shall not operate a vessel within fifty feet of a diver's flag placed in accordance with the rules of the commission adopted under chapter 17A.

12. A person shall not operate a personal watercraft at any time between sundown and sunup.

13. A person shall not chase or harass animals while operating a personal watercraft or motorboat.

14. A person shall not operate a personal watercraft that is equipped with a cut-off switch, at any time, without first attaching the accompanying cut-off switch lanyard to the operator's person while the engine is running and the personal watercraft is in use.

2007 Acts, ch 28, §7

For applicable scheduled fines, see §805.8B, subsection 1, paragraph c  
NEW subsection 14

#### **462A.14 Operating a motorboat or sailboat while intoxicated.**

1. A person commits the offense of operating a motorboat or sailboat while intoxicated if the person operates a motorboat or sailboat on the navigable waters of this state in any of the following conditions:

a. While under the influence of an alcoholic beverage or other drug or a combination of such substances.

b. While having an alcohol concentration of .10 or more.

c. While any amount of a controlled substance is present in the person, as measured in the person's blood or urine.

2. A person who violates subsection 1 commits:

a. A serious misdemeanor for the first offense, punishable by all of the following:

(1) Imprisonment in the county jail for not less than forty-eight hours, to be served as ordered by the court, less credit for any time the person was confined in a jail or detention facility following arrest. However, the court, in ordering service of the sentence and in its discretion, may accommodate the defendant's work schedule.

(2) Assessment of a fine of one thousand dollars. However, in the discretion of the court, if no personal or property injury has resulted from the defendant's actions, up to five hundred dollars of the fine may be waived. As an alternative to a portion or all of the fine, the court may order the person to perform unpaid community service.

(3) Prohibition of operation of a motorboat or sailboat for one year, pursuant to court order.

(4) Assignment to substance abuse evaluation and treatment, pursuant to subsection 12, and a course for drinking drivers.

b. An aggravated misdemeanor for a second offense, punishable by all of the following:

(1) Imprisonment in the county jail or community-based correctional facility for not less than seven days.

(2) Assessment of a fine of not less than one thousand five hundred dollars nor more than five thousand dollars.

(3) Prohibition of operation of a motorboat or sailboat for two years, pursuant to court order.

(4) Assignment to substance abuse evaluation and treatment, pursuant to subsections 12 and 13, and a course for drinking drivers.

c. A class "D" felony for a third offense and each subsequent offense, punishable by all of the following:

(1) Imprisonment in the county jail for a determinate sentence of not more than one year but not less than thirty days, or committed to the custody of the director of the department of corrections. A person convicted of a third or subsequent offense may be committed to the custody of the director of the department of corrections, who shall assign the person to a facility pursuant to section 904.513 or the offender may be committed to treatment in the community under the provisions of section 907.13.

(2) Assessment of a fine of not less than two thousand five hundred dollars nor more than seven thousand five hundred dollars.

(3) Prohibition of operation of a motorboat or sailboat for six years, pursuant to court order.

(4) Assignment to substance abuse evaluation

and treatment, pursuant to subsections 12 and 13, and a course for drinking drivers.

d. A class "D" felony for any offense under this section resulting in serious injury to persons other than the defendant, if the court determines that the person who committed the offense caused the serious injury, and shall be imprisoned for a determinate sentence of not more than five years but not less than thirty days, or committed to the custody of the director of the department of corrections, and assessed a fine of not less than two thousand five hundred dollars nor more than seven thousand five hundred dollars. A person convicted of a felony offense may be committed to the custody of the director of the department of corrections, who shall assign the person to a facility pursuant to section 904.513. The court shall also order that the person not operate a motorboat or sailboat for one year in addition to any other period of time the defendant would have been ordered not to operate if no injury had occurred in connection with the violation. The court shall also assign the defendant to substance abuse evaluation and treatment pursuant to subsections 12 and 13, and a course for drinking drivers.

e. A class "B" felony for any offense under this section resulting in the death of persons other than the defendant, if the court determines that the person who committed the offense caused the death, and shall be imprisoned for a determinate sentence of not more than twenty-five years, or committed to the custody of the director of the department of corrections. A person convicted of a felony offense may be committed to the custody of the director of the department of corrections, who shall assign the person to a facility pursuant to section 904.513. The court shall also order that the person not operate a motorboat or sailboat for six years. The court shall also assign the defendant to substance abuse evaluation and treatment pursuant to subsections 12 and 13, and a course for drinking drivers.

3. a. Notwithstanding the provisions of sections 901.5 and 907.3, the court shall not defer judgment or sentencing, or suspend execution of any mandatory minimum sentence of incarceration applicable to the defendant under subsection 2, and shall not suspend execution of any other part of a sentence not involving incarceration imposed pursuant to subsection 2, if any of the following apply:

(1) If the defendant's alcohol concentration established by the results of an analysis of a specimen of the defendant's blood, breath, or urine withdrawn in accordance with this chapter exceeds .15, regardless of whether or not the alcohol concentration indicated by the chemical test minus the established margin of error inherent in the device or method used to conduct the test equals an alcohol concentration of .15 or more.

(2) If the defendant has previously been con-

victed of a violation of subsection 1 or a statute in another state substantially corresponding to subsection 1.

(3) If the defendant has previously received a deferred judgment or sentence for a violation of subsection 1 or for a violation of a statute in another state substantially corresponding to subsection 1.

(4) If the defendant refused to consent to testing requested in accordance with section 462A.14A.

(5) If the offense under this section results in bodily injury to a person other than the defendant.

b. A minimum term of imprisonment in a county jail or community-based correctional facility imposed on a person convicted of a second or subsequent offense under subsection 2 shall be served on consecutive days. However, if the sentencing court finds that service of the full minimum term on consecutive days would work an undue hardship on the person, or finds that sufficient jail space is not available and is not reasonably expected to become available within four months after sentencing to incarcerate the person serving the minimum sentence on consecutive days, the court may order the person to serve the minimum term in segments of at least forty-eight hours and to perform a specified number of hours of unpaid community service as deemed appropriate by the sentencing court.

4. In determining if a violation charged is a second or subsequent offense for purposes of criminal sentencing or license or privilege revocation under this section:

a. Any conviction under this section within the previous twelve years shall be counted as a previous offense.

b. Deferred judgments entered pursuant to section 907.3 for violations of this section shall be counted as previous offenses.

c. Convictions or the equivalent of deferred judgments for violations in any other states under statutes substantially corresponding to this section shall be counted as previous offenses. The courts shall judicially notice the statutes of other states which define offenses substantially equivalent to an offense defined in this section and can therefore be considered corresponding statutes. Each previous violation on which conviction or deferral of judgment was entered prior to the date of the violation charged shall be considered and counted as a separate previous offense.

5. A person shall not be convicted and sentenced for more than one violation of this section for actions arising out of the same event or occurrence, even if the event or occurrence involves more than one of the conditions specified in subsection 1. However, a person who refuses a test pursuant to section 462A.14B may be subject to imposition of the penalties under that section in addition to the penalties under this section if the person violates both sections, even though the ac-

tions arise out of the same event or occurrence.

6. The clerk of the district court shall immediately certify to the department a true copy of each order entered with respect to deferral of judgment, deferral of sentence, or pronouncement of judgment and sentence for a defendant under this section.

7. a. This section does not apply to a person operating a motorboat or sailboat while under the influence of a drug if the substance was prescribed for the person and was taken under the prescription and in accordance with the directions of a medical practitioner as defined in chapter 155A or if the substance was dispensed by a pharmacist without a prescription pursuant to the rules of the board of pharmacy, if there is no evidence of the consumption of alcohol and the medical practitioner or pharmacist had not directed the person to refrain from operating a motor vehicle, or motorboat or sailboat.

b. When charged with a violation of subsection 1, paragraph "c", a person may assert, as an affirmative defense, that the controlled substance present in the person's blood or urine was prescribed or dispensed for the person and was taken in accordance with the directions of a practitioner and the labeling directions of the pharmacy, as that person and place of business are defined in section 155A.3.

8. In any prosecution under this section, evidence of the results of analysis of a specimen of the defendant's blood, breath, or urine is admissible upon proof of a proper foundation.

a. The alcohol concentration established by the results of an analysis of a specimen of the defendant's blood, breath, or urine withdrawn within two hours after the defendant was operating or in physical control of a motorboat or sailboat is presumed to be the alcohol concentration at the time of operating or being in physical control of the motorboat or sailboat.

b. The presence of a controlled substance or other drug established by the results of analysis of a specimen of the defendant's blood or urine withdrawn within two hours after the defendant was operating or in physical control of a motorboat or sailboat is presumed to show the presence of such controlled substance or other drug in the defendant at the time of operating or being in physical control of the motorboat or sailboat.

c. The nationally accepted standards for determining detectable levels of controlled substances in the division of criminal investigation's initial laboratory screening test for controlled substances adopted by the department of public safety shall be utilized in prosecutions under this section.

9. a. In addition to any fine or penalty imposed under this chapter, the court shall order a defendant convicted of or receiving a deferred judgment for a violation of this section to make restitution for damages resulting directly from the violation, to the victim, pursuant to chapter 910.

An amount paid pursuant to this restitution order shall be credited toward any adverse judgment in a subsequent civil proceeding arising from the same occurrence. However, other than establishing a credit, a restitution proceeding pursuant to this section shall not be given evidentiary or preclusive effect in a subsequent civil proceeding arising from the same occurrence.

b. The court may order restitution paid to any public agency for the costs of the emergency response resulting from the actions constituting a violation of this section, not exceeding five hundred dollars per public agency for each such response. For the purposes of this paragraph, “*emergency response*” means any incident requiring response by fire fighting, law enforcement, ambulance, medical, or other emergency services. A public agency seeking such restitution shall consult with the county attorney regarding the expenses incurred by the public agency, and the county attorney may include the expenses in the statement of pecuniary damages pursuant to section 910.3.

10. In any prosecution under this section, the results of a chemical test shall not be used to prove a violation of subsection 1, paragraph “b” or paragraph “c”, if the alcohol, controlled substance, or other drug concentration indicated by the chemical test minus the established margin of error inherent in the device or method used to conduct the chemical test does not equal or exceed the level prohibited by subsection 1.

11. This section does not limit the introduction of any competent evidence bearing on the question of whether a person was under the influence of an alcoholic beverage or a controlled substance or other drug, including the results of chemical tests of specimens of blood, breath, or urine obtained more than two hours after the person was operating a motorboat or sailboat.

12. a. All substance abuse evaluations required under this section shall be completed at the defendant’s expense.

b. In addition to assignment to substance abuse evaluation and treatment under this section, the court shall order any defendant convicted under this section to follow the recommendations proposed in the substance abuse evaluation for appropriate substance abuse treatment for the defendant. Court-ordered substance abuse treatment is subject to the periodic reporting requirements of section 125.86.

c. If a defendant is committed by the court to a substance abuse treatment facility, the administrator of the facility shall report to the court when it is determined that the defendant has received the maximum benefit of treatment at the facility and the defendant shall be released from the facility. The time for which the defendant is committed for treatment shall be credited against the defendant’s sentence.

d. The court may prescribe the length of time

for the evaluation and treatment or the court may request that the community college or licensed substance abuse program conducting the course for drinking drivers which the defendant is ordered to attend or the treatment program to which the defendant is committed immediately report to the court when the defendant has received maximum benefit from the course for drinking drivers or treatment program or has recovered from the defendant’s addiction, dependency, or tendency to chronically abuse alcohol or drugs.

e. Upon successfully completing a course for drinking drivers or an ordered substance abuse treatment program, a court may place the defendant on probation for six months and as a condition of probation, the defendant shall attend a program providing posttreatment services relating to substance abuse as approved by the court.

f. A defendant committed under this section who does not possess sufficient income or estate to make payment of the costs of the treatment in whole or in part shall be considered a state patient and the costs of treatment shall be paid as provided in section 125.44.

g. A defendant who fails to carry out the order of the court shall be confined in the county jail for twenty days in addition to any other imprisonment ordered by the court or may be ordered to perform unpaid community service work, and shall be placed on probation for one year with a violation of this probation punishable as contempt of court.

h. In addition to any other condition of probation, the defendant shall attend a program providing substance abuse prevention services or post-treatment services related to substance abuse as ordered by the court. The defendant shall report to the defendant’s probation officer as ordered concerning proof of attendance at the treatment program or posttreatment program ordered by the court. Failure to attend or complete the program shall be considered a violation of probation and is punishable as contempt of court.

13. a. Upon a second or subsequent offense in violation of section 462A.14, the court upon hearing may commit the defendant for inpatient treatment of alcoholism or drug addiction or dependency to any hospital, institution, or community correctional facility in this state providing such treatment. The time for which the defendant is committed for treatment shall be credited against the defendant’s sentence.

b. The court may prescribe the length of time for the evaluation and treatment or the court may request that the hospital to which the defendant is committed immediately report to the court when the defendant has received maximum benefit from the program of the hospital or institution or has recovered from the defendant’s addiction, dependency, or tendency to chronically abuse alcohol or drugs.

c. A defendant committed under this section

who does not possess sufficient income or estate to make payment of the costs of the treatment in whole or in part shall be considered a state patient and the costs of treatment shall be paid as provided in section 125.44.

2007 Acts, ch 10, §176  
Subsection 7, paragraph a amended

#### **462A.14A Implied consent to test.**

1. A person who operates a motorboat or sailboat on the navigable waters in this state under circumstances which give reasonable grounds to believe that the person has been operating a motorboat or sailboat in violation of section 462A.14 is deemed to have given consent to the withdrawal of specimens of the person's blood, breath, or urine and to a chemical test or tests of the specimens for the purpose of determining the alcohol concentration or presence of controlled substances or other drugs, subject to this section.

2. *a.* If a peace officer has reasonable grounds to believe that any of the following has occurred, the peace officer may request that the motorboat or sailboat operator provide a sample of the operator's breath for a preliminary screening test using a device approved by the commissioner of public safety for that purpose:

(1) The motorboat or sailboat operator may be violating or has violated section 462A.14.

(2) The motorboat or sailboat has been involved in an accident resulting in injury or death.

(3) The motorboat or sailboat operator is or has been operating carelessly or recklessly, in violation of section 462A.12.

*b.* The results of this preliminary screening test may be used for the purpose of deciding whether an arrest should be made or whether to request a chemical test authorized in this chapter, but shall not be used in any court action except to prove that a chemical test was properly requested of a person pursuant to this section.

3. The withdrawal of the body substances and the test or tests shall be administered at the written request of a peace officer having reasonable grounds to believe that the person was operating a motorboat or sailboat in violation of section 462A.14, and if any of the following conditions exist:

*a.* A peace officer has lawfully placed the person under arrest for violation of section 462A.14.

*b.* The motorboat or sailboat has been involved in an occurrence resulting in personal injury or death.

*c.* The person has refused to take a preliminary breath screening test provided by this chapter.

*d.* The preliminary breath screening test was administered and it indicated an alcohol concentration equal to or in excess of the level prohibited by section 462A.14.

*e.* The preliminary breath screening test was administered and it indicated an alcohol concentration of less than the level prohibited under section 462A.14, and the peace officer has reasonable grounds to believe that the person was under the influence of a controlled substance, a drug other than alcohol or a combination of alcohol and another drug.

4. *a.* The peace officer shall determine which of the three substances, breath, blood, or urine, shall be tested.

*b.* If the peace officer fails to offer a test within two hours after the preliminary screening test is administered or refused, or the arrest is made, whichever occurs first, a test is not required, and there shall be no suspension of motorboat or sailboat operation privileges.

*c.* Refusal to submit to a chemical test of urine or breath is deemed a refusal to submit, and the peace officer shall inform the person that the person's refusal will result in the suspension of the person's privilege to operate a motorboat or sailboat.

*d.* Refusal to submit to a chemical test of blood is not deemed a refusal to submit, but in that case, the peace officer shall then determine which one of the other two substances shall be tested and shall offer the test.

*e.* Notwithstanding paragraphs "a" through "d", if the peace officer has reasonable grounds to believe that the person was under the influence of a drug other than alcohol, or a combination of alcohol and another drug, a urine test may be required even after a blood or breath test has been administered.

*f.* A person who is dead, unconscious, or otherwise in a condition rendering the person incapable of consent or refusal is deemed not to have withdrawn the consent provided by this section, and the test may be given if a licensed physician certifies in advance of the test that the person is dead, unconscious, or otherwise in a condition rendering that person incapable of consent or refusal.

*g.* A person who has been requested to submit to a chemical test shall be advised by a peace officer of the following:

(1) A refusal to submit to the test is punishable by a mandatory civil penalty of five hundred to two thousand dollars, and suspension of motorboat or sailboat operating privileges for at least a year. In addition, if the person is also convicted of operating a motorboat or sailboat while intoxicated, the person shall be subject to additional penalties.

(2) If the person submits to the test and the results indicate an alcohol concentration equal to or in excess of the level prohibited under section 462A.14 and the person is convicted, the person's motorboat or sailboat operating privileges will be suspended for at least one year and up to six years, depending upon how many previous convictions

the person has under this chapter, and whether or not the person has caused serious injury or death, in addition to any sentence and fine imposed for a violation of section 462A.14.

5. Refusal to submit to a test under this section does not prohibit the withdrawal of a specimen for chemical testing if a motorboat or sailboat has been involved in an accident resulting in death or serious bodily injury, if the peace officer has reasonable grounds to believe that the operator of the motorboat or sailboat was violating section 462A.14 at the time of the accident, and the peace officer has obtained, in compliance with chapter 808 or according to the procedure in section 462A.14D, a search warrant permitting the withdrawal of a specimen for chemical testing. The act of any person knowingly resisting or obstructing the withdrawal of a specimen pursuant to a search warrant issued under this section constitutes a contempt punishable by a fine not exceeding one thousand dollars or imprisonment in a county jail not exceeding one year or by both such fine and imprisonment, and further constitutes a refusal to submit, punishable under this section.

6. Only a licensed physician, licensed physician assistant as defined in section 148C.1, medical technologist, or registered nurse, acting at the request of a peace officer, may withdraw a specimen of blood for the purpose of determining the alcohol concentration or the presence of a controlled substance or other drugs. However, any peace officer, using devices and methods approved by the commissioner of public safety, may take a specimen of a person's breath or urine for the purpose of determining the alcohol concentration or the presence of drugs. Only new equipment kept under strictly sanitary and sterile conditions shall be used for drawing blood. Medical personnel who use reasonable care and accepted medical practices in withdrawing blood specimens are immune from liability for their actions in complying with requests made of them pursuant to this section.

7. The person may have an independent chemical test or tests administered at the person's own expense in addition to any administered at the direction of a peace officer. The failure or inability of the person to obtain an independent chemical test or tests does not preclude the admission of evidence of the results of the test or tests administered at the direction of the peace officer. Upon the request of the person who is tested, the results of the test or tests administered at the direction of the peace officer shall be made available to the person.

8. In any prosecution under section 462A.14, evidence of the results of analysis of a specimen of the defendant's blood, breath, or urine is admissible upon proof of a proper foundation. The alcohol concentration established by the results of an analysis of a specimen of the defendant's blood,

breath, or urine withdrawn within two hours after the defendant was operating or was otherwise in physical control of a motorboat or sailboat is presumed to be the alcohol concentration at the time of operation or being in physical control of the motorboat or sailboat. If a person refuses to submit to a chemical test, proof of refusal is admissible in any civil or criminal action or proceeding arising out of acts alleged to have been committed while the person was operating a motorboat or sailboat in violation of section 462A.14. This section does not limit the introduction of any competent evidence bearing on the question of whether a person was under the influence of an alcoholic beverage or a controlled substance or other drug, including the results of chemical tests of specimens of blood, breath, or urine obtained more than two hours after the person was operating a motorboat or sailboat.

2007 Acts, ch 28, §8  
Subsection 3, paragraph b amended

#### **462A.23 Suspension or revocation.**

1. Any officer appointed by the commission may, for cause, temporarily suspend the registration certificate of any vessel that has been issued under this chapter, and the commission, after a due hearing on the matter at its next session, shall make final determination in the matter.

2. The commission shall forthwith revoke the registration certificate of any vessel and the owner's or operator's privilege to operate a vessel for hire or commercial vessel, upon receiving a record of such owner or operator's conviction of any of the following offenses, when such conviction has become final:

*a.* Manslaughter resulting from the operation of a vessel.

*b.* Operating a motorboat or sailboat while intoxicated, or manipulating water skis, a surfboard, or a similar device while in an intoxicated condition or under the influence of a narcotic drug.

*c.* Failure to stop and render aid as required by this chapter when an occurrence involving a vessel results in the death or personal injury of another.

*d.* Perjury or the making of a false affidavit or statement under oath to the commission under this chapter relating to the ownership or operation of a vessel.

3. The commission is hereby authorized to suspend the registration certificate of any vessel and the owner's or operator's privilege to operate a vessel for hire or commercial vessel upon a showing by its records that the owner or operator:

*a.* Has committed an offense for which mandatory revocation of the registration certificate or of the privilege to operate a vessel for hire or commercial vessel is required upon conviction.

*b.* Is a habitual reckless or negligent operator of a vessel for hire or commercial vessel.

c. Is incompetent to operate a vessel for hire or commercial vessel.

d. Has permitted an unlawful or fraudulent use of such registration certificate.

4. The commission is hereby authorized to suspend or revoke the certificate of registration of a vessel registered under the provisions of this chapter when:

a. It is satisfied that such registration certificate was fraudulently or erroneously obtained.

b. It determines that a registered vessel is unsafe to be operated on waters of the state under the jurisdiction of the commission.

c. A registered vessel has been abandoned or wrecked.

d. Identification numbers are knowingly displayed on a vessel other than the one to which assigned.

5. Upon revocation of any registration certificate, the commission shall notify the county recorder who issued the same, who shall immediately enter the revocation upon the recorder's records.

6. The commission is hereby authorized to suspend or revoke the special certificate of any manufacturer or dealer when it is satisfied that:

a. Such special certificate was fraudulently or erroneously obtained.

b. Such special certificate is being used in violation of the provisions of this chapter or the rules and regulations of the commission.

c. Such manufacturer or dealer is violating any of the provisions of this chapter or the rules and regulations of the commission.

2007 Acts, ch 28, §9  
Subsection 2, paragraph c amended

**462A.34B Eluding or attempting to elude pursuing law enforcement vessel — penalty.**

1. The operator of a vessel commits a serious misdemeanor if the operator willfully fails to bring the vessel to a stop or otherwise eludes or attempts to elude an authorized marked law enforcement vessel operated by a uniformed peace officer or by a water patrol officer of the department of natural resources, after being given a visual and audible signal to stop. The signals given by the officer shall be by displaying a blue light or flashing blue and red lights and by sounding a horn or siren.

2. The operator of a vessel commits an aggravated misdemeanor if the operator willfully fails to bring the vessel to a stop or otherwise eludes or attempts to elude an authorized marked law enforcement vessel operated by a uniformed peace officer or by a water patrol officer of the department of natural resources, after being given a visual and audible signal to stop as provided in this section and in doing so exceeds a reasonable speed.

3. The operator of a vessel commits a class "D" felony if the operator willfully fails to bring the vessel to a stop or otherwise eludes or attempts to

elude an authorized marked law enforcement vessel operated by a uniformed peace officer or by a water patrol officer of the department of natural resources, after being given a visual and audible signal to stop as provided in this section, and in doing so exceeds a reasonable speed, and if any of the following occurs:

a. The operator is participating in a public offense, as defined in section 702.13, that is a felony.

b. The operator is in violation of section 462A.14 or 124.401.

c. The offense results in bodily injury to a person other than the operator.

2007 Acts, ch 28, §10  
NEW section

**462A.43 Transfer of ownership.**

Upon the transfer of ownership of any vessel, the owner, except as otherwise provided by this chapter, shall complete the form on the back of the registration certificate and shall deliver it to the purchaser or transferee at the time of delivering the vessel. If a vessel has an expired registration at the time of transfer, the transferee shall pay all applicable fees for the current registration period, the appropriate writing fee, and a penalty of five dollars, and a transfer of number shall be awarded in the same manner as provided for in an original registration. All penalties collected pursuant to this section shall be forwarded by the commission to the treasurer of state, who shall place the money in the state fish and game protection fund. The money so collected is appropriated to the commission solely for the administration and enforcement of navigation laws and water safety.

2007 Acts, ch 28, §11  
Section amended

**462A.84 Perfection and titles — fee.**

1. A security interest created in this state in a vessel required to have a certificate of title is not perfected until the security interest is noted on the certificate of title.

a. To perfect the security interest, an application for security interest must be presented along with the original title. The county recorder shall note the security interest on the face of the title and on the copy in the recorder's office.

b. The application fee for a security interest is five dollars. The fees shall be credited to the county general fund.

2. The certificate of title shall be presented to the county recorder when the application for security interest or for assignment of the security interest is presented and a new or endorsed certificate of title shall be issued to the secured party with the name and address of the secured party upon it.

3. When a security interest is discharged, the secured party shall note the cancellation of the security interest on the face of the certificate of title and send the title by first class mail to the office of



the county recorder where the title was issued, or the secured party shall send a notarized letter by first class mail to the county recorder where the title was issued notifying the county recorder of the cancellation of the security interest. The coun-

ty recorder shall note the release of the security interest in the county records as evidence of the release of the security interest.

2007 Acts, ch 28, §12  
Subsection 3 stricken and rewritten

## CHAPTER 463C

### HONEY CREEK PARK DEVELOPMENT

#### 463C.17 Exemption from certain laws.

The authority, the department, and their agents and contracts entered into by the authority, the department, and their agents, in carrying out its public and essential governmental functions are exempt from the laws of the state which provide for competitive bids, term-length, and hearings in connection with contracts, except as provided in

section 12.30. However, the exemption from competitive bid laws in this section shall not be construed to apply to contracts for the development or construction of facilities in the park, including, but not limited to, lodges, campgrounds, cabins, and golf courses.

2007 Acts, ch 215, §116  
Section amended

## CHAPTER 464A

### DAMS AND SPILLWAYS

#### 464A.5 Appraisal of damages.

If, at the time of the hearing, the claims for damages shall have been filed, further proceedings shall be continued to an adjourned, regular, or special session, the date and place of which shall be fixed at the time of adjournment and of which all interested parties shall take notice, and the commission shall have the damages appraised by

three appraisers to be appointed by the chief justice of the supreme court. One of these appraisers shall be a licensed civil engineer resident of the state and two shall be freeholders of the state, who shall not be interested in nor related to any person affected by the proposed project.

2007 Acts, ch 126, §83  
Section amended

## CHAPTER 466A

### WATERSHED IMPROVEMENT GRANTS

#### 466A.2 Watershed improvement fund.

1. A watershed improvement fund is created in the state treasury which shall be administered by the treasurer of state upon direction of the watershed improvement review board. Moneys appropriated to the fund and any other moneys available to and obtained or accepted by the treasurer of state for placement in the fund shall be deposited in the fund. Additionally, payments of interest, recaptures of awards, and other repayments to the fund shall be deposited in the fund. Notwithstanding section 12C.7, subsection 2, interest or earnings on moneys in the fund shall be credited to the fund. Notwithstanding section 8.33, moneys in the fund that remain unencumbered or unobligated at the end of the fiscal year shall not revert, but shall remain available for the same purpose in the succeeding fiscal year. The moneys in the fund shall be used exclusively for

carrying out the purposes of the fund as provided in this section. Moneys appropriated to the treasurer of state and deposited in the fund shall not be used by the treasurer of state for administrative purposes.

2. The purposes of the watershed improvement fund are the following:

*a.* Enhancement of water quality in the state through a variety of impairment-based, locally directed watershed improvement grant projects. Innovative water quality projects shall be encouraged.

*b.* Positively affecting the management and use of water for the purposes of drinking, agriculture, recreation, sport, and economic development in the state.

*c.* Ensuring public participation in the process of determining priorities related to water quality including but not limited to all of the following:

- (1) Agricultural runoff and drainage.
- (2) Stream bank erosion.
- (3) Municipal discharge.
- (4) Storm water runoff.
- (5) Unsewered communities.
- (6) Industrial discharge.
- (7) Livestock runoff.

2007 Acts, ch 211, §38  
 Subsection 2, paragraph a amended

**466A.4 Eligible applicants — local watershed improvement committees.**

1. Public water supply utilities, county conservation boards, and cities may also be eligible and apply for and receive local watershed improvement grants for water quality improvement projects. An applicant shall coordinate with a local watershed improvement committee or a soil and water conservation district and shall include in the application a description of existing projects and any potential impact the proposed project may have on existing or planned water quality improvement projects.

2. A local watershed improvement committee shall be organized for the purposes of applying for

a local watershed improvement grant and implementing a local watershed improvement project. Each local watershed improvement grant application shall include a methodology for attaining measurable, observable, and performance-based results. A majority of the members of the committee shall represent a cause for the impairment of the watershed. The committee shall be authorized as a not-for-profit organization by the secretary of state. Soil and water conservation districts may also be eligible and apply for and receive local watershed improvement grants.

3. A local watershed improvement committee shall be responsible for application for and implementation of an approved local watershed improvement grant, including providing authorization for project bids and project expenditures under the grant. A portion of the grant moneys may be used to engage engineering expertise related to the project. The committee shall monitor local performance throughout the local watershed grant project and shall submit a report at six-month intervals regarding the progress and findings of the project as required by the committee.

2007 Acts, ch 211, §39  
 NEW subsection 1 and former subsections 1 and 2 renumbered as 2 and 3

**CHAPTER 468**

**LEVEE AND DRAINAGE DISTRICTS AND IMPROVEMENTS**

**468.3 Definitions.**

1. The term “*appraisers*” shall mean the persons appointed and qualified to ascertain the value of all land taken and the amount of damage arising from the construction of levee or drainage improvements.

2. Within the meaning of this subchapter, parts 1 through 5, and subchapter II, part 1, the term “*board*” shall embrace the board of supervisors, the joint boards of supervisors in case of intercounty levee or drainage districts, and the board of trustees in case of a district under trustee management.

3. As used in this chapter, unless the context otherwise requires, “*book*”, “*list*”, “*record*”, or “*schedule*” kept by a county auditor, assessor, treasurer, recorder, sheriff, or other county officer means the county system as defined in section 445.1.

4. The term “*commissioners*” shall mean the persons appointed and qualified to classify lands, fix percentages of benefits, apportion and assess costs and expenses in any levee or drainage district, unless otherwise specifically indicated by law.

5. The term “*cost of improvements*” means the costs of any improvement which is subject to special assessment including, but not limited to, the

costs of engineering, preliminary reports, property valuations, estimates, plans, specifications, notices, acquisition of land, easements, rights of way, construction, repair, supervision, inspection, testing, notices and publication, interest during construction and for a reasonable period following the completion of construction, and may include the default fund which shall amount to not more than ten percent of the total cost of an improvement assessed against benefited property.

6. The term “*engineer*” and the term “*civil engineer*”, within the meaning of this subchapter, parts 1 through 5, subchapter II, parts 1, 4, 5, and 6, and subchapter V, shall mean a person licensed as a professional engineer under the provisions of chapter 542B.

7. For the purpose of this subchapter, parts 1 through 5, and with reference to improvements along or adjacent to the Missouri river the word “*levee*” shall be construed to include, in addition to its ordinary and accepted meaning, embankments, revetments, retards, or any other approved system of construction which may be deemed necessary to adequately protect the banks of any river or stream, within or adjacent to any county, from wash, cutting, or erosion.

2007 Acts, ch 126, §84  
 Subsection 6 amended

## CHAPTER 469

### ENERGY INDEPENDENCE INITIATIVES

#### SUBCHAPTER I

#### GENERAL PROVISIONS

##### 469.1 Definitions.

For the purposes of this chapter:

1. “*Board*” means the Iowa power fund board created in section 469.6.
2. “*Committee*” means the due diligence committee created in section 469.7.
3. “*Director*” means the director of the office of energy independence.
4. “*Foreign*” means a locality outside of or nation other than the United States, Canada, or Mexico.
5. “*Fund*” means the Iowa power fund created in section 469.9.
6. “*Office*” means the office of energy independence.

2007 Acts, ch 168, §1, 18  
NEW section

##### 469.2 Office of energy independence.

The office of energy independence is established to coordinate state activities concerning energy independence.

2007 Acts, ch 168, §2, 18  
NEW section

##### 469.3 Director of office of energy independence.

1. A director of the office of energy independence shall be appointed by the governor, subject to confirmation by the senate, and shall serve at the pleasure of the governor. The governor shall fill a vacancy in the office in the same manner as the original appointment was made. The director shall be selected primarily for administrative ability and knowledge concerning renewable energy, renewable fuels, and energy efficiency. The salary of the director shall be fixed by the governor.

2. The director shall do all of the following:
  - a. Direct the office of energy independence.
  - b. Coordinate the administration of the Iowa power fund.
  - c. Lead outreach and public education efforts concerning renewable energy, renewable fuels, and energy efficiency.
  - d. Pursue new research and investment funds from federal and private sources.
  - e. Coordinate and monitor all existing state and federal renewable energy, renewable fuels, and energy efficiency grants, programs, and policy.
  - f. Advise the governor and general assembly concerning renewable energy, renewable fuels, and energy efficiency policy and legislation.

g. Establish performance measures for determining effectiveness of renewable energy, renewable fuels, and energy efficiency efforts.

h. Contract for and utilize assistance from the department of economic development regarding administration of grants, loans, and other financial incentives related to section 469.9, subsection 4, paragraph “a”, subparagraph (1), the department of natural resources and the utilities board regarding assistance in the administration of grants, loans, and other financial incentives related to section 469.9, subsection 4, paragraph “a”, subparagraph (2), and other state agencies as appropriate.

i. Develop an Iowa energy independence plan pursuant to section 469.4.

j. Submit an annual report to the governor and general assembly by November 1 of each year concerning the activities and programs of the office, Iowa power fund, and other departments related to renewable energy, renewable fuels, and energy efficiency. The report shall include an assessment of needs with respect to renewable energy, renewable fuels, and energy efficiency efforts and policy and fiscal recommendations for renewable energy, renewable fuels, and energy efficiency. In addition, the director shall review issues relating to the transportation of biofuels and explore leading and participating in multistate efforts relating to renewable energy and energy efficiency.

k. Adopt rules pursuant to chapter 17A concerning the office, the Iowa power fund, and the programs and functions of the office and the fund.

2007 Acts, ch 168, §3, 18  
Confirmation, see §2.32  
NEW section

##### 469.4 Iowa energy independence plan.

1. The director shall develop an Iowa energy independence plan with the assistance of the department of natural resources as provided in section 473.7, and in association with public and private partners selected by the director including representatives of the energy industry, environmental interests, agricultural interests, business interests, other interested parties, and members of the general public. The plan shall be subject to approval by the board.

2. The plan shall provide cost-effective options and strategies for reducing the state’s consumption of energy, dependence on foreign sources of energy, use of fossil fuels, and greenhouse gas emissions. The options and strategies developed in the plan shall provide for achieving energy independence from foreign sources of energy by the year 2025.

3. The plan shall be initially submitted to the

governor and members of the general assembly by December 14, 2007, and by December 14 annually thereafter. The plan shall be made electronically available to the public. The director shall conduct public meetings around the state to gather input to be used in developing the plan.

4. The plan shall identify cost-effective options and strategies that will allow the state to accomplish the following:

*a.* Maximize use of emerging technologies and practices to enhance energy efficiency and conservation and develop alternative and renewable energy sources.

*b.* Retain and create high-quality jobs that provide good wages and benefits.

*c.* Enhance the development of the state's bioeconomy including but not limited to the design, construction, operation, and maintenance of bioengineering, biorefining, and other bioproduct manufacturing facilities in this state.

*d.* Encourage federal, local, and private industry investment in the state's bioeconomy.

*e.* Promote sustainable land use, soil conservation, clean air, sustainable water supply, and clean water practices.

*f.* Reduce greenhouse gas emissions, both on an aggregate and per capita basis.

*g.* Advance the interests of crop, biomass, and livestock producers and biofuel and other bioproduct manufacturers.

*h.* Identify the road, transit, trail, rail, pipeline, transmission, distributed generation, and other infrastructure investments needed to enhance the state's energy independence efforts.

*i.* Identify strategies to increase affordability of energy for individuals, families, organizations, and businesses, including low-income persons.

*j.* Review and assess the effectiveness of existing state programs, including but not limited to financial assistance programs and tax policies, in enhancing the state's energy independence efforts.

*k.* Develop short-term and long-term recommendations for the role of individuals, families, community organizations, cities, counties, public and private education institutions, and state agencies in enhancing the state's energy independence efforts.

*l.* Develop short-term and long-term recommendations regarding state energy regulatory policy.

2007 Acts, ch 168, §4, 18  
NEW section

#### **469.5 Intellectual property.**

The director shall promote utilization across the state of the results of research, development, and commercialization activities funded in whole or in part by the Iowa power fund. The director is authorized to negotiate provisions with applicants that address issues relating to income generated from patents, trademarks, licenses, or royalties

expected to be produced as a result of moneys proposed to be expended from the fund. The director may seek assistance from appropriate state agencies or outside expertise. An applicant shall not be prevented from protecting any previously developed intellectual property.

2007 Acts, ch 168, §5, 18  
NEW section

#### **469.6 Iowa power fund board.**

1. An eighteen-member Iowa power fund board is created with the following membership:

*a.* The chairperson of the utilities board or the chairperson's designee.

*b.* The director of the department of economic development or the director's designee.

*c.* The director of the department of natural resources or the director's designee.

*d.* The secretary of agriculture or the secretary's designee.

*e.* Seven members appointed by the governor subject to confirmation by the senate. All appointees shall represent nonpublic organizations or businesses, or research institutions, and must demonstrate experience or expertise in one or more of the fields of renewable energy, renewable fuels, agribusiness, energy efficiency, greenhouse gas reductions, utility operations, research and development of new technologies, commercialization of new technologies, economic development, and finance.

*f.* Seven members serving in an ex officio, non-voting capacity, appointed as follows:

(1) One member of the senate appointed by the majority leader of the senate.

(2) One member of the senate appointed by the minority leader of the senate.

(3) One member of the house of representatives appointed by the speaker of the house of representatives.

(4) One member of the house of representatives appointed by the minority leader of the house of representatives.

(5) One member representing the state board of regents appointed by the president of the state board of regents.

(6) One member representing the community colleges appointed by the executive director of the Iowa association of community college presidents.

(7) One member representing independent colleges and universities appointed by the president of the Iowa association of independent colleges and universities.

A legislative member is eligible for per diem and expenses as provided in section 2.10.

2. The members appointed by the governor shall be appointed for three-year staggered terms beginning and ending as provided in section 69.19. A vacancy on the board shall be filled for the unexpired term in the same manner as the original appointment was made.

3. The members of the board shall be reim-

bursed for actual and necessary travel and related expenses incurred in the discharge of official duties. Each member of the board may also be eligible to receive compensation as provided in section 7E.6.

4. A majority of the voting members of the board constitutes a quorum, and a majority of the total voting membership of the board is necessary to act in any matter within the jurisdiction of the board.

5. The duties of the board include all of the following:

*a.* Consider and approve grants, loans, or investments and other financial incentives made from the fund.

*b.* Advise the director concerning strategic direction for the fund.

*c.* Provide the governor with advice concerning economic development, policy, technical issues, and strategic direction concerning renewable energy, renewable fuels, and energy efficiency.

*d.* Direct moneys from the fund to be used to purchase private or public technical assistance needed to conduct due diligence activities and to develop an Iowa energy independence plan.

2007 Acts, ch 168, §6, 18  
Confirmation, see §2.32  
NEW section

#### **469.7 Due diligence committee.**

1. A seven-member due diligence committee is created to review applications that will come before the board for financial assistance from moneys in the fund. The committee, after a thorough review, shall determine whether a proposed project using moneys from the fund is practical, economically feasible, and furthers the goals of the fund, and shall provide recommendations to the board regarding any moneys proposed to be expended from the fund. The recommendations may be conditional or recommend that a proposal be rejected. Membership of the committee shall consist of the following:

*a.* One member designated by the director of the office of energy independence with expertise in the financing of new businesses and leveraging federal and private sources of funding.

*b.* One member designated by the president of the state board of regents.

*c.* One member designated by the director of the department of economic development.

*d.* One member designated by the director of the Iowa energy center.

*e.* One member from a single bioscience development organization determined by the director of the department of economic development to possess expertise in the promotion and commercialization of biotechnology.

*f.* Two members of the Iowa power fund board designated by the chairperson of the board.

2. A majority of the members of the committee

shall constitute a quorum, and a quorum shall be necessary to act on any matter within the jurisdiction of the committee.

3. The director of the office of energy independence shall provide office space, staff assistance, and necessary supplies and equipment to the committee. The director shall budget moneys to pay the compensation expenses of the committee. In performing its functions, the committee is performing a public function on behalf of the state and is a public instrumentality of the state.

2007 Acts, ch 168, §7, 18  
NEW section

#### **469.8 Conflicts of interest.**

If a member of the board or due diligence committee has an interest, either direct or indirect, in a project for which financial assistance may be provided by the board, the interest shall be fully disclosed to the board in writing. The member having the interest shall not participate in the decision-making process with regard to the provision of such financial assistance to the project.

2007 Acts, ch 168, §8, 18  
NEW section

#### **469.9 Iowa power fund.**

1. An Iowa power fund is created in the state treasury under the control of the office. The fund shall be separate from the general fund of the state and the balance in the fund shall not be considered part of the balance of the general fund of the state. However, the fund shall be considered a special account for the purposes of section 8.53, relating to generally accepted accounting principles.

2. The fund shall be used to further the goals of increasing the research, development, production, and use of biofuels and other sources of renewable energy, improve energy efficiency, and reduce greenhouse gas emissions, and shall encourage, support, and provide for research, development, commercialization, and the implementation of energy technologies and practices. The technologies and practices should reduce this state's dependence on foreign sources of energy and fossil fuels. The research, development, commercialization, implementation, and distribution of such technologies and practices are intended to sustain the environment and develop business in this state as Iowans market these technologies and practices to the world.

3. The fund shall consist of appropriations made to the fund and other moneys available to and obtained or accepted by the office from federal or private sources to the credit of the fund. Notwithstanding section 12C.7, subsection 2, interest or earnings on moneys in the fund shall be credited to the fund.

4. *a.* Moneys available in the fund for a fiscal year are appropriated to the office to be used in providing financial assistance to entities conducting business, research, or programs in Iowa:

(1) To accelerate research and development,

knowledge transfer, technology innovation, and improve the economic competitiveness of efforts furthering the goals stated in subsection 2.

(2) To increase the demand for and educate the public about technologies and approaches furthering the goals stated in subsection 2.

b. Eligibility criteria for grants awarded or loans made pursuant to paragraph “a” after due diligence activities shall be established by the director by rule, and shall include documentation relating to the actual or potential development of the following:

(1) Commercialization of technology and product development for sale in the national and international market.

(2) Utilization of crops and products grown or produced in this state that maximize the value of crops used as feedstock in biomanufacturing products and as coproducts.

(3) Reduction of greenhouse gas emissions and carbon sequestration.

(4) Private or federal matching funds.

c. The board may reclaim any moneys granted or loaned if the commitments set forth in the documentation required pursuant to paragraph “b” are not met.

d. All grant and loan recipients must provide to the board a report on the use and effectiveness of the moneys granted or loaned on a periodic basis as determined by the board.

5. Notwithstanding section 8.33, moneys credited to the Iowa power fund shall not revert to the fund from which appropriated.

2007 Acts, ch 168, §9, 18  
NEW section

**469.10 Iowa power fund — appropriation.**

1. There is appropriated from the general fund of the state to the office of energy independence for each fiscal year of the fiscal period beginning July 1, 2008, and ending June 30, 2011, the sum of twenty-five million dollars to be used for awarding grants and making loans from the Iowa power fund.

2. Of the moneys appropriated to the office and deposited in the fund, the office shall utilize up to one and five-tenths percent of the amount appropriated from the fund for a fiscal year for administrative costs. From the funds available for administrative costs, the office shall not employ more than four full-time equivalent positions.

3. Of the moneys appropriated to the office and deposited in the fund, there shall be allocated on an annual basis two million five hundred thousand dollars to the department of economic development for deposit into the workforce training and economic development funds of the community colleges created pursuant to section 260C.18A. Of the funds so deposited into the workforce training

and economic development funds of the community colleges, two million five hundred thousand dollars shall be used each year in the development and expansion of energy industry areas and for the department’s north American industrial classification system for targeted industry areas established pursuant to section 260C.18A.

4. Notwithstanding section 8.33, amounts appropriated pursuant to this section shall not revert but shall remain available for the purposes designated for the following fiscal year. Notwithstanding section 12C.7, subsection 2, interest or earnings on moneys in the funds\* shall be credited to the fund.

2007 Acts, ch 209, §1, 4; 2007 Acts, ch 215, §63  
\*The word “fund” probably intended; corrective legislation is pending  
NEW section

**469.11 through 469.30 Reserved.**

SUBCHAPTER II

FINANCIAL INCENTIVES FOR  
BIOMASS, BIOREFINERY, RENEWABLE  
ENERGY, AND ENERGY  
EFFICIENCY PROJECTS

**469.31 Definitions.**

As used in this chapter, unless the context otherwise requires:

1. “*Agricultural animal*” means the same as defined in section 717A.1.

2. “*Alternative and renewable energy*” means energy sources including but not limited to solar, wind turbine, waste management, resource recovery, recovered energy generation, refuse-derived fuel, hydroelectric, agricultural crops or residues, hydrogen produced using renewable fuel sources, and woodburning, or relating to renewable fuel development and distribution.

3. “*Biobased material*” means a material in which carbon is derived in whole or in part from a renewable resource.

4. “*Biobased product*” means a product generated by blending or assembling of one or more biobased materials, either exclusively or in combination with nonbiobased materials, in which the biobased material is present as a quantifiable portion of the total mass of the product.

5. “*Biomass*” means organic material that is available on a renewable or recurring basis, including but not limited to crops; plants, including aquatic plants and grasses; residues; trees grown for energy production; wood waste and wood residues; fibers; animal wastes and other waste materials; animal fats; and other fats, oils, and greases including recycled fats, oils, and greases.

6. “*Biorefinery*” means a cluster of biobased industries producing power, fuel, materials, chemicals, and products.

7. “*Cellulosic biomass renewable fuel*” means renewable fuel derived from a lignocellulosic or hemicellulosic matter that is available on a renewable or recurring basis, including dedicated energy crops and trees, wood and wood residues, plants, grasses, agricultural residues, fiber, animal wastes and other waste materials, refuse-derived fuel, and municipal solid waste.

8. “*Crop*” means the same as defined in section 717A.1.

9. “*Recovered energy generation*” means a recycled energy system, other than a system whose primary purpose is the generation of electricity, which produces electricity from currently unused waste heat resulting from combustion or other processes and which does not use an additional combustion process.

10. “*Renewable fuel*” means a fuel that is all of the following:

a. A motor vehicle fuel that is any of the following:

(1) Produced from grain; starch; oilseed; vegetable, animal, or fish materials, including but not limited to fats, greases, and oil; sugar components, grasses, or potatoes; or other biomass.

(2) Natural gas produced from a biogas source including but not limited to a landfill, sewage waste treatment plant, animal feeding operation, or other place where decaying organic material is found.

b. Used to replace or reduce the quantity of fossil fuel present in a motor fuel mixture used to operate a motor vehicle.

2007 Acts, ch 168, §10, 18  
NEW section

#### **469.32 Financial incentives relating to products for biorefineries — authorization.**

The Iowa power fund board, with the assistance of the office of energy independence and other appropriate state agencies, may provide financial incentives and adopt necessary rules pursuant to chapter 17A in relation to the following:

1. Research, development, and commercialization of products derived from or developed for biorefineries, including but not limited to:

a. Renewable fuel such as cellulosic biomass renewable fuel, and associated agricultural or industrial coproducts which promise to provide environmentally benign product life cycles, promote rural economic development, and diversify energy resources.

b. Products to be used as feedstuffs for agricultural animals.

c. Other products to add value to the biorefinery supply chain.

2. Research, development, and commercialization of specialized crop varieties for use in biorefineries, equipment in production and harvesting, soil conservation, and crop management practices designed for sustainability.

3. Research, development, and commercial-

ization of advanced manufacturing and information technology required for supporting biorefineries.

4. Market development of biorefinery products, including but not limited to public education, quality testing, transportation, and infrastructure financial support.

2007 Acts, ch 168, §11, 18  
NEW section

#### **469.33 Federal biomass research and development programs — authorization.**

The Iowa power fund board, the office of energy independence, and other appropriate state agencies, shall cooperate with federal agencies and participate in federal programs including but not limited to programs under the federal Biomass Research and Development Act of 2000, 7 U.S.C. § 7624, et seq., in order to provide for the production of cost-competitive industrial products derived from biomass, including but not limited to renewable fuels, such as cellulosic biomass renewable fuels or biobased materials and biobased products, and associated agricultural or industrial coproducts which promise to provide environmentally benign product life cycles, promote rural economic development, and diversify energy resources.

2007 Acts, ch 168, §12, 18  
NEW section

#### **469.34 Financial incentives for renewable energy products — authorization.**

The Iowa power fund board, with the assistance of the office of energy independence and other appropriate state agencies, may provide financial incentives and adopt necessary rules pursuant to chapter 17A in relation to the following:

1. Research, development, and commercialization of renewable energy.

2. Market development of renewable energy, including but not limited to public education, quality testing, transportation, transmission, and infrastructure.

2007 Acts, ch 168, §13, 18  
NEW section

#### **469.35 Financial incentives for energy efficiency projects — authorization.**

The Iowa power fund board, with the assistance of the office of energy independence and other appropriate state agencies, may provide financial incentives to individuals or communities and adopt necessary rules pursuant to chapter 17A in relation to the following:

1. Research, development, and commercialization of technologies and practices that improve energy efficiency.

2. Implementation of technologies and practices that improve energy efficiency.

3. Public education efforts encouraging improved energy efficiency.

2007 Acts, ch 168, §14, 18  
NEW section

## CHAPTER 473

## ENERGY DEVELOPMENT AND CONSERVATION

**473.7 Duties of the department.**

The department shall:

1. Assist the director of the office of energy independence with preparation of the Iowa energy independence plan as provided in section 469.4. In addition to assistance requested by the director, the department shall supply and annually update the following information:

*a.* The historical use and distribution of energy in Iowa.

*b.* The growth rate of energy consumption in Iowa, including rates of growth for each energy source.

*c.* A projection of Iowa's energy needs at a minimum through the year 2025.

*d.* The impact of meeting Iowa's energy needs on the economy of the state, including the impact of energy efficiency and renewable energy on employment and economic development.

*e.* The impact of meeting Iowa's energy needs on the environment of the state, including the impact of energy production and use on greenhouse gas emissions.

*f.* An evaluation of renewable energy sources, including the current and future technological potential for such sources.

2. Identify a state facility in the state to be used as a marketing tool to promote energy conservation by providing a showcase for the department to demonstrate energy efficiency.

3. The department shall exchange information with other states on energy and especially on the allocation of fuel and shall request all information necessary to determine the reasonableness of any reduction of Iowa's fuel allocation.

4. Establish a central depository within the state for energy data. The central depository shall be located at or accessible through a library which is a member of an interlibrary loan program to facilitate access to the data and information contained in the central depository. The department shall collect data necessary to forecast future energy demands in the state. The department may require a supplier to provide information pertaining to the supply, storage, distribution and sale of energy sources in this state. The information shall be furnished on a periodic basis, shall be of a nature which directly relates to the supply, storage, distribution and sale of energy sources, and shall not include any records, documents, books or other data which relate to the financial position of the supplier. Provided the department, prior to requiring any supplier to furnish it with such information, shall make every reasonable effort to determine if the same is available from any other governmental source. If it finds such information is available, the department shall not require sub-

mission of the same from a supplier. Notwithstanding the provisions of chapter 22, information and reports obtained under this section shall be confidential except when used for statistical purposes without identifying a specific supplier and when release of the information will not give an advantage to competitors and serves a public purpose. The department shall use this data to conduct energy forecasts which shall be included in the biennial update required by this section.

The department may subpoena witnesses, administer oaths and require the production of records, books, and documents for examination in order to obtain information required to be submitted under this section. In case of failure or refusal on the part of any person to comply with a subpoena issued by the department, or in case of the refusal of any witness to testify as to any matter regarding which the witness may be interrogated under this chapter, the district court, upon the application of the department, may order the person to show cause why the person should not be held in contempt for failure to testify or comply with a subpoena, and may order the person to produce the records, books, and documents for examination, and to give testimony. The courts may punish for contempt as in the case of disobedience to a like subpoena issued by the court, or for refusal to testify.

5. Develop, recommend, and implement with appropriate agencies public and professional education and communication programs in energy efficiency, energy conservation, and conversion to alternative sources of energy.

6. When necessary to carry out its duties under this chapter, enter into contracts with state agencies and other qualified contractors.

7. Receive and accept grants made available for programs relating to duties of the department under this chapter.

8. Promulgate rules necessary to carry out the provisions of this chapter, subject to review in accordance with chapter 17A. Rules promulgated by the governor pursuant to a proclamation issued under the provisions of section 473.8 shall not be subject to review or a public hearing as required in chapter 17A; however, agency rules for implementation of the governor's proclamation are subject to the requirements of chapter 17A.

9. Examine and determine whether additional state regulatory authority is necessary to protect the public interest and to promote the effective development, utilization and conservation of energy resources. If the department finds that additional regulatory authority is necessary, the department shall submit recommendations to the general assembly concerning the nature and extent of such



regulatory authority and which state agency should be assigned such regulatory responsibilities.

10. Develop and assist in the implementation of public education and communications programs in energy development, use and conservation, in cooperation with the department of education, the state university extension services and other public or private agencies and organizations as deemed appropriate by the department.

11. Develop a program to annually give public recognition to innovative methods of energy conservation.

12. Administer and coordinate federal funds for energy conservation programs including, but not limited to, the institutional conservation program, state energy conservation program, and energy extension service program, and related programs which provide energy management and conservation assistance to schools, hospitals, health care facilities, communities, and the general public.

13. Administer and coordinate the state building energy management program including projects funded through private financing.

14. Perform monthly fuel surveys which establish a statistical average of motor fuel prices for various motor fuels provided throughout the state. Additionally, the department shall perform monthly fuel surveys in cities with populations of over fifty thousand which establish a statistical average of motor fuel prices for various motor fuels provided in those individual cities. The survey results shall be publicized in a monthly press release issued by the department.

15. Conduct a study on activities related to energy production and use which contribute to global climate change and the depletion of the stratospheric ozone layer. The study shall identify the types and relative contributions of these activities in Iowa. The department shall develop a strategy to reduce emissions from activities identified as having an adverse impact on the global climate and the stratospheric ozone layer. The department shall submit a report containing its findings and recommendations to the governor and general

assembly by January 1, 1992.

2007 Acts, ch 168, §15, 18  
Subsection 1 amended

#### **473.41 Energy city designation program.**

1. The department shall establish an energy city designation program, with the objective of encouraging cities to develop and implement innovative energy efficiency programs. To qualify for designation as an energy city, a city shall submit an application on forms prescribed by the department by rule, indicating the following:

a. Submission of community-based plans for energy reduction projects, energy-efficient building construction and rehabilitation, and alternative or renewable energy production.

b. Efforts to secure local funding for community-based plans, and documentation of any state or federal grant or loan funding being pursued in connection therewith.

c. Involvement of local schools, civic organizations, chambers of commerce, and private groups in a community-based plan.

d. Existing or proposed ordinances encouraging energy efficiency and conservation, recycling efforts, and energy-efficient building code provisions and enforcement.

e. Organization of an energy day observance and proclamation with a commemorating event and awards ceremony for leading energy-efficient community businesses, groups, schools, or individuals.

2. The department shall establish by rule criteria for awarding energy city designations. If more than one designation is awarded annually, the criteria shall include a requirement that the department award the designations to cities of varying populations. Rules shall also be established identifying and publicizing state grant and loan programs relating to energy efficiency, and the development of a procedure whereby the department shall coordinate with other state agencies preferences given in the awarding of grants or making of loans to energy city designated applicants.

2007 Acts, ch 157, §1  
NEW section

## CHAPTER 476

### PUBLIC UTILITY REGULATION

#### **476.6 Changes in rates, charges, schedules, and regulations — supply and cost review — water costs for fire protection.**

1. *Filing with board.* A public utility subject to rate regulation shall not make effective a new or changed rate, charge, schedule or regulation until the rate, charge, schedule, or regulation has been approved by the board, except as provided in

subsections 8 and 10.

2. *Written notice of increase.* All public utilities, except those exempted from rate regulation by section 476.1, shall give written notice of a proposed increase of any rate or charge to all affected customers served by the public utility no more than sixty-two days prior to and prior to the time the application for the increase is filed with the

board. Public utilities exempted from rate regulation by section 476.1 shall give written notice of a proposed increase of any rate or charge to all affected customers served by the public utility at least thirty days prior to the effective date of the increase. If the public utility is subject to rate regulation, the notice to affected customers shall also state that the customer has a right to file a written objection to the rate increase and that the affected customers may request the board to hold a public hearing to determine if the rate increase should be allowed. The board shall prescribe the manner and method that the written notice to each affected customer of the public utility shall be served.

3. *Facts and arguments submitted.* At the time a public utility subject to rate regulation files with the board an application for any new or changed rates, charges, schedules, or regulations, the public utility also shall submit factual evidence and written argument offered in support of the filing. If the filing is an application for a general rate increase, the utility shall also file affidavits containing testimonial evidence to be offered in support of the filing, although this requirement does not apply if the public utility is a rural electric cooperative.

4. *Hearing set.* After the filing of an application for new or changed rates, charges, schedules, or regulations by a public utility subject to rate regulation, the board, prior to the expiration of thirty days after the filing date, shall docket the case as a formal proceeding and set the case for hearing unless the new or changed rates, charges, schedules, or regulations are approved by the board. However, if an application presents no material issue of fact subject to dispute, and the board determines that the application violates a relevant statute, or is not in substantial compliance with a board rule lawfully adopted pursuant to chapter 17A, the application may be rejected by the board without prejudice and without a hearing, provided that the board issues a written order setting forth all of its reasons for rejecting the application. In the case of a gas public utility having less than two thousand customers, the board shall docket a case as a formal proceeding and set the case for hearing as provided in section 476.1C. In the case of a rural electric cooperative, the board may docket the case as a formal proceeding and set the case for hearing prior to the proposed effective date of the tariff. The board shall give notice of formal proceedings as it deems appropriate. The docketing of a case as a formal proceeding suspends the effective date of the new or changed rates, charges, schedules, or regulations until the rates, charges, schedules, or regulations are approved by the board, except as provided in subsection 10.

5. *Utility hearing expenses reported.* When a case has been docketed as a formal proceeding under subsection 4, the public utility, within a reasonable time thereafter, shall file with the board

a report outlining the utility's expected expenses for litigating the case through the time period allowed by the board in rendering a decision. At the conclusion of the utility's presentation of comments, testimony, exhibits, or briefs the utility shall submit to the board a listing of the utility's actual litigation expenses in the proceeding. As part of the findings of the board under subsection 6, the board shall allow recovery of costs of the litigation expenses over a reasonable period of time to the extent the board deems the expenses reasonable and just.

6. *Finding by board.* If, after hearing and decision on all issues presented for determination in the rate proceeding, the board finds the proposed rates, charges, schedules, or regulations of the utility to be unlawful, the board shall by order authorize and direct the utility to file new or changed rates, charges, schedules, or regulations which, when approved by the board and placed in effect, will satisfy the requirements of this chapter. The rates, charges, schedules, or regulations so approved are lawful and effective upon their approval.

7. *Limitation on filings.* A public utility shall not make a subsequent filing of an application for a new or changed rate, charge, schedule, or regulation which relates to services for which a rate filing is pending within twelve months following the date the prior application was filed or until the board has issued a final order on the prior application, whichever date is earlier, unless the public utility applies to the board for authority and receives authority to make a subsequent filing at an earlier date.

8. *Automatic adjustments permitted.* This chapter does not prohibit a public utility from making provision for the automatic adjustment of rates and charges for public utility service provided that a schedule showing the automatic adjustment of rates and charges is first filed with the board.

9. *Rate levels for telephone utilities.* The board may approve a schedule of rate levels for any regulated service provided by a utility providing communication services.

10. *Temporary authority.* Upon the request of a public utility, the board shall, when required by this subsection, grant the public utility temporary authority to place in effect any or all of the suspended rates, charges, schedules or regulations by filing with the board a bond or other undertaking approved by the board conditioned upon the refund in a manner to be prescribed by the board of any amounts collected in excess of the amounts which would have been collected under rates, charges, schedules or regulations finally approved by the board. In determining that portion of the new or changed rates, charges, schedules or regulations to be placed in effect prior to a final decision, the board shall apply previously established regulatory principles and shall, at a mini-

mum, permit rates and charges which will allow the utility the opportunity to earn a return on common stock equity equal to that which the board held reasonable and just in the most recent rate case involving the same utility or the same type of utility service, provided that if the most recent final decision of the board in an applicable rate case was rendered more than twelve months prior to the date of filing of the request for temporary rates, the board shall in addition consider financial market data that is filed or that is otherwise available to the board and shall adjust the rate of return on common stock equity that was approved in that decision upward or downward as necessary to reflect current conditions. The board shall render a decision on a request for temporary authority within ninety days after the date of filing of the request. The decision shall be effective immediately. If the board has not rendered a final decision with respect to suspended rates, charges, schedules or regulations upon the expiration of ten months after the filing date, plus the length of any delay that necessarily results either from the failure of the public utility to exercise due diligence in connection with the proceedings or from intervening judicial proceedings, plus the length of any extension permitted by section 476.33, subsection 3, then those portions that were approved by the board on a temporary basis shall be deemed finally approved by the board and the utility may place them into effect on a permanent basis, and the utility also may place into effect subject to refund and until the final decision of the board any portion of the suspended rates, charges, schedules or regulations not previously approved on a temporary basis by filing with the board a bond or other undertaking approved by the board.

A public utility may choose to place in effect temporary rates, charges, schedules, or regulations without board review ten days after the filing under this section. If the utility chooses to place such rates, charges, schedules, or regulations in effect without board review, the utility shall file with the board a bond or other corporate undertaking approved by the board conditioned upon the refund in a manner prescribed by the board of amounts collected in excess of the amounts which would have been collected under rates, charges, schedules, or regulations finally approved by the board. At the conclusion of the proceeding if the board determines that the temporary rates, charges, schedules, or regulations placed in effect under this paragraph were not based on previously established regulatory principles, the board shall consider ordering refunds based upon the overpayments made by each individual customer class, rate zone, or customer group.

If the board finds that an extension of the ten-month period is necessary to permit the accumulation of necessary data with respect to the operation of a newly constructed electric generating facility that has a capacity of one hundred mega-

watts or more of electricity and that is proposed to be included in the rate base for the first time, the board may extend the ten-month period up to a maximum extension of six months, but only with respect to that portion of the suspended rates, charges, schedules, or regulations that are necessarily connected with the inclusion of the generating facility in the rate base. If a utility is proposing to include in its rate base for the first time a newly constructed electric generating facility that has a capacity of one hundred megawatts or more of electricity, the filing date of new or changed rates, charges, schedules, or regulations shall, for purposes of computing the time limitations stated above, be the date as determined by the board that the new plant went into service, but only with respect to that portion of the suspended rates, charges, schedules, or regulations that are necessarily connected with the inclusion of the generating facility in the rate base.

The board shall determine the rate of interest to be paid by a public utility to persons receiving refunds. The interest rate to be applied to refunds of moneys collected subject to refund under this subsection is two percent per annum plus the average quarterly interest rate at commercial banks for twenty-four-month loans for personal expenditures, as determined by the board, compounded annually. The board shall consider federal reserve statistical release G.19 or its equivalent when determining interest to be paid under this subsection.

11. *Refunds passed on to customers.* If pursuant to federal law or rule a rate-regulated public utility furnishing gas to customers in the state receives a refund or credit for past gas purchases, the savings shall be passed on to the customers in a manner approved by the board. Similarly, if pursuant to federal law or rule a rate-regulated public utility furnishing gas to customers in the state receives a rate for future gas purchases which is lower than the price included in the public utility's approved rate application, the savings shall be passed on to the customers in a manner approved by the board.

12. *Natural gas supply and cost review.* The board shall periodically conduct a proceeding for the purpose of evaluating the reasonableness and prudence of a rate-regulated public utility's natural gas procurement and contracting practices. The natural gas supply and cost review shall be conducted as a contested case pursuant to chapter 17A.

Under procedures established by the board, each rate-regulated public utility furnishing gas shall periodically file a complete natural gas procurement plan describing the expected sources and volumes of its gas supply and changes in the cost of gas anticipated over a future twelve-month period specified by the board. The utilities shall file information as the board deems appropriate.

During the natural gas supply and cost review,

the board shall evaluate the reasonableness and prudence of the gas procurement plan. If a utility is not taking all reasonable actions to minimize its purchase gas costs, consistent with assuring an adequate long-term supply of natural gas, the board shall not allow the utility to recover from its customers purchase gas costs in excess of those costs that would be incurred under reasonable and prudent policies and practices.

13. *Electric energy supply and cost review.* The board shall periodically conduct a proceeding for the purpose of evaluating the reasonableness and prudence of a rate-regulated public utility's procurement and contracting practices related to the acquisition of fuel for use in generating electricity. The evaluation may review the reasonableness and prudence of actions taken by a rate-regulated public utility to comply with the federal Clean Air Act Amendments of 1990, Pub. L. No. 101-549. The proceeding shall be conducted as a contested case pursuant to chapter 17A. Under procedures established by the board, the utility shall file information as the board deems appropriate. If a utility is not taking all reasonable actions to minimize its fuel and allowance transaction costs, the board shall not allow the utility to recover from its customers fuel and allowance transaction costs in excess of those costs that would be or would have been incurred under reasonable and prudent policies and practices.

14. *Energy efficiency plans.* Electric and gas public utilities shall offer energy efficiency programs to their customers through energy efficiency plans. An energy efficiency plan as a whole shall be cost-effective. In determining the cost-effectiveness of an energy efficiency plan, the board shall apply the societal test, utility cost test, rate-payer impact test, and participant test. Energy efficiency programs for qualified low-income persons and for tree planting programs, educational programs, and assessments of consumers' needs for information to make effective choices regarding energy use and energy efficiency need not be cost-effective and shall not be considered in determining cost-effectiveness of plans as a whole. The energy efficiency programs in the plans may be provided by the utility or by a contractor or agent of the utility. Programs offered pursuant to this subsection by gas and electric utilities that are required to be rate-regulated shall require board approval.

15. *Water costs for fire protection in certain cities.*

*a.* Application. A city furnished water by a public utility subject to rate regulation may apply to the board for inclusion of all or a part of the costs of fire hydrants or other improvements, maintenance, and operations for the purpose of providing adequate water production, storage, and distribution for public fire protection in the rates or charges assessed to consumers covered by the applicant's fire protection service. The application

shall be made in a form and manner approved by or as directed by the board. The applicant shall provide such additional information as the board may require to consider the application.

*b.* Review. The board shall review the application, and may in its discretion consider additional evidence, beyond that supplied in the application or provided by the applicant in response to a request for additional information pursuant to paragraph "a", including, but not limited to, soliciting oral or written testimony from other interested parties.

*c.* Notice. Written notice of a proposed rate increase shall be provided by the public utility pursuant to subsection 2, except that notice shall be provided within ninety days of the date of application. Costs of the notice shall be paid for by the applicant.

*d.* Conditions for approval. As a condition to approving an application to include water-related fire protection costs in the utility's rates or charges, the board shall make an affirmative determination that the following conditions will be met:

(1) That the service area currently charged for fire protection, either directly or indirectly, is substantially the same service area containing those persons who will pay for water-related fire protection through inclusion of such costs within the utility's rates or charges.

(2) That the inclusion of such costs within the utility's rates or charges will not cause substantial inequities among the utility's customers.

(3) That all or a portion of the costs sought to be included in the utility's rates or charges by the applicant are reasonable in the circumstances, and limited to the purposes specified in paragraph "a".

(4) That written notice has been provided pursuant to paragraph "c" and that the costs of the notice have been paid by the applicant.

*e.* Inclusion within rates or charges. If the board affirmatively determines that the conditions of paragraph "d" are or will be satisfied, the board shall include the reasonable costs in the rates or charges assessed to consumers covered by the applicant's fire protection service.

*f.* Written order. The board shall issue a written order within six months of the date of application. The written order shall include a recitation of the facts found pursuant to consideration of the application.

16. *Energy efficiency implementation, cost review, and cost recovery.*

*a.* Gas and electric utilities required to be rate-regulated under this chapter shall file energy efficiency plans with the board. An energy efficiency plan and budget shall include a range of programs, tailored to the needs of all customer classes, including residential, commercial, and industrial customers, for energy efficiency opportunities. The plans shall include programs for qualified low-income persons including a cooperative pro-

gram with any community action agency within the utility's service area to implement countywide or communitywide energy efficiency programs for qualified low-income persons. Rate-regulated gas and electric utilities shall utilize Iowa agencies and Iowa contractors to the maximum extent cost-effective in their energy efficiency plans filed with the board.

b. A gas and electric utility required to be rate-regulated under this chapter shall assess potential energy and capacity savings available from actual and projected customer usage by applying commercially available technology and improved operating practices to energy-using equipment and buildings. The utility shall submit the assessment to the board. Upon receipt of the assessment, the board shall consult with the department of natural resources to develop specific capacity and energy savings performance standards for each utility. The utility shall submit an energy efficiency plan which shall include economically achievable programs designed to attain these energy and capacity performance standards.

c. The board shall conduct contested case proceedings for review of energy efficiency plans and budgets filed by gas and electric utilities required to be rate-regulated under this chapter. The board may approve, reject, or modify the plans and budgets. Notwithstanding the provisions of section 17A.19, subsection 5, in an application for judicial review of the board's decision concerning a utility's energy efficiency plan or budget, the reviewing court shall not order a stay. Whenever a request to modify an approved plan or budget is filed subsequently by the office of consumer advocate or a gas or electric utility required to be rate-regulated under this chapter, the board shall promptly initiate a formal proceeding if the board determines that any reasonable ground exists for investigating the request. The formal proceeding may be initiated at any time by the board on its own motion. Implementation of board-approved plans or budgets shall be considered continuous in nature and shall be subject to investigation at any time by the board or the office of the consumer advocate.

d. Notice to customers of a contested case proceeding for review of energy efficiency plans and budgets shall be in a manner prescribed by the board.

e. A gas or electric utility required to be rate-regulated under this chapter may recover, through an automatic adjustment mechanism filed pursuant to subsection 8, over a period not to exceed the term of the plan, the costs of an energy efficiency plan approved by the board, including amounts for a plan approved prior to July 1, 1996, in a contested case proceeding conducted pursuant to paragraph "c". The board shall periodically conduct a contested case proceeding to evaluate the reasonableness and prudence of the utility's implementation of an approved energy efficiency plan and budget. If a utility is not taking all rea-

sonable actions to cost-effectively implement an approved energy efficiency plan, the board shall not allow the utility to recover from customers costs in excess of those costs that would be incurred under reasonable and prudent implementation and shall not allow the utility to recover future costs at a level other than what the board determines to be reasonable and prudent. If the result of a contested case proceeding is a judgment against a utility, that utility's future level of cost recovery shall be reduced by the amount by which the programs were found to be imprudently conducted. The utility shall not represent energy efficiency in customer billings as a separate cost or expense unless the board otherwise approves.

f. A rate-regulated utility required to submit an energy efficiency plan under this subsection shall, upon the request of a state agency or political subdivision to which it provides service, provide advice and assistance regarding measures which the state agency or political subdivision might take in achieving improved energy efficiency results. The cooperation shall include assistance in accessing financial assistance for energy efficiency measures.

17. *Filing of forecasts.* The board shall periodically require each rate-regulated gas or electric public utility to file a forecast of future gas requirements or electric generating needs and the board shall evaluate the forecast. The forecast shall include, but is not limited to, a forecast of the requirements of its customers, its anticipated sources of supply, and its anticipated means of addressing the forecasted gas requirements or electric generating needs.

18. *Energy efficiency program financing.* The board may require each rate-regulated gas or electric public utility to offer qualified customers the opportunity to enter into an agreement for the amount of moneys reasonably necessary to finance cost-effective energy efficiency improvements to the qualified customers' residential dwellings or businesses.

19. *Allocation of replacement tax costs.* The costs of the replacement tax imposed pursuant to chapter 437A shall be reflected in the charges of utilities subject to rate regulation, in lieu of the utilities' costs of property taxes. The imposition of the replacement taxes pursuant to chapter 437A is not intended to initiate any change in the rates and charges for the sale of electricity, the sale of natural gas, or the transportation of natural gas that is subject to regulation by the board and in effect on January 1, 1999.

The cost of the replacement taxes imposed by chapter 437A shall be allocated among and within customer classes in a manner that will replicate the tax cost burden of the current property tax on individual customers to the maximum extent practicable.

Upon the restructuring of the electric industry in this state so that individual consumers are giv-

en the right to choose their electric suppliers, replacement tax costs shall be assigned to the service corresponding to the individual generation, transmission, and delivery taxes. In all other respects, the allocation of the replacement tax costs among and within the customer classes shall remain the same to the maximum extent practicable.

Notwithstanding this subsection, the board may determine the amount of replacement tax properly included in retail rates subject to its jurisdiction. The board may determine whether the base rates or some other form of rate is most appropriate for recovery of the costs of the replacement tax, subject to the requirement that utility rates be reasonable and just. The board may also determine the appropriate allocation of the tax. Any significant modification to rate design relating to the replacement tax shall be made in a manner consistent with this subsection unless made in a contested case proceeding where the impact of such modification on competition and consumer costs is considered.

20. *Replacement tax study committee.* On or before July 1, 2000, the utilities board, in consultation with the department of revenue, shall initiate and coordinate the establishment of a replacement tax study committee and provide staffing assistance to the committee. It is the intent of the general assembly that the committee include representatives of the utilities board, department of revenue, department of management, investor-owned utilities, municipal utilities, cooperative utilities, local governments, major customer classes, and other stakeholders.

The committee shall study the effects of the replacement tax on both restructuring and the development of competition in the gas and electric industries in this state. The board shall report to the general assembly by January 1 of each year through 2003, the results of the study, and the committee's recommendations as to whether the replacement tax, in its then present form, should be continued, whether a different form of taxation of electric and gas utilities should be adopted in order to allow free and fair competition in the electric and gas industries, and fair competitive prices for all classes of consumers, whether a different basis for determination of the generation, transmission, and delivery taxes should be adopted or whether the relative share of the total replacement tax burden imposed on each of the generation, transmission, and delivery functions should be modified in order to allow free and fair competition in the electric and gas industries, and fair competitive prices for all classes of consumers, and whether the replacement tax in its then present form, appropriately accounts for the decline in value of electric power generating plants. The replacement tax study committee shall reconvene by January 1, 2006, to further study these same is-

sues, and the board shall report the results of the study and the committee's recommendations to the general assembly by January 1, 2008.

Upon recommendation of the committee, the board may contract for services necessary to the implementation of this subsection with persons who are not state employees, including, but not limited to, facilitators, consultants, and other experts required to assist the committee. The cost of contracted services shall not be paid from appropriated funds, but shall be assessed to entities paying replacement tax pursuant to chapter 437A, subchapter II, pro rata, based on the amount of tax paid.

21. *Recovery of management costs.* A public utility which is assessed management costs by a local government pursuant to chapter 480A is entitled to recover those costs. If the public utility serves customers within the boundaries of the local government imposing the management costs, such costs shall be recovered exclusively from those customers.

22. *Electric power generating facility emissions.*

a. It is the intent of the general assembly that the state, through a collaborative effort involving state agencies and affected generation owners, provide for compatible statewide environmental and electric energy policies with respect to regulated emissions from rate-regulated electric power generating facilities in the state that are fueled by coal. Each rate-regulated public utility that is an owner of one or more electric power generating facilities fueled by coal and located in this state on July 1, 2001, shall develop a multiyear plan and budget for managing regulated emissions from its facilities in a cost-effective manner.

(1) The initial multiyear plan and budget shall be filed with the board by April 1, 2002. Updates to the plan and budget shall be filed at least every twenty-four months.

(2) Copies of the initial plan and budget, as well as any subsequent updates, shall be served on the department of natural resources.

(3) The initial multiyear plan and budget and any subsequent updates shall be considered in a contested case proceeding pursuant to chapter 17A. The department of natural resources and the consumer advocate shall participate as parties to the proceeding.

(4) The department of natural resources shall state whether the plan or update meets applicable state environmental requirements for regulated emissions. If the plan does not meet these requirements, the department shall recommend amendments that outline actions necessary to bring the plan or update into compliance with the environmental requirements.

b. The board shall not approve a plan or update that does not meet applicable state environmental requirements and federal ambient air

quality standards for regulated emissions from electric power generating facilities located in the state.

c. The board shall review the plan or update and the associated budget, and shall approve the plan or update and the associated budget if the plan or update and the associated budget are reasonably expected to achieve cost-effective compliance with applicable state environmental requirements and federal ambient air quality standards. In reaching its decision, the board shall consider whether the plan or update and the associated budget reasonably balance costs, environmental requirements, economic development potential, and the reliability of the electric generation and transmission system.

d. The board shall issue an order approving or rejecting a plan, update, or budget within one hundred eighty days after the public utility's filing is deemed complete; however, upon good cause shown, the board may extend the time for issuing the order as follows:

(1) The board may grant an extension of thirty days.

(2) The board may grant more than one extension, but each extension must rely upon a separate showing of good cause.

(3) A subsequent extension must not be granted any earlier than five days prior to the expiration of the original one-hundred-eighty-day period, or the current extension.

e. The reasonable costs incurred by a rate-regulated public utility in preparing and filing the plan, update, or budget and in participating in the proceedings before the board and the reasonable costs associated with implementing the plan, update, or budget shall be included in its regulated retail rates.

f. It is the intent of the general assembly that the board, in an environmental plan, update, or associated budget filed under this section by a rate-regulated public utility, may limit investments or expenditures that are proposed to be undertaken prior to the time that the environmental benefit to be produced by the investment or expenditure would be required by state or federal law.

2007 Acts, ch 168, §16, 18  
Subsection 14 amended

#### **476.29 Certificates for providing local telecommunications services.**

1. After September 30, 1992, a utility must have a certificate of public convenience and necessity issued by the board before furnishing land-line local telephone service in this state. No lines or equipment shall be constructed, installed, or operated for the purpose of furnishing the service before a certificate has been issued.

2. Except as provided in subsection 12, a certificate shall be issued by the board, after notice and opportunity for hearing, if the board determines that the service proposed to be rendered will pro-

vide the public convenience and necessity, provided that an applicant other than a local exchange carrier, as defined in section 476.96, shall not be denied a certificate if the board finds that the applicant possesses the technical, financial, and managerial ability to provide the service it proposes to render and the board finds the service is consistent with the public interest. The board shall make a determination within ninety days of the submission by the applicant of evidence of its technical, financial, and managerial ability, unless the board determines that additional time is necessary to consider the application, in which case the board may extend the time for making a determination for an additional sixty days. The board may establish reasonable conditions or restrictions on the certificate at the time of issuance.

3. A certificate is transferable, subject to approval of the board pursuant to section 476.20, subsection 1, and for purposes of a rate-regulated local exchange utility shall be treated by the board in the same manner as a reorganization pursuant to sections 476.76 and 476.77.

4. Each certificate shall define the service territory in which land-line local telephone service will be provided. The service territory shall be shown on maps and other documentation as the board may require to be filed with the board. The board shall, by rule, specify the style, size, and kind of map or other documentation, and the information to be shown.

5. Each local exchange utility has an obligation to serve all eligible customers within the utility's service territory, unless explicitly excepted from this requirement by the board.

6. The certificate and tariffs approved by the board are the only authority required for the utility to furnish land-line local telephone service. However, to the extent not inconsistent with this section, the power to regulate the conditions required and manner of use of the highways, streets, rights-of-way, and public grounds remains in the appropriate public authority.

7. The inclusion of any facilities or service territory of a local exchange utility within the boundaries of a city does not impair or affect the rights of the utility to provide land-line local telephone service in the utility's service territory.

8. An agreement between local exchange utilities to designate service territory boundaries and customers to be served by the utilities, or for exchange of customers between utilities, when approved by the board after notice to affected persons and opportunity for hearing, is valid and enforceable and shall be incorporated into the appropriate certificates. The board shall approve an agreement if the board finds the agreement will result in adequate service to all areas and customers affected and is in the public interest.

9. A certificate may, after notice and opportunity for hearing, be revoked by the board for failure of a utility to furnish reasonably adequate

telephone service and facilities. The board may also order a revocation affecting less than the entire service territory, or may place appropriate conditions on a utility to ensure reasonably adequate telephone service. Prior to revocation proceedings, the board shall notify the utility of any inadequacies in its service and facilities and allow the utility a reasonable time to eliminate the inadequacies.

10. In the event that eighty percent or more of the subscribers in a community served by a local exchange utility sign a petition indicating they are adversely affected by school reorganization or economic dislocation and prefer to have their local telephone service provided by a different local exchange utility and file that petition with the board, the board, after notice and opportunity for hearing, shall determine whether the certificate held by the local exchange utility shall be revoked or conditioned as provided in subsection 9.

11. The board shall assure that all territory in the state is served by a local exchange utility. If at any time due to certificate revocation proceedings, discontinuance of service proceedings, or any other reason, it appears that a particular territory may not be served by any local exchange utility, the board may, after notice to interested persons and opportunity for hearing, include all or part of the territory in the certificate of another local exchange utility or utilities. In determining the local exchange utility or utilities to be authorized or required to serve, the board shall consider the willingness and ability of the utilities to serve, the location of existing service facilities, the community of interest of the customers involved, and any other factors deemed relevant to the public interest.

12. The board, on or prior to September 30, 1992, shall issue to each local exchange utility in the state, without a contested case proceeding, a nonexclusive certificate to serve the area included within the utility's service territory boundaries as shown by the service territory boundary maps on record with the board on January 1, 1992. The board shall adopt rules pursuant to chapter 17A to implement the issuance of certificates.

*a.* A customer served by a local exchange utility, but outside the service territory of that utility when the utility's certificate is issued, shall continue to be served by that utility for as long as that customer remains eligible to receive and requests service.

*b.* If more than one utility has on file maps indicating service in the same territory, the board shall request the involved utilities to resolve the overlap. If the overlap is not resolved in a reasonable time, the board, after notice to interested persons and opportunity for hearing, shall determine the boundary, taking into consideration the criteria listed in subsection 11.

13. Notwithstanding other provisions of this section, approval by the voters of a city pursuant

to section 388.2 of a proposal to establish or acquire a public utility providing communications services is conclusive evidence of the fact that the city has the technical, financial, and managerial ability to provide such service. Following the notice and opportunity for hearing in subsection 2, an applicant shall not be denied a certificate if the board finds the proposed service is consistent with the public interest.

14. This section does not prevent the board from adopting rules requiring or allowing local exchange utilities to provide extended area service or adjacent exchange service.

15. The board shall provide a written report to the general assembly no later than January 20, 2005, describing the current status of local telephone service in this state. The report shall include at a minimum the number of certificates of convenience issued, the number of current providers of local telephone service, and any other information deemed appropriate by the board.

Section repealed effective July 1, 2017; 92 Acts, ch 1058, §3; 2007 Acts, ch 4, §1, 2

Section not amended; footnote revised

#### **476.33 Rules governing hearings.**

1. The board shall adopt rules pursuant to chapter 17A to provide for the completion of proceedings under section 476.3 within ten months after the date of the filing of a petition under section 476.3, subsection 2, and to provide for the completion of proceedings under section 476.6 within ten months after the date of filing of the new or changed rates, charges, schedules, or regulations under that section. These rules shall include reasonable time limitations for the submission or completion of comments and testimony, and exhibits, briefs, and hearings, and may provide for the granting of additional time upon the request of a party to the proceeding for good cause shown.

2. Additional time granted to a party under subsection 1 shall not extend the amount of time for which a utility is required to file a bond or other undertaking conditioned upon refund under section 476.3, subsection 2.

3. If in a proceeding under section 476.6 additional time is granted to a party under subsection 1, the board may extend the ten-month period during which a utility is prohibited from placing its entire rate increase request into effect under section 476.6, but an extension shall not exceed the aggregate amount of all additional time granted under subsection 1.

4. The board shall adopt rules that require the board, in rate regulatory proceedings under sections 476.3 and 476.6, to consider the use of the most current test period possible in determining reasonable and just rates, subject only to the availability of existing and verifiable data respecting costs and revenues, and in addition, to consider



verifiable data that exists within nine months after the conclusion of the test year, respecting known and measurable changes in costs not associated with a different level of revenue, and known and measurable revenues not associated with a different level of costs, that are to occur at any time within twelve months after the date of commencement of the proceedings. Parties proposing adjustments that are not verifiable at the commencement of the proceedings shall include projected data related to the adjustments in their initial substantive filing with the board. For purposes of this subsection, a proceeding commences under section 476.6 upon the filing date of new or changed rates, charges, schedules, or regulations. This subsection does not limit the authority of the board to consider other evidence in proceedings under sections 476.3 and 476.6.

Subsection 5 stricken effective July 1, 2007, pursuant to its own terms; utilities board proceedings pending on that date and conducted pursuant to §476.3 or 476.6 shall be completed as if strike had not occurred; consideration of adjustments contained in former subsection 5; 2003 Acts, ch 179, §134

Subsection 5 stricken

#### **476.53 Electric generating and transmission facilities.**

1. It is the intent of the general assembly to attract the development of electric power generating and transmission facilities within the state in sufficient quantity to ensure reliable electric service to Iowa consumers and provide economic benefits to the state.

2. The general assembly's intent with regard to the development of electric power generating and transmission facilities, as provided in subsection 1, shall be implemented in a manner that is cost-effective and compatible with the environmental policies of the state, as expressed in Title XI.

3. For purposes of this section, unless the context otherwise requires, the terms "*cogeneration pilot project facility*", "*energy sales agreement*", "*qualified cogeneration pilot project facility*", and "*utility-owned cogeneration pilot project facility*" mean the same as defined in section 15.269.\*

4. *a.* The board shall specify in advance, by order issued after a contested case proceeding, the ratemaking principles that will apply when the costs of the electric power generating facility, alternate energy production facility, cogeneration pilot project facility, or energy sales agreement are included in regulated electric rates whenever a rate-regulated public utility does any of the following:

(1) Files an application pursuant to section 476A.3 to construct in Iowa a baseload electric power generating facility with a nameplate generating capacity equal to or greater than three hundred megawatts or a combined-cycle electric power generating facility, or an alternate energy production facility as defined in section 476.42.

(2) Leases or owns in Iowa, in whole or in part, a new baseload electric power generating facility with a nameplate generating capacity equal to or greater than three hundred megawatts or a combined-cycle electric power generating facility, or a new alternate energy production facility as defined in section 476.42.

(3) Enters into an agreement for the purchase of the electric power output of a qualified cogeneration pilot project facility or constructs a utility-owned cogeneration pilot project facility pursuant to section 15.269.\*

*b.* In determining the applicable ratemaking principles, the board shall not be limited to traditional ratemaking principles or traditional cost recovery mechanisms. Among the principles and mechanisms the board may consider, the board has the authority to approve ratemaking principles proposed by a rate-regulated public utility that provide for reasonable restrictions upon the ability of the public utility to seek a general increase in electric rates under section 476.6 for at least three years after the generating facility begins providing service to Iowa customers.

*c.* In determining the applicable ratemaking principles, the board shall make the following findings:

(1) The rate-regulated public utility has in effect a board-approved energy efficiency plan as required under section 476.6, subsection 16.

(2) The rate-regulated public utility has demonstrated to the board that the public utility has considered other sources for long-term electric supply and that the facility, lease, or cogeneration pilot project facility is reasonable when compared to other feasible alternative sources of supply. The rate-regulated public utility may satisfy the requirements of this subparagraph through a competitive bidding process, under rules adopted by the board, that demonstrate the facility, energy sales agreement, or lease is a reasonable alternative to meet its electric supply needs.

*d.* The applicable ratemaking principles shall be determined in a contested case proceeding, which proceeding may be combined with the proceeding for issuance of a certificate conducted pursuant to chapter 476A.

*e.* The order setting forth the applicable ratemaking principles shall be issued prior to the commencement of construction or lease of the facility, or execution of an energy sales agreement related to the cogeneration pilot project facility.

*f.* Following issuance of the order, the rate-regulated public utility shall have the option of proceeding according to either of the following:

(1) Withdrawing its application for a certificate pursuant to chapter 476A.

(2) Proceeding with the construction or lease of the facility or implementation of an energy sales agreement related to a cogeneration pilot project facility.

*g.* Notwithstanding any provision of this chapter to the contrary, the ratemaking principles established by the order issued pursuant to paragraph “e” shall be binding with regard to the specific electric power generating facility or cogeneration pilot project facility in any subsequent rate proceeding.

5. The utilities board and the consumer advocate may employ additional temporary staff, or may contract for professional services with persons who are not state employees, as the board and the consumer advocate deem necessary to perform required functions as provided in this section, including but not limited to review of power purchase contracts, review of emission plans and budgets, and review of ratemaking principles proposed for construction or lease of a new generating facility or a cogeneration pilot project facility.\* Beginning July 1, 2002, there is appropriated out of any funds in the state treasury not otherwise appropriated, such sums as may be necessary to enable the board and the consumer advocate to hire additional staff and contract for services under this section. The costs of the additional staff and services shall be assessed to the utilities pursuant to the procedure in section 476.10 and section 475A.6.

6. *a.* A qualified cogeneration pilot project facility\* may file a petition with the board for a determination of the avoided cost of an electric utility as provided in the federal Public Utility Regulatory Policies Act of 1978 and related federal reg-

ulations, if such a determination has not been made within the last twenty-four months or if there is reason to believe the avoided cost has changed.

*b.* The board shall issue its determination of the electric utility’s avoided cost within one hundred twenty days after the petition is filed.

*c.* The board, for good cause shown, may extend the deadline for issuing the decision for an additional period not to exceed one hundred twenty days.

*d.* The board shall not issue a decision under this subsection without providing notice and an opportunity for hearing.

*e.* The utilities board and the consumer advocate may employ additional temporary staff, or may contract for professional services with persons who are not state employees, as the board and the consumer advocate deem necessary to perform required functions as provided in this subsection. There is appropriated out of any funds in the state treasury not otherwise appropriated, such sums as may be necessary to enable the board and the consumer advocate to hire additional staff and contract for services under this section. The costs of the additional staff and services shall be assessed to the electric utility pursuant to the procedure in sections 476.10 and 475A.6.

\*Section 15.269, establishing the cogeneration pilot program, is repealed pursuant to its own terms effective July 1, 2007; utilities board proceedings pending on that date that are being conducted pursuant to this section shall be completed notwithstanding the repeal; 2003 Acts, ch 159, §1  
Section not amended; footnote added

## CHAPTER 477A

### CABLE OR VIDEO SERVICE FRANCHISES

Purpose of chapter; 2007 Acts, ch 201, §1  
Severability of provisions of chapter; 2007 Acts, ch 201, §14

#### 477A.1 Definitions.

As used in this chapter, unless the context otherwise requires:

1. “*Board*” means the utilities board within the utilities division of the department of commerce.

2. “*Cable operator*” means the same as defined in 47 U.S.C. § 522.

3. “*Cable service*” means the same as defined in 47 U.S.C. § 522.

4. “*Cable system*” means the same as defined in 47 U.S.C. § 522.

5. “*Competitive cable service provider*” means a person who provides cable service over a cable system in an area other than the incumbent cable provider providing service in the same area.

6. “*Competitive video service provider*” means a person who provides video service other than a cable operator.

7. “*Franchise*” means an initial authorization,

or renewal of an authorization, issued by the board or a municipality, regardless of whether the authorization is designated as a franchise, permit, license, resolution, contract, certificate, agreement, or otherwise, that authorizes the construction and operation of a cable system or video service provider’s network in a public right-of-way.

8. “*Franchise fee*” means the fee imposed under section 477A.7.

9. *a.* “*Gross revenues*” means all consideration of any kind or nature, including but not limited to cash, credits, property, and in-kind contributions received from subscribers for the provision of cable service over a cable system by a competitive cable service provider or for the provision of video service by a competitive video service provider within a municipality’s jurisdiction. Gross revenues are limited to the following:

(1) Recurring charges for cable service or video service.

(2) Event-based charges for cable service or video service, including but not limited to pay-per-view and video-on-demand charges.

(3) Rental of set-top boxes and other cable service or video service equipment.

(4) Service charges related to the provision of cable service or video service, including but not limited to activation, installation, and repair charges.

(5) Administrative charges related to the provision of cable service or video service, including but not limited to service order and service termination charges.

(6) A pro rata portion of all revenue derived, less refunds, rebates, or discounts, by a cable service provider or a video service provider for advertising over the cable service or video service network to subscribers within the franchise area where the numerator is the number of subscribers within the franchise area, and the denominator is the total number of subscribers reached by such advertising. This subparagraph applies only to municipalities that include this provision in their franchise agreements as of January 1, 2007.

b. "Gross revenues" does not include any of the following:

(1) Revenues not actually received, even if billed, including bad debt.

(2) Revenues received by any affiliate or any other person in exchange for supplying goods or services used by the person providing cable service or video service.

(3) Refunds, rebates, or discounts made to third parties, including subscribers, leased access providers, advertisers, or any municipality or other unit of local government.

(4) Regardless of whether the services are bundled, packaged, or functionally integrated with cable service or video service, any revenues derived by the holder of a certificate of franchise authority from services not classified as cable service or video service, including, without limitation, revenue received from telecommunications services, revenue received from information services, revenue received in connection with home-shopping services, or any other revenues attributed by the competitive cable service provider or competitive video service provider to noncable service or nonvideo service in accordance with the holder's books and records kept in the regular course of business and any applicable rules, regulations, standards, or orders.

(5) Revenues paid by subscribers to home-shopping programmers directly from the sale of merchandise through any home-shopping channel offered as part of the cable services or video services.

(6) Revenues from the sale of cable services or video services for resale in which the purchaser is required to collect the franchise fee from the purchaser's customer.

(7) Revenues from any tax of general applica-

bility imposed upon the competitive cable service provider or competitive video service provider or upon subscribers by a city, state, federal, or any other governmental entity and required to be collected by the competitive cable service provider or competitive video service provider and remitted to the taxing entity, including but not limited to sales or use tax, gross receipts tax, excise tax, utility users tax, public service tax, and communication taxes, and including the franchise fee imposed under section 477A.7.

(8) Revenues forgone from the provision of cable services or video services to public institutions, public schools, or governmental entities at no charge.

(9) Revenues forgone from the competitive cable service provider's or competitive video service provider's provision of free or reduced-cost video service to any person, including, without limitation, any municipality and other public institutions or other institutions.

(10) Revenues from sales of capital assets or sales of surplus equipment.

(11) Revenues from reimbursements by programmers of marketing costs incurred by the competitive cable service provider or competitive video service provider for the introduction or promotion of new programming.

(12) Directory or internet advertising revenues including but not limited to yellow page, white page, banner advertisement, and electronic publishing.

(13) Copyright fees paid to the United States copyright office.

(14) Late payment charges.

(15) Maintenance charges.

10. "Incumbent cable provider" means the cable operator serving the largest number of cable subscribers in a particular franchise service area on January 1, 2007.

11. "Institutional network" means the system of dedicated fibers, coaxial cables, or wires constructed and maintained by an incumbent cable provider which is reserved and dedicated by the municipality for noncommercial purposes.

12. "Municipality" means a county or city.

13. "Percentage of gross revenues" means the percentage set by the municipality and identified in a written request made under section 477A.7, subsection 1, which shall be not greater than five percent. However, if the incumbent cable provider is a municipal utility providing telecommunications services under section 388.10, "percentage of gross revenues" means the percentage set by the municipality and identified in a written request made under section 477A.7, subsection 1, which shall not be greater than an equitable apportionment of the services and fees that the municipal utility pays to the municipality, or five percent, whichever is less.

14. "Public right-of-way" means the area on, below, or above a public roadway, highway, street,

bridge, cartway, bicycle lane, or public sidewalk in which the municipality has an interest, including other dedicated rights-of-way for travel purposes and utility easements. “*Public right-of-way*” does not include the airwaves above a public right-of-way with regard to cellular or other nonwire telecommunications or broadcast services or utility poles owned by a municipality or a municipal utility.

15. “*Video programming*” means the same as defined in 47 U.S.C. § 522.

16. “*Video service*” means video programming services provided through wireline facilities located at least in part in the public right-of-way without regard to delivery technology, including internet protocol technology. “*Video service*” does not include any video programming provided by a provider of commercial mobile service as defined in 47 U.S.C. § 332, or cable service provided by an incumbent cable provider or a competitive cable service provider or any video programming provided solely as part of, and via, a service that enables users to access content, information, electronic mail, or other services offered over the public internet.

2007 Acts, ch 201, §2, 15  
NEW section

#### **477A.2 Certificate of franchise authority requirement.**

1. After July 1, 2007, a person providing cable service or video service in this state shall not provide such service without a franchise. The franchise may be issued by either the board pursuant to section 477A.3 or by a municipality pursuant to section 364.2.

2. *a.* A person providing cable service or video service under a franchise agreement with a municipality prior to July 1, 2007, is not subject to this section with respect to such municipality until the franchise agreement expires or is converted pursuant to subsection 6.

*b.* Upon expiration of a franchise, a person may choose to renegotiate a franchise agreement with a municipality or may choose to obtain a certificate of franchise authority under this chapter.

*c.* A municipal utility that provides cable service or video service in this state is not subject to this section and shall not be required to obtain a certificate of franchise authority pursuant to this chapter in the municipality in which the provision of cable service or video service by that municipality was originally approved.

3. For purposes of this section, a person providing cable service or video service is deemed to have executed a franchise agreement to provide cable service or video service with a specific municipality if an affiliate or predecessor of the person providing cable service or video service has or had executed an unexpired franchise agreement with that municipality as of May 29, 2007.

4. A competitive cable service provider or competitive video service provider shall provide at

least thirty days’ notice to each municipality with authority to grant a franchise in the service area, and to the incumbent cable provider, in which the competitive cable service provider or competitive video service provider is granted authority to provide service under a certificate of franchise authority that the competitive cable service provider or competitive video service provider will offer cable services or video services within the jurisdiction of the municipality, and shall not provide service without having provided such thirty days’ notice.

5. As used in this section, “*affiliate*” includes but is not limited to a person that directly, or indirectly through one or more intermediaries, controls, is controlled by, or is under common control with a person receiving, obtaining, or operating under a franchise agreement with a municipality to provide cable service or video service through merger, sale, assignment, restructuring, or any other type of transaction.

6. If a competitive cable service provider or a competitive video service provider applies for a certificate of franchise authority to operate within a municipality, the incumbent cable provider may, at its discretion, apply for a certificate of franchise authority for that same municipality. Such application shall be automatically granted on the same day as a competitive cable service provider or competitive video service provider files a thirty days’ notice of offering service as required pursuant to subsection 4. The franchise agreement with the municipality is terminated on the date the board issues the certificate of franchise authority to an incumbent cable provider. The terms and conditions of the certificate of franchise authority shall be the same as the terms and conditions of a competitive cable service provider or a competitive video service provider pursuant to this chapter and shall replace the terms and conditions of the franchise agreement previously granted by the municipality.

2007 Acts, ch 201, §3, 15  
NEW section

#### **477A.3 Application requirements — certificate of franchise authority.**

1. The board shall issue a certificate of franchise authority under this chapter within fifteen business days after receipt of a completed application and affidavit submitted by the applicant and signed by an officer or general partner of the applicant. The application and affidavit shall provide all of the following information:

*a.* That the applicant has filed or will timely file with the federal communications commission all forms required by the commission in advance of offering cable service or video service in this state.

*b.* That the applicant agrees to comply with all applicable federal and state statutes, regulations, and rules.

c. That the applicant agrees to comply with all applicable state laws and nondiscriminatory municipal ordinances and regulations regarding the use and occupation of a public right-of-way in the delivery of the cable service or video service, to the extent consistent with this chapter, including the police powers of the municipalities in which the service is delivered.

d. A description of the service area to be served and the municipalities to be served by the applicant which may include certain designations of unincorporated areas. This description shall be updated by the applicant prior to the expansion of cable service or video service to a previously undesignated service area and, upon such expansion, notice shall be given to the board of the service area to be served by the applicant.

e. The address of the applicant's principal place of business and the names of the applicant's principal executive officers.

2. The failure of the board to notify the applicant of the completeness of the applicant's affidavit or issue a certificate of franchise authority before the fifteenth business day after receipt of a completed affidavit shall constitute issuance of the certificate of franchise authority applied for by the applicant without further action by the applicant.

3. The certificate of franchise authority issued by the board shall contain all of the following:

a. A grant of authority to provide cable service or video service in the service area designated in the application.

b. A grant of authority to use and occupy the public right-of-way in the delivery of cable service or video service, subject to the laws of this state, including the police powers of the municipalities in which the service is delivered.

c. A statement that the grant of authority provided by the certificate is subject to the lawful operation of the cable service or video service by the applicant or the applicant's successor.

d. A statement that the franchise is for a term of ten years, is renewable under the terms of this section, and is nonexclusive.

4. A certificate of franchise authority issued by the board is fully transferable to any successor of the applicant to which the certificate was initially issued. A notice of transfer shall be filed by the holder of the certificate of franchise authority with the board and the affected municipality and shall be effective fourteen business days after submission. The notice of transfer shall include the address of the successor's principal place of business and the names of the successor's principal executive officers. The successor shall assume all regulatory rights and responsibilities of the holder of the certificate. Neither the board nor an affected municipality shall have authority to review or require approval of such transfer.

5. The certificate of franchise authority issued

by the board may be terminated by a person providing cable service or video service by submitting written notice to the board and any affected municipality. Neither the board nor an affected municipality shall have authority to review or require approval of such termination.

6. The board shall only have the authorization to issue a certificate of franchise authority as provided in this section, and shall not impose any additional requirements or regulations upon an applicant.

2007 Acts, ch 201, §4, 15  
NEW section

#### 477A.4 Applicability to federal law.

To the extent required by applicable law, a certificate of franchise authority issued under this chapter shall constitute a "franchise" for the purposes of 47 U.S.C. § 541(b)(1). To the extent required for the purposes of 47 U.S.C. § 521 – 561, only the state of Iowa shall constitute the exclusive franchising authority for competitive cable service providers and competitive video service providers in this state.

2007 Acts, ch 201, §5, 15  
NEW section

#### 477A.5 Municipality restrictions.

1. A municipality shall not require a holder of a certificate of franchise authority to do any of the following:

a. Comply with a mandatory build-out provision.

b. Obtain a separate franchise.

c. Pay any additional fees, except as provided in this chapter.

d. Be subject to any additional franchise requirement by the municipality, except as provided in this chapter.

2. For purposes of this section, a "franchise requirement" includes any provision regulating rates or requiring build-out requirements to deploy any facilities or equipment.

3. Section 364.2 shall not apply to a holder of a certificate of franchise authority issued pursuant to this chapter.

2007 Acts, ch 201, §6, 15  
NEW section

#### 477A.6 Public, educational, and governmental access channels.

1. Not later than one hundred eighty days after a request by a municipality in which a competitive cable service provider or a competitive video service provider is providing cable service or video service, the holder of the certificate of authority for that municipality shall designate a sufficient amount of capacity on the certificate holder's communications network to allow the provision of a comparable number of public, educational, and governmental channels that the incumbent cable

provider in the municipality has activated and provided in the municipality under the terms of a franchise agreement with a municipality prior to July 1, 2007. If no such channels are active, the municipality may request a maximum of three public, educational, and governmental channels for a municipality with a population of at least fifty thousand, and a maximum of two public, educational, and governmental channels for a municipality with a population of less than fifty thousand.

*a.* The public, educational, and governmental content to be provided pursuant to this section and the operation of the public, educational, and governmental channels shall be the responsibility of the municipality receiving the benefit of such capacity. The holder of a certificate of franchise authority shall be responsible only for the transmission of such content, subject to technological restraints.

*b.* The municipality receiving capacity under this section shall ensure that all transmissions, content, or programming to be transmitted by the holder of the certificate of franchise authority are provided or submitted to the competitive cable service provider or competitive video service provider in a manner or form that is capable of being accepted and transmitted by the competitive cable service provider or competitive video service provider, without requirement for additional alteration or change in the content, over the particular network of the competitive cable service provider or competitive video service provider, which is compatible with the technology or protocol utilized by the competitive cable service provider or competitive video service provider to deliver services. At its election the municipality may reasonably request any cable service provider or video service provider to make any necessary change to the form of any programming, furnished for transmission, which shall be charged to the municipality, not to exceed the provider's incremental costs. The municipality shall have up to twelve months to reimburse the cable service provider or video service provider. The provision of such transmissions, content, or programming to the competitive cable service provider or competitive video service provider shall constitute authorization for such holder to carry such transmissions, content, or programming, at the holder's option, beyond the jurisdictional boundaries stipulated in any franchise agreement.

2. Where technically feasible, a competitive cable service provider or competitive video service provider that is a holder of a certificate of franchise authority and an incumbent cable provider shall use reasonable efforts to interconnect the cable or video communications network systems of the certificate holder and incumbent cable provider for the purpose of providing public, educational, and governmental programming. Interconnection may be accomplished by direct cable, microwave

link, satellite, or other reasonable method of connection. A holder of a certificate of franchise authority and an incumbent cable provider shall negotiate in good faith and an incumbent cable provider shall not withhold interconnection of public, educational, or governmental channels.

3. A court of competent jurisdiction shall have exclusive jurisdiction to enforce any requirement under this section.

2007 Acts, ch 201, §7, 15  
NEW section

#### **477A.7 Fees — financial support.**

1. *a.* In any service area in which a competitive cable service provider or a competitive video service provider holding a certificate of franchise authority offers or provides cable service or video service, the competitive cable service provider or competitive video service provider shall calculate and pay a franchise fee to the municipality with authority to grant a certificate of franchise authority in that service area upon the municipality's written request. If the municipality makes such a request, the franchise fee shall be due and paid to the municipality on a quarterly basis, not later than forty-five days after the close of the quarter, and shall be calculated as a percentage of gross revenues. The municipality shall not demand any additional franchise fees from the competitive cable service provider or competitive video service provider, and shall not demand the use of any other calculation method for the franchise fee.

*b.* All cable service providers and video service providers shall pay a franchise fee at the same percent of gross revenues as had been assessed on the incumbent cable provider by the municipality as of January 1, 2007, and such percentage shall continue to apply for the period of the remaining term of the existing franchise agreement with the municipality. Upon expiration of the period of the remaining term of the agreement with the incumbent cable service provider, a municipality may request an increase in the franchise fee up to five percent of gross revenues.

*c.* A provider who is both a competitive cable service provider and a competitive video service provider shall be subject to and only be required to pay one franchise fee to a municipality under this subsection regardless of whether the provider provides both cable service and video service.

*d.* At the request of a municipality and not more than once per year, an independent auditor may perform reasonable audits of the competitive cable service provider's or competitive video service provider's calculation of the franchise fee under this subsection. The municipality shall bear the costs of any audit requested pursuant to this subsection, unless the audit discloses that the competitive cable service provider or competitive video service provider has underpaid franchise fees by more than five percent, in which case the competitive cable service provider or competitive

video service provider shall pay all of the reasonable and actual costs of the audit.

e. A competitive cable service provider or competitive video service provider may identify and collect the amount of the franchise fee as a separate line item on the regular bill of each subscriber.

2. If an incumbent cable provider pays any fee to a municipality for public, educational, and governmental access channels, any subsequent holder of a certificate of franchise authority that includes that municipality shall pay this fee at the same rate during the remaining term of the existing franchise agreement with the municipality, even if the incumbent cable provider elects to convert to a certificate of franchise authority pursuant to section 477A.2. All fees collected pursuant to this subsection shall be used only for the support of the public, educational, and governmental access channels.

3. a. If an incumbent cable provider is required by a franchise agreement as of January 1, 2007, to provide institutional network capacity to a municipality for use by the municipality for non-commercial purposes, the incumbent cable provider and any subsequent holder of a certificate of franchise authority shall provide support only for the existing institutional network on a pro rata basis per customer. Any financial support provided for an institutional network shall be limited to ongoing maintenance and support of the existing institutional network. This subsection shall be applicable only to a cable service provider's or video service provider's first certificate of franchise authority issued under this chapter, and shall not apply to any subsequent renewals. For the purposes of this subsection, maintenance and support shall only include the reasonable incremental cost of moves, changes, and restoring connectivity of the fiber or coaxial cable lines up to a demarcation point at the building.

b. For purposes of this subsection, the number of customers of a cable service provider or video service provider shall be determined based on the relative number of subscribers in that municipality at the end of the prior calendar year as reported to the municipality by all incumbent cable providers and holders of a certificate of franchise authority. Any records showing the number of subscribers shall be considered confidential records pursuant to section 22.7. The incumbent cable provider shall provide to the municipality, on an annual basis, the maintenance and support costs of the institutional network, subject to an independent audit. A municipality acting under this subsection shall notify and present a bill to competitive cable service providers or competitive video service providers for the amount of such support on an annual basis, beginning one year after issuance of the certificate of franchise authority. The annual institutional network support shall be due and paid by the providers to the municipality in four quarterly

payments, not later than forty-five days after the close of each quarter. The municipality shall reimburse the incumbent cable provider for the amounts received from competitive cable service providers or competitive video service providers.

c. This subsection shall not apply if the incumbent cable service provider is a municipal utility providing telecommunications services under section 388.10.

4. A franchise fee may be assessed or imposed by a municipality without regard to the municipality's cost of inspecting, supervising, or otherwise regulating the franchise, and the fees collected may be credited to the municipality's general fund and used for municipal general fund purposes.

5. To the extent that any amount of franchise fees assessed by and paid to a municipality prior to May 29, 2007, pursuant to a franchise agreement between a municipality and any person to erect, maintain, and operate plants and systems for cable television, exceeds the municipality's reasonable costs of inspecting, supervising, or otherwise regulating the franchise, such amount is deemed and declared to be authorized and legally assessed by and paid to the municipality.

2007 Acts, ch 201, §§, 15  
NEW section

#### **477A.8 Customer service standards.**

1. The holder of a certificate of franchise authority shall comply with customer service requirements consistent with those contained in 47 C.F.R. § 76.309, and shall maintain a local or toll-free telephone number for customer service contact.

2. The holder of a certificate of franchise authority shall implement an informal process for handling inquiries from municipalities and customers concerning billing events, service issues, and other complaints. If an issue is not resolved through this informal process, a municipality may request a confidential nonbinding mediation with the holder of a certificate of franchise authority, with the costs of such mediation to be shared equally between the municipality and the holder of a certificate of franchise authority.

2007 Acts, ch 201, §9, 15  
NEW section

#### **477A.9 Nondiscrimination by municipality.**

1. A municipality shall allow the holder of a certificate of franchise authority to install, construct, and maintain a communications network within a public right-of-way and shall provide the holder of a certificate of franchise authority with open, comparable, nondiscriminatory, and competitively neutral access to the public right-of-way.

2. A municipality shall not discriminate against the holder of a certificate of franchise authority in providing access to a municipal building

or through a municipal utility pole attachment term.

2007 Acts, ch 201, §10, 15  
NEW section

**477A.10 Provider discrimination prohibited.**

1. The purpose of this section is to prevent discrimination among potential residential subscribers.

2. A competitive cable service provider or competitive video service provider holding a certificate of franchise authority shall not deny access to any group of potential residential subscribers because of the income of residents in the local area in which such group resides.

3. *a.* A video service provider operating under a certificate of franchise authority that is using telecommunication facilities to provide video services and has more than five hundred thousand telecommunication access lines in this state shall extend its system to a potential subscriber, at no cost to the potential subscriber, if all of the following criteria are met:

(1) The potential subscriber is located within its authorized service area.

(2) At least two hundred fifty dwelling units are located within two thousand five hundred feet of a remote terminal.

(3) These dwelling units do not have cable or video service available from another cable service provider or video service provider.

*b.* This subsection shall be applicable only after the first date on which the video service provider operating under a certificate of franchise authority is providing cable service or video service to more than fifty percent of all cable and video subscribers receiving cable or video service from the holders of certificates of franchise authority and any other providers of cable or video services operating under franchise agreements with a municipality.

2007 Acts, ch 201, §11, 15  
NEW section

**477A.11 Applicability of other law.**

1. This chapter is intended to be consistent with the federal Cable Act, 47 U.S.C. § 521 et seq.

2. Except as otherwise stated in this chapter, this chapter shall not be interpreted to prevent a competitive cable service provider, competitive video service provider, municipality, or other provider of cable service or video service from seeking clarification of any rights and obligations under federal law or to exercise any right or authority under federal or state law.

2007 Acts, ch 201, §12, 15  
NEW section

**477A.12 Rules.**

The board shall adopt rules necessary to administer this chapter.

2007 Acts, ch 201, §13, 15  
NEW section

**CHAPTER 479**

**PIPELINES AND UNDERGROUND GAS STORAGE**

**479.29 Land restoration.**

1. The board shall, pursuant to chapter 17A, adopt rules establishing standards for the restoration of agricultural lands during and after pipeline construction. In addition to the requirements of section 17A.4, the board shall distribute copies of the notice of intended action and opportunity for oral presentations to each county board of supervisors. Any county board of supervisors may, under the provisions of chapter 17A, and subsequent to the rulemaking proceedings, petition under those provisions for additional rulemaking to establish standards for land restoration after pipeline construction within that county. Upon the request of the petitioning county, the board shall schedule a hearing to consider the merits of the petition. Rules adopted under this section shall not apply to land located within city boundaries unless the land is used for agricultural purposes. Rules adopted under this section shall address, but are not limited to, all of the following subject matters:

*a.* Topsoil separation and replacement.

*b.* Temporary and permanent repair to drain tile.

*c.* Removal of rocks and debris from the right-of-way.

*d.* Restoration of areas of soil compaction.

*e.* Restoration of terraces, waterways, and other erosion control structures.

*f.* Revegetation of untilled land.

*g.* Future installation of drain tile or soil conservation structures.

*h.* Restoration of land slope and contour.

*i.* Restoration of areas used for field entrances and temporary roads.

*j.* Construction in wet conditions.

*k.* Designation of a pipeline company point of contact for landowner inquiries or claims.

2. The county board of supervisors shall cause an on-site inspection for compliance with the standards adopted under this section to be performed at any pipeline construction project in the county. A licensed professional engineer familiar with the standards adopted under this section and licensed



under chapter 542B shall be responsible for the inspection. A county board of supervisors may contract for the services of a licensed professional engineer for the purposes of the inspection. The reasonable costs of the inspection shall be borne by the pipeline company.

3. If the inspector determines that there has been a violation of the standards adopted under this section, of the land restoration plan, or of an independent agreement on land restoration or line location executed in accordance with subsection 10, the inspector shall give oral notice, followed by written notice, to the pipeline company and the contractor operating for the pipeline company and order corrective action to be taken in compliance with the standards. The costs of the corrective action shall be borne by the contractor operating for the pipeline company.

4. An inspector shall adequately inspect underground improvements altered during construction of pipeline. An inspection shall be conducted at the time of the replacement or repair of the underground improvements. An inspector shall be present on the site at all times at each phase and separate activity of the opening of the trench, the restoration of underground improvements, and backfilling. The pipeline company and its contractor shall keep an inspector continually informed of the work schedule and any schedule changes. If proper notice is given, construction shall not be delayed due to an inspector's failure to be present on the site.

5. If the pipeline company or its contractor does not comply with the requirements of this section, with the land restoration plan, or with an independent agreement on land restoration or line location executed in accordance with subsection 10, the county board of supervisors may petition the board for an order requiring corrective action to be taken. In addition, the county board of supervisors may file a complaint with the board seeking imposition of civil penalties pursuant to section 479.31.

6. The pipeline company shall allow landowners and the inspector to view the proposed center

line of the pipeline prior to commencing trenching operations to insure that construction takes place in its proper location.

7. An inspector may temporarily halt the construction if the construction is not in compliance with this chapter and the standards adopted pursuant to this chapter, the land restoration plan, or the terms of an independent agreement with the pipeline company regarding land restoration or line location executed in accordance with subsection 10, until the inspector consults with the supervisory personnel of the pipeline company.

8. The board shall instruct inspectors appointed by the board of supervisors regarding the content of the statutes and rules and the inspectors' responsibility to require construction conforming with the standards provided by this chapter.

9. Petitioners for a permit for pipeline construction shall file with the petition a written land restoration plan showing how the requirements of this section, and of rules adopted pursuant to this section, will be met. The petitioners shall provide copies of the plan to all landowners of property that will be disturbed by the construction.

10. This section does not preclude the application of provisions for protecting or restoring property that are different than those prescribed in this section, in rules adopted pursuant to this section, or in the land restoration plan, if the alternative provisions are contained in agreements independently executed by the pipeline company and landowner, and if the alternative provisions are not inconsistent with state law or with rules adopted by the board. Independent agreements on land restoration or line location between the landowner and pipeline company shall be in writing and a copy provided to the county inspector.

11. For purposes of this section, "construction" includes the removal of a previously constructed pipeline.

12. The requirements of this section shall apply only to pipeline construction projects commenced on or after June 1, 1999.

2007 Acts, ch 126, §85  
Subsection 2 amended

## CHAPTER 481A

### WILDLIFE CONSERVATION

#### **481A.38 Prohibited acts — restrictions on the taking of wildlife — special licenses.**

It is unlawful for a person to take, pursue, kill, trap or ensnare, buy, sell, possess, transport, or attempt to so take, pursue, kill, trap or ensnare, buy, sell, possess, or transport any game, protected nongame animals, fur-bearing animals or fur or skin of such animals, mussels, frogs, spawn or fish or any part thereof, except upon the terms, condi-

tions, limitations, and restrictions set forth herein, and administrative rules necessary to carry out the purposes set out in section 481A.39, or as provided by the Code.

1. The commission may upon its own motion and after an investigation, alter, limit, or restrict the methods or means employed and the instruments or equipment used in taking wild mammals, birds subject to section 481A.48, fish, rep-

tiles, and amphibians, if the investigation reveals that the action would be desirable or beneficial in promoting the interests of conservation, or the commission may, after an investigation when it is found there is imminent danger of loss of fish through natural causes, authorize the taking of fish by means found advisable to salvage imperiled fish populations.

The commission shall adopt a rule permitting a crossbow to be used only by individuals with disabilities who are physically incapable of using a bow and arrow under the conditions in which a bow and arrow is permitted. The commission shall prepare an application to be used by an individual requesting the status. The application shall require the individual's physician to sign a statement declaring that the individual is not physically able to use a bow and arrow.

2. If the commission finds that the number of hunters licensed or the type of license issued to take deer or wild turkey should be limited or further regulated, the commission shall adopt procedures, by rule, for issuing the licenses. This subsection does not apply to the hunting of wild turkey on a hunting preserve licensed under chapter 484B.

3. The department and the commission shall exercise regulatory authority regarding seasons, bag limits, possession limits, locality, the method of taking, or the taking of fish and wildlife within the boundaries of the Sac and Fox tribe settlement in Tama county only to the extent provided in a written agreement between the tribal council of the Sac and Fox tribe of the Mississippi in Iowa and the department. The written agreement shall not be construed to supersede or impair the regulatory authority exercised by the commission pursuant to the federal Migratory Bird Treaty Act, the federal Migratory Bird Stamp Hunting Act, the federal Endangered Species Act, or other federal law, and shall not be construed to supersede or impair the regulatory authority exercised by the Sac and Fox tribe of the Mississippi in Iowa pursuant to any federal act, statute, or law. The department and the commission shall not unreasonably fail to enter into an agreement and shall pursue such an agreement in an expedient manner. This subsection shall become effective upon signing of the written agreement by the director of the department and the chairperson of the Sac and Fox tribe of the Mississippi in Iowa.

2007 Acts, ch 189, §1, 2

For applicable scheduled fines, see §805.8B, subsection 3, paragraphs f and g

Subsection 3 amended

#### **481A.40 Use of drugs on wildlife — penalty.**

1. For the purposes of this section, “*drug*” means any chemical substance, other than food, that affects the structure or biological function of any wildlife under the jurisdiction of the depart-

ment of natural resources.

2. Except with written authorization from the director or the director's designee or as otherwise provided by law, a person shall not administer any drug to any wildlife under the jurisdiction of the department of natural resources, including but not limited to drugs used for fertility control, disease prevention or treatment, immobilization, or growth stimulation.

3. This section does not prohibit the treatment of sick or injured wildlife by a licensed veterinarian or holder of a wildlife rehabilitation permit.

4. This section shall not be construed to limit employees of agencies of the state, the United States, or local animal control officers, licensed animal shelters, or licensed pounds in the performance of their official duties related to public health, wildlife management, or wildlife removal. However, a drug shall not be administered by any person for fertility control or growth stimulation except as provided in subsection 2.

5. An officer of the department may take possession of or dispose of any wildlife under the jurisdiction of the department of natural resources that the officer reasonably believes has been administered drugs in violation of this section.

6. A person who violates this section is guilty of a serious misdemeanor.

2007 Acts, ch 56, §1

NEW section

#### **481A.41 Reserved.**

#### **481A.55 Selling game.**

1. Except as otherwise provided, a person shall not buy or sell, dead or alive, a bird or animal or any part of one which is protected by this chapter, but this section does not apply to fur-bearing animals, bones of wild turkeys that were legally taken, and the skins, plumage, and antlers of legally taken game. This section does not prohibit the purchase of jackrabbits from sources outside this state. A person shall not purchase, sell, barter, or offer to purchase, sell, or barter for millinery or ornamental use the feathers of migratory game birds; and a person shall not purchase, sell, barter, or offer to purchase, sell, or barter mounted specimens of migratory game birds.

2. Section 481A.50 and this section do not apply to a game species, fur-bearing animal species, or variety of fish protected under this chapter which is sold by a nonprofit corporation as a part of a meal. The number of game of a game species or fur-bearing animal species, or a variety of fish protected by this chapter which are donated by a person to a nonprofit corporation plus any additional game of the same species or same variety of fish in the person's possession must not exceed the person's legal possession limit.

2007 Acts, ch 28, §13

For applicable scheduled fines, see §805.8B, subsection 3, paragraph d  
Subsection 1 amended

#### 481A.123 Prohibited hunting near buildings, feedlots.

1. A person shall not discharge a firearm or shoot or attempt to shoot a game or fur-bearing animal within two hundred yards of a building inhabited by people or domestic livestock or within two hundred yards of a feedlot unless the owner or tenant has given consent. However, within the corporate limits of a city, a person may take deer with a firearm within fifty yards of a building inhabited by people or domestic livestock, or a feedlot pursuant to an approved special deer population control plan, if the person obtains permission of the owner or tenant of the building or feedlot.

2. As used in this section, “*feedlot*” means a lot, yard, corral, or other area in which livestock are present and confined, for the purposes of feeding and growth before slaughter. The term does not include areas which are used for the raising of crops or other vegetation and upon which livestock are allowed to graze or feed.

3. *a.* This section does not apply to the discharge of a firearm for the purpose of target shooting on premises posted as a target shooting range that is open to the public, if the premises have been used as a target shooting range prior to the erection of a building inhabited by people or domestic livestock, or prior to the construction of a feedlot, located within two hundred yards of the target shooting range. This subsection applies only to the erection of a building inhabited by people or domestic livestock or to the construction of a feedlot located within two hundred yards of a target shooting range that is open to the public and that is identified as a target shooting range by the city, county, state, or federal government, which erection or construction occurs on or after May 14, 2004.

*b.* As used in this subsection, “*target shooting*” means the discharge of a firearm at an inanimate object, for amusement or as a test of skill in marksmanship.

4. *a.* This section does not apply to the discharge of a firearm on premises identified as a public hunting area, if the premises have been identified as a public hunting area prior to the erection of a building inhabited by people or domestic livestock, or prior to the construction of a feedlot, located within two hundred yards of the public hunting area. This subsection applies only to the erection of a building inhabited by people or domestic livestock or to the construction of a feedlot located within two hundred yards of a public hunting area, which erection or construction occurs on or after May 14, 2004.

*b.* As used in this subsection, “*public hunting area*” means public lands or waters available for hunting by the public, and identified as a public hunting area by the city, county, state, or federal government.

5. *a.* This section does not apply to the dis-

charge of a firearm on a farm unit by the owner or tenant of the farm unit or by a family member of the owner or tenant of the farm unit.

*b.* As used in this subsection, “*family member*”, “*farm unit*”, “*owner*”, and “*tenant*” mean the same as defined in section 483A.24, subsection 2.

2007 Acts, ch 28, §14

For applicable scheduled fine, see §805.8B, subsection 3, paragraph c  
Subsection 3, unnumbered paragraphs 1 and 2 editorially designated as paragraphs a and b

Subsection 4, unnumbered paragraphs 1 and 2 editorially designated as paragraphs a and b  
NEW subsection 5

#### 481A.125A Remote control or internet hunting — criminal and civil penalties.

1. As used in this section, “*remote control or internet hunting*” means use of a computer or other electronic device, equipment, or software to remotely control the aiming or discharge of a firearm or other weapon, allowing a person who is not physically present to take a wild animal, a game bird or ungulate kept on a hunting preserve under chapter 484B, or a preserve whitetail kept on a hunting preserve under chapter 484C.

2. A person shall not offer for sale, take, or assist in the taking of a wild animal, a game bird or ungulate kept on a hunting preserve under chapter 484B, or a preserve whitetail kept on a hunting preserve under chapter 484C, by remote control or internet hunting.

3. A person who violates this section is guilty of a serious misdemeanor. A second or subsequent violation of this section is punishable as a class “D” felony.

4. In addition, any person who violates this section is subject to a civil penalty, which may be levied by the department, of not more than ten thousand dollars for each violation of this section. The moneys collected from imposition of a civil penalty shall be deposited in the state fish and game protection fund.

2007 Acts, ch 156, §1

NEW section

#### 481A.130 Damages in addition to penalty — animals — ginseng.

1. In addition to the penalties for violations of this chapter and chapters 350, 461A, 481B, and 482, a person convicted of unlawfully selling, taking, catching, killing, injuring, destroying, or having in possession any animal, shall reimburse the state for the value of such as follows:

*a.* For each elk, antelope, buffalo, or moose, two thousand five hundred dollars.

*b.* For each wild turkey, two hundred dollars.

*c.* For each bird or animal or the raw pelt or plumage of such bird or animal for which damages are not otherwise prescribed, fifty dollars.

*d.* For each fish, reptile, mussel, or amphibian, fifteen dollars.

*e.* For each beaver, mink, otter, red fox, gray fox, or raccoon, two hundred dollars.

*f.* For each animal classified by the commis-

sion as an endangered or threatened species, one thousand dollars.

*g.* For each antlered deer, reimbursement shall be based on the score of the antlered deer as measured by the Boone and Crockett club's scoring system for whitetail deer as follows:

(1) 150 gross inches or less: A minimum of two thousand dollars and not more than five thousand dollars, and eighty hours of community service or, in lieu of the community service, a minimum of four thousand dollars and not more than ten thousand dollars, in an amount that is deemed reasonable by the court.

(2) More than 150 gross inches: A minimum of five thousand dollars and not more than ten thousand dollars, and eighty hours of community service or, in lieu of the community service, a minimum of ten thousand dollars and not more than twenty thousand dollars, in an amount that is deemed reasonable by the court.

*h.* For each deer, except as provided in paragraph "g", and for each swan or crane, one thousand five hundred dollars.

2. In addition to any other penalty, a person convicted of unlawfully harvesting wild ginseng in violation of section 456A.24 shall reimburse the state at one hundred fifty percent of the ginseng's market value, as determined by the department.

3. This section does not apply to a landowner who cooperates with the department of natural resources and the department of agriculture and land stewardship to remove all whitetail from enclosed land as provided in section 170.5, even if all whitetail are not removed.

2007 Acts, ch 28, §15  
Subsection 1, paragraph g amended

**481A.133 Suspension of licenses, certificates, and permits.**

A person who is assessed damages pursuant to section 481A.130 shall immediately surrender all licenses, certificates, and permits to hunt, fish, or trap in the state to the department. The licenses, permits, and certificates, and the privileges associated with them shall remain suspended until the assessed damages and any accrued interest are paid in full. Upon payment of the assessed damages and any accrued interest, the suspension shall be lifted. Interest shall begin to accrue as of the date of judgment at a rate of ten percent per year.

2007 Acts, ch 28, §16  
Section amended

**481A.134 Authority to cancel, suspend, or revoke license — point system.**

The department shall establish rules pursuant to chapter 17A providing for the suspension or revocation of licenses issued by the department. The

rules may include procedures for summary cancellation of a license based on documentation that the licensee failed to pay the applicable fee for the license. For purposes of determining when to suspend or revoke a license issued by the department under this section, the department shall adopt a point system pursuant to chapter 17A for the purpose of weighing the seriousness of violations of the provisions of this chapter or chapter 481B, 482, 483A, 484A, or 484B, or of committing trespass as defined in section 716.7 while hunting deer, other than farm deer as defined in section 170.1 or preserve whitetail as defined in section 484C.1. The weighted scale may be amended from time to time as experience dictates.

2007 Acts, ch 28, §17  
Section amended

**481A.135 Repeat offender — records, enforcement, and penalties.**

1. The commission shall establish by rule, a recordkeeping system and other administrative procedures necessary to administer this section.

2. A person who pleads guilty or is convicted of a violation of any provision of this chapter or chapter 481B, 482, 483A, 484A, or 484B, or trespass as defined in section 716.7 while hunting deer, other than farm deer as defined in section 170.1 or preserve whitetail as defined in section 484C.1, while the person's license or licenses are suspended or revoked is guilty of a simple misdemeanor if the person has no other violations within the previous three years which occurred while the person's license or licenses have been suspended or revoked.

3. A person who pleads guilty or is convicted of a violation of any provision of this chapter or chapter 481B, 482, 483A, 484A, or 484B, or trespass as defined in section 716.7 while hunting deer, other than farm deer as defined in section 170.1 or preserve whitetail as defined in section 484C.1, while the person's license or licenses are suspended or revoked is guilty of a serious misdemeanor if the person has one other violation within the previous three years which occurred while the person's license or licenses have been suspended or revoked.

4. A person who pleads guilty or is convicted of a violation of any provision of this chapter or chapter 481B, 482, 483A, 484A, or 484B, or trespass as defined in section 716.7 while hunting deer, other than farm deer as defined in section 170.1 or preserve whitetail as defined in section 484C.1, while the person's license or licenses are suspended or revoked is guilty of an aggravated misdemeanor when the person has had two or more convictions within the previous three years which occurred while the person's license or licenses have been suspended or revoked.

2007 Acts, ch 28, §18  
Subsections 2 - 4 amended

CHAPTER 483A

FISHING AND HUNTING LICENSES, CONTRABAND, AND GUNS

**483A.1 Licenses — fees.**

Except as otherwise provided in this chapter, a person shall not fish, trap, hunt, pursue, catch, kill, take in any manner, use, have possession of, sell, or transport all or a part of any wild animal, bird, game, or fish, the protection and regulation of which is desirable for the conservation of resources of the state, without first obtaining a license for that purpose and the payment of a fee as follows:

- 1. Residents:
  - a. Fishing license ..... \$ 17.00
  - b. Fishing license, lifetime, sixty-five years or older ..... \$ 50.50
  - c. Hunting license ..... \$ 17.00
  - d. Hunting license, lifetime, sixty-five years or older ..... \$ 50.50
  - e. Deer hunting license ..... \$ 25.50
  - f. Wild turkey hunting license .... \$ 22.50
  - g. Fur harvester license, sixteen years or older ..... \$ 20.50
  - h. Fur harvester license, under sixteen years of age ..... \$ 5.50
  - i. Fur dealer license ..... \$225.50
  - j. Aquaculture unit license ..... \$ 25.50
  - k. Retail bait dealer license ..... \$ 30.50
  - l. Fishing license, seven-day ..... \$ 11.50
  - m. Trout fishing fee ..... \$ 10.50
  - n. Game breeder license ..... \$ 15.50
  - o. Taxidermy license ..... \$ 15.50
  - p. Falconry license ..... \$ 20.50
  - q. Wildlife habitat fee ..... \$ 11.00
  - r. Migratory game bird fee ..... \$ 8.00
  - s. Fishing license, one-day ..... \$ 7.50
  - t. Wholesale bait dealer license ... \$125.00
- 2. Nonresidents:
  - a. Fishing license, annual ..... \$ 39.00
  - b. Fishing license, seven-day ..... \$ 30.00
  - c. Hunting license, eighteen years of age or older ..... \$ 80.00
  - d. Hunting license, under eighteen years of age ..... \$ 30.00
  - e. Deer hunting license, antlered or any sex deer ..... \$220.00
  - f. Deer hunting license, antlerless deer only, required with the purchase of an antlered or any sex deer hunting license ..... \$100.00
  - g. Deer hunting license, antlerless deer only ..... \$150.00
  - h. Wild turkey hunting license .... \$100.00
  - i. Fur harvester license ..... \$200.00
  - j. Fur dealer license ..... \$501.00
  - k. Location permit for fur dealers \$ 56.00
  - l. Aquaculture unit license ..... \$ 56.00

- m. Retail bait dealer license ..... \$125.00  
or the amount for the same type of license in the nonresident's state, whichever is greater
  - n. Trout fishing fee ..... \$ 13.00
  - o. Game breeder license ..... \$ 26.00
  - p. Taxidermy license ..... \$ 26.00
  - q. Falconry license ..... \$ 26.00
  - r. Wildlife habitat fee ..... \$ 11.00
  - s. Migratory game bird fee ..... \$ 8.00
  - t. Fishing license, three-day ..... \$ 15.50
  - u. Wholesale bait dealer license ... \$250.00  
or the amount for the same type of license in the nonresident's state, whichever is greater
  - v. Fishing license, one-day ..... \$ 8.50
- 2007 Acts, ch 194, §1, 2  
Commercial fishing licenses, see §482.4  
For applicable scheduled fines, see §805.8B, subsection 3, paragraph b  
Subsection 1, paragraph q amended  
Subsection 2, paragraph r amended

**483A.3 Wildlife habitat fee.**

1. A resident or nonresident person required to have a hunting or fur harvester license shall not hunt or trap unless the person has paid the wildlife habitat fee. This section shall not apply to residents who have permanent disabilities or who are younger than sixteen or older than sixty-five years of age. Wildlife habitat fees shall be administered in the same manner as hunting and fur harvester licenses except all revenue derived from wildlife habitat fees shall be used within the state of Iowa for habitat development and shall be deposited in the state fish and game protection fund, except as provided in subsection 2. The revenue may be used for the matching of federal funds. The revenues and any matched federal funds shall be used for acquisition of land, leasing of land, or obtaining of easements from willing sellers for use as wildlife habitats. Notwithstanding the exemption provided by section 427.1, any land acquired with the revenues and matched federal funds shall be subject to the full consolidated levy of property taxes which shall be paid from those revenues. In addition the revenue may be used for the development and enhancement of wildlife lands and habitat areas. Not less than fifty percent of all revenue from wildlife habitat fees shall be used by the commission to enter into agreements with county conservation boards or other public agencies in order to carry out the purposes of this section. The state share of funding of those agreements provided by the revenue from wildlife habitat fees shall not exceed seventy-five percent.

2. Up to sixty percent of the revenues from

wildlife habitat fees which are not required under subsection 1 to be used by the commission to enter into agreements with county conservation boards or other public agencies may be credited to the wildlife habitat bond fund as provided in section 483A.53.

3. Notwithstanding subsections 1 and 2, any increase in revenues received on or after July 1, 2007, pursuant to this section as a result of fee increases pursuant to 2007 Iowa Acts, ch. 194, shall be used by the commission only for the purpose of the game bird habitat development program as provided in section 483A.3B. The commission shall not reduce on an annual basis for these purposes the amount of other funds being expended as of July 1, 2007.

2007 Acts, ch 194, §3

For applicable scheduled fines, see §805.8B, subsection 3, paragraph b  
NEW subsection 3

### **483A.3B Game bird habitat development programs.**

1. *Allocation of revenue—accounts.* All revenue collected from increases in wildlife habitat fees as provided in section 483A.3, subsection 3, that is deposited in the state fish and game protection fund shall be allocated as follows:

a. Two dollars of each wildlife habitat fee collected shall be allocated to the game bird wetlands conservation account.

b. One dollar of each wildlife habitat fee collected shall be allocated to the game bird buffer strip assistance account.

c. Notwithstanding section 12C.7, subsection 2, interest or earnings on moneys collected from wildlife habitat fees that are deposited in each account created under this section shall be credited to that account. Notwithstanding section 8.33 or section 456A.17, moneys credited to each account created under this section shall not revert to the state general fund at the close of a fiscal year.

d. All revenue generated by increases in the wildlife habitat fee as provided in section 483A.3, subsection 3, shall be used as provided in this section, except for that part which is specified by the department for use in paying administrative expenses as provided in section 456A.17.

2. *Game bird wetlands conservation program.*

a. All moneys allocated to the game bird wetlands conservation account shall be used by the department only to carry out the purposes of the game bird wetlands conservation program and shall be used in addition to funds already being expended by the department each year for wetlands conservation purposes.

b. The purpose of the game bird wetlands conservation program is to create a sustained source of revenue to be used by the department to qualify for federal matching funds that are available for wetlands conservation and to undertake projects in conjunction with soil and water conservation districts, county conservation boards, and other

partners that will aid in wetlands and associated habitat conservation in the state, including the acquisition, restoration, maintenance, or preservation of wetlands and associated habitat.

c. (1) All moneys that are allocated to the game bird wetlands conservation account shall accumulate in the account until the account balance is equal to one million dollars or an amount sufficient to be used by the department to qualify for federal matching funds. Each time the account balance reaches an amount sufficient to be used by the department to qualify for federal matching funds, the department shall apply for such matching funds, and upon obtaining such funds, shall expend the state and federal revenues available at that time to undertake projects as set forth in paragraph "b".

(2) Additional moneys that are generated by game bird wildlife habitat fees and allocated to the game bird wetlands conservation account shall again accumulate in the account, and each time the account balance is equal to one million dollars or an amount sufficient to be used by the department to qualify for federal matching funds, the department shall again apply for federal matching funds, and upon obtaining such funds, shall expend the state and federal revenues available at that time to undertake projects as set forth in paragraph "b".

d. The department shall use all state revenue and federal matching funds obtained under the federal North American Wetlands Conservation Act to undertake the purposes of the game bird wetlands conservation program as set forth in paragraph "b". State revenue allocated to the account shall be used by the department only for projects that increase public recreational hunting opportunities in the state and shall not be used for projects on private land that is not accessible to the public for recreational hunting.

3. *Game bird buffer strip assistance program.*

a. All moneys allocated to the game bird buffer strip assistance account shall be used by the department only to carry out the purposes of the game bird buffer strip assistance program and shall be used in addition to funds already being expended by the department each year for such purposes. The department shall not reduce the amount of other funds being expended for these purposes as of July 1, 2007.

b. The purpose of the game bird buffer strip assistance program is to increase landowner participation in federally funded conservation programs that benefit game birds and to increase opportunities for recreational hunting on private lands. To the extent possible, moneys allocated to the game bird buffer strip assistance account shall be used in conjunction with and to qualify for additional funding from private conservation organizations and other state and federal agencies to accomplish the purposes of the program. The funds may be

used to provide private landowners with cost-sharing assistance for habitat improvement practices on projects that are not eligible for federal programs or where federal funding for such projects is not adequate. The department may utilize the funds to provide marketing and outreach efforts to landowners in order to maximize landowners' use of federal conservation programs. The department may coordinate such marketing and outreach efforts with soil and water conservation districts and other partners.

c. (1) All moneys that are allocated to the game bird buffer strip assistance account shall accumulate in the account for a period of three years. At the end of the three-year period, the moneys in the account shall be used by the department to carry out the purposes of the game bird buffer strip assistance program as set forth in paragraph "b". The department shall, by rule pursuant to chapter 17A, establish eligibility requirements for the program and procedures for applications for and approval of projects to be funded under the program. The department shall expend moneys from the account only for projects on private land that is accessible to the public for recreational hunting.

(2) Additional moneys that are generated by game bird wildlife habitat fees and allocated to the game bird buffer strip assistance account shall accumulate in the account and shall be used by the department every three years as set forth in subparagraph (1).

2007 Acts, ch 194, §4  
NEW section

#### **483A.8 Deer license and tag.**

1. A resident hunting deer who is required to have a hunting license must have a resident hunting license in addition to the deer hunting license and must pay the wildlife habitat fee. In addition, a resident who purchases a deer hunting license shall pay a one dollar fee that shall be used and is appropriated for the purpose of deer herd population management, including assisting with the cost of processing deer donated to the help us stop hunger program administered by the commission.

2. The deer hunting license shall be accompanied by a tag designed to be used only once. When a deer is taken, the deer shall be tagged and the tag shall be dated.

3. a. A nonresident hunting deer is required to have a nonresident hunting license and a nonresident deer license and must pay the wildlife habitat fee. In addition, a nonresident who purchases a deer hunting license shall pay a one dollar fee that shall be used and is appropriated for the purpose of deer herd population management, including assisting with the cost of processing deer donated to the help us stop hunger program administered by the commission.

b. A nonresident who purchases an antlered or any sex deer hunting license pursuant to section

483A.1, subsection 2, paragraph "e", is required to purchase an antlerless deer only deer hunting license at the same time, pursuant to section 483A.1, subsection 2, paragraph "f".

c. The commission shall annually limit to six thousand the number of nonresidents allowed to have antlered or any sex deer hunting licenses. Of the six thousand nonresident antlered or any sex deer licenses issued, not more than thirty-five percent of the licenses shall be bow season licenses. After the six thousand antlered or any sex nonresident deer licenses have been issued, all additional licenses shall be issued for antlerless deer only. The commission shall annually determine the number of nonresident antlerless deer only deer hunting licenses that will be available for issuance.

d. The commission shall allocate all nonresident deer hunting licenses issued among the zones based on the populations of deer. However, a nonresident applicant may request one or more hunting zones, in order of preference, in which the applicant wishes to hunt. If the request cannot be fulfilled, the applicable fees shall be returned to the applicant. A nonresident applying for a deer hunting license must exhibit proof of having successfully completed a hunter safety and ethics education program as provided in section 483A.27 or its equivalent as determined by the department before the license is issued.

4. The commission may provide, by rule, for the issuance of an additional antlerless deer license to a person who has been issued an antlerless deer license. The rules shall specify the number of additional antlerless deer licenses which may be issued, and the season and zone in which the license is valid. The fee for an additional antlerless deer license shall be ten dollars for residents.

5. A nonresident owning land in this state may apply for a nonresident antlered or any sex deer hunting license, and the provisions of subsection 3 shall apply. However, if a nonresident owning land in this state is unsuccessful in obtaining one of the nonresident antlered or any sex deer hunting licenses, the landowner shall be given preference for one of the antlerless deer only nonresident deer hunting licenses available pursuant to subsection 3. A nonresident owning land in this state shall pay the fee for a nonresident antlerless only deer license and the license shall be valid to hunt on the nonresident's land only. If one or more parcels of land have multiple nonresident owners, only one of the nonresident owners is eligible for a nonresident antlerless only deer license. If a nonresident jointly owns land in this state with a resident, the nonresident shall not be given preference for a nonresident antlerless only deer license. The department may require proof of land ownership from a nonresident landowner applying for a nonresident antlerless only deer license.

6. The commission shall provide by rule for the

annual issuance to a nonresident of a nonresident antlerless deer hunting license that is valid for use only during the period beginning on December 24 and ending at sunset on January 2 of the following year, and costs fifty dollars. A nonresident hunting deer with a license issued under this subsection shall be otherwise qualified to hunt deer in this state and shall have a nonresident hunting license, pay the wildlife habitat fee, and pay the one dollar fee for the purpose of deer herd population management as provided in subsection 3. Pursuant to this subsection, the commission shall make available for issuance only the remaining nonresident antlerless deer hunting licenses allocated under subsection 3 that have not yet been issued for the current year's nonresident antlerless deer hunting seasons.

7. A person who is issued a youth deer hunting license and does not take a deer during the youth deer hunting season may use the deer hunting license and unused tag during any other firearm season that is established by the commission to take a deer of either sex.

2007 Acts, ch 129, §1

For applicable scheduled fines, see §805.8B, subsection 3, paragraph c  
Issuance of licenses to minors, see §483A.24  
NEW subsection 7

#### **483A.24 When license not required — special licenses.**

1. Owners or tenants of land, and their juvenile children, may hunt, fish or trap upon such lands and may shoot by lawful means ground squirrels, gophers, or woodchucks upon adjacent roads without securing a license so to do; except, special licenses to hunt deer and wild turkey shall be required of owners and tenants but they shall not be required to have a special wild turkey hunting license to hunt wild turkey on a hunting preserve licensed under chapter 484B.

2. a. As used in this subsection:

(1) “*Family member*” means a resident of Iowa who is the spouse or child of the owner or tenant and who resides with the owner or tenant.

(2) “*Farm unit*” means all parcels of land which are certified by the commission pursuant to rule as meeting all of the following requirements:

(a) Are in tracts of two or more contiguous acres.

(b) Are operated as a unit for agricultural purposes.

(c) Are under the lawful control of the owner or the tenant.

(3) “*Owner*” means an owner of a farm unit who is a resident of Iowa and who is one of the following:

(a) Is the sole operator of the farm unit.

(b) Makes all of the farm operation decisions but contracts for custom farming or hires labor for all or part of the work on the farm unit.

(c) Participates annually in farm operation decisions or cropping practices on specific fields of

the farm unit that are rented to a tenant.

(d) Raises specialty crops on the farm unit including, but not limited to, orchards, nurseries, or tree farms that do not always produce annual income but require annual operating decisions about maintenance or improvement.

(e) Has all or part of the farm unit enrolled in a long-term agricultural land retirement program of the federal government.

An “*owner*” does not mean a person who owns a farm unit and who employs a farm manager or third party to operate the farm unit, or a person who owns a farm unit and who rents the entire farm unit to a tenant who is responsible for all farm operations. However, this paragraph does not apply to an owner who is a parent of the tenant and who resides in this state.

(4) “*Tenant*” means a person who is a resident of Iowa and who rents and actively farms a farm unit owned by another person. A member of the owner's family may be a tenant. A person who works on the farm for a wage and is not a family member does not qualify as a tenant.

b. Upon written application on forms furnished by the department, the department shall issue annually without fee one wild turkey license to the owner of a farm unit or to a member of the owner's family, but not to both, and to the tenant or to a member of the tenant's family, but not to both. The wild turkey hunting license issued shall be valid only on the farm unit for which an applicant qualifies pursuant to this subsection and shall be equivalent to the least restrictive license issued under section 481A.38. The owner or the tenant need not reside on the farm unit to qualify for a free license to hunt on that farm unit.

c. Upon written application on forms furnished by the department, the department shall issue annually without fee two deer hunting licenses, one antlered or any sex deer hunting license and one antlerless deer only deer hunting license, to the owner of a farm unit or a member of the owner's family, but only a total of two licenses for both, and to the tenant of a farm unit or a member of the tenant's family, but only a total of two licenses for both. The deer hunting licenses issued shall be valid only for use on the farm unit for which the applicant applies pursuant to this paragraph. The owner or the tenant need not reside on the farm unit to qualify for the free deer hunting licenses to hunt on that farm unit. The free deer hunting licenses issued pursuant to this paragraph shall be valid and may be used during any shotgun deer season. The licenses may be used to harvest deer in two different seasons. In addition, a person who receives a free deer hunting license pursuant to this paragraph shall pay a one dollar fee for each license that shall be used and is appropriated for the purpose of deer herd population management, including assisting with the cost of processing deer donated to the help us stop hunger



program administered by the commission.

*d.* In addition to the free deer hunting licenses received pursuant to paragraph “c”, an owner of a farm unit or a member of the owner’s family and the tenant or a member of the tenant’s family may purchase a deer hunting license for any option offered to paying deer hunting licensees. An owner of a farm unit or a member of the owner’s family and the tenant or a member of the tenant’s family may also purchase two additional antlerless deer hunting licenses which are valid only on the farm unit for a fee of ten dollars each.

*e.* If the commission establishes a deer hunting season to occur in the first quarter of a calendar year that is separate from a deer hunting season that continues from the last quarter of the preceding calendar year, each owner and each tenant of a farm unit located within a zone where a deer hunting season is established, upon application, shall be issued a free deer hunting license for each of the two calendar quarters. Each license is valid only for hunting on the farm unit of the owner and tenant.

*f.* A deer hunting license or wild turkey hunting license issued pursuant to this subsection shall be attested by the signature of the person to whom the license is issued and shall contain a statement in substantially the following form:

By signing this license I certify that I qualify as an owner or tenant under Iowa Code section 483A.24.

A person who makes a false attestation as described in this paragraph is guilty of a simple misdemeanor. In addition, the person’s hunting license shall be revoked and the person shall not be issued a hunting license for a period of one year.

3. The director shall provide up to seventy-five nonresident deer hunting licenses for allocation as requested by a majority of a committee consisting of the majority leader of the senate, speaker of the house of representatives, and director of the department of economic development, or their designees. The licenses provided pursuant to the subsection shall be in addition to the number of nonresident licenses authorized pursuant to section 483A.8. The purpose of the special nonresident licenses is to allow state officials and local development groups to promote the state and its natural resources to nonresident guests and dignitaries. Photographs, videotapes, or any other form of media resulting from the hunting visitation shall not be used for political campaign purposes. The nonresident licenses shall be issued without application upon payment of the nonresident deer hunting license fee and the wildlife habitat fee. The licenses are valid in all zones open to deer hunting. The hunter safety and ethics education certificate requirement pursuant to section 483A.27 is waived for a nonresident issued a license pursuant to this subsection.

4. The director shall provide up to twenty-five nonresident wild turkey hunting licenses for allocation as requested by a majority of a committee consisting of the majority leader of the senate, speaker of the house of representatives, and director of the department of economic development, or their designees. The licenses provided pursuant to the subsection shall be in addition to the number of nonresident licenses authorized pursuant to section 483A.7. The purpose of the special nonresident licenses is to allow state officials and local development groups to promote the state and its natural resources to nonresident guests and dignitaries. Photographs, videotapes, or any other form of media resulting from the hunting visitation shall not be used for political campaign purposes. The nonresident licenses shall be issued without application upon payment of the nonresident wild turkey hunting license fee and the wildlife habitat fee. The licenses are valid in all zones open to wild turkey hunting. The hunter safety and ethics education certificate requirement pursuant to section 483A.27 is waived for a nonresident issued a license pursuant to this subsection.

5. A resident or nonresident of the state under sixteen years of age is not required to have a license to fish in the waters of the state. However, residents and nonresidents under sixteen years of age must pay the trout fishing fee to possess trout or they must fish for trout with a licensed adult who has paid the trout fishing fee and limit their combined catch to the daily limit established by the commission.

6. A license shall not be required of minor pupils of the state school for the blind, state school for the deaf, or of minor residents of other state institutions under the control of an administrator of a division of the department of human services. In addition, a person who is on active duty with the armed forces of the United States, on authorized leave from a duty station located outside of this state, and a resident of the state of Iowa shall not be required to have a license to hunt or fish in this state. The military person shall carry the person’s leave papers and a copy of the person’s current earnings statement showing a deduction for Iowa income taxes while hunting or fishing. In lieu of carrying the person’s earnings statement, the military person may also claim residency if the person is registered to vote in this state. If a deer or wild turkey is taken, the military person shall immediately contact a state conservation officer to obtain an appropriate tag to transport the animal. A license shall not be required of residents of county care facilities or any person who is receiving supplementary assistance under chapter 249.

7. A resident of the state under sixteen years of age is not required to have a hunting license to hunt game if accompanied by the minor’s parent or guardian or in company with any other competent adult with the consent of the minor’s parent or guardian, if the person accompanying the minor

possesses a valid hunting license; however, there must be one licensed adult accompanying each person under sixteen years of age. The minor must have a deer hunting license to hunt deer and a wild turkey hunting license to hunt wild turkey.

8. A person having a dog entered in a licensed field trial is not required to have a hunting license or fur harvester license to participate in the event or to exercise the person's dog on the area on which the field trial is to be held during the twenty-four-hour period immediately preceding the trial.

9. The commission shall issue without charge a special fishing license to residents of Iowa sixteen years or more of age who the commission finds have severe mental or physical disabilities. The commission is hereby authorized to prepare an application to be used by the person requesting the special license, which would require that the person's attending physician sign the form declaring that the person has a severe mental or physical disability and is eligible for exempt status.

10. No person shall be required to have a special wild turkey license to hunt wild turkey on a hunting preserve licensed under chapter 484B.

11. A lessee of a camping space at a campground may fish on a private lake or pond on the premises of the campground without a license if the lease confers an exclusive right to fish in common with the rights of the owner and other lessees.

12. The department may issue a permit, subject to conditions established by the department, which authorizes patients of a substance abuse facility, residents of health care facilities licensed under chapter 135C, tenants of elder group homes licensed under chapter 231B, tenants of assisted living program facilities licensed under chapter 231C, participants who attend adult day services programs licensed under chapter 231D, participants in services funded under a federal home and community-based services waiver implemented under the medical assistance program as defined in chapter 249A, and persons cared for in juvenile shelter care homes as provided for in chapter 232 to fish without a license as a supervised group. A person supervising a group pursuant to this subsection may fish with the group pursuant to the permit and is not required to obtain a fishing license.

13. Upon payment of the fee of five dollars for a lifetime fishing license or lifetime hunting and fishing combined license, the department shall issue a lifetime fishing license or lifetime hunting and fishing combined license to a resident of Iowa who is a veteran, as defined in section 35.1, or served in the armed forces of the United States for a minimum aggregate of ninety days of active federal service and who was disabled or was a prisoner of war during that veteran's military service. The department shall prepare an application to be used by a person requesting a lifetime fishing license or lifetime hunting and fishing combined li-

cense under this subsection. The department of veterans affairs shall assist the department in verifying the status or claims of applicants under this subsection. As used in this subsection, "disabled" means entitled to compensation under the United States Code, Title 38, ch. 11.

14. The department shall issue without charge a special annual fishing or combined hunting and fishing license to residents of this state who have permanent disabilities and whose income falls below the federal poverty guidelines as published by the United States department of health and human services or residents of this state who are sixty-five years of age or older and whose income falls below the federal poverty guidelines as published by the United States department of health and human services. The commission shall provide for, by rule, an application to be used by an applicant requesting a special license. The commission shall require proof of age, income, and proof of permanent disability.

15. The department may issue a permit, subject to conditions established by the department, which authorizes a student sixteen years of age or older attending an Iowa public or accredited non-public school who is participating in the Iowa department of natural resources fish Iowa! basic spincasting module to fish without a license as part of a supervised school outing.

2007 Acts, ch 66, §1  
For applicable scheduled fines, see §805.8B, subsection 3, paragraph c  
Subsection 3 amended

#### **483A.27 Hunter safety and ethics education program — license requirement.**

1. A person born after January 1, 1972, shall not obtain a hunting license unless the person has satisfactorily completed a hunter safety and ethics education course approved by the commission. A person who is eleven years of age or more may enroll in an approved hunter safety and ethics education course, but a person who is eleven years of age and who has successfully completed the course shall be issued a certificate of completion which becomes valid on the person's twelfth birthday. A certificate of completion from an approved hunter safety and ethics education course issued in this state since 1960, by another state, or by a foreign nation, is valid for the requirements of this section.

2. A certificate of completion shall not be issued to a person who has not satisfactorily completed a minimum of ten hours of training in an approved hunter safety and ethics education course. The department shall establish the curriculum for the first ten hours of an approved hunter safety and ethics education course offered in this state. Upon completion of the ten-hour curriculum, each person shall pass an individual oral test or a written test provided by the department. The department shall establish the criteria for successfully passing the tests. Based on the results of the test

and demonstrated safe handling of a firearm, the instructor shall determine the persons who shall be issued a certificate of completion.

3. The department shall provide a manual on hunter safety education which shall be used by all instructors and persons receiving hunter safety and ethics education training in this state.

4. The department shall provide for the certification of persons who wish to become hunter safety and ethics instructors. A person shall not act as an instructor in hunter safety and ethics education as provided in this section without first obtaining an instructor's certificate from the department.

5. An officer of the department or a certified instructor may issue a certificate to a person who has not completed the hunter safety and ethics education course but meets the criteria established by the commission.

6. A public or private school or organization approved by the department may co-operate with the department in providing a course in hunter safety and ethics education as provided in this section.

7. A hunting license obtained under this section by a person who gave false information or presented a fraudulent certificate of completion shall be revoked and a new hunting license shall not be issued for at least two years from the date of conviction. A hunting license obtained by a person who was born after January 1, 1972, but has not satisfactorily completed the hunter safety and ethics education course or has not met the require-

ments established by the commission, shall be revoked.

8. The commission shall adopt rules in accordance with chapter 17A as necessary to carry out the administration of this section.

9. The initial hunter safety certificate shall be issued without cost. A duplicate certificate shall be issued at a cost of three dollars.

10. A person under eighteen years of age who is required to exhibit a valid hunting license, shall also exhibit a valid certificate of completion from a state approved hunter safety and ethics education course upon request of an officer of the department. A failure to carry or refusal to exhibit the certificate of completion as provided in this subsection is a violation of this chapter. A violator is guilty of a simple misdemeanor as provided in section 483A.42.

11. A hunter safety and ethics instructor certified by the department shall be allowed to conduct an approved hunter safety and ethics education course on public school property with the approval of a majority of the board of directors of the school district. The conduct of an approved hunter safety and ethics education course is not a violation of any public policy, rule, regulation, resolution, or ordinance which prohibits the possession, display, or use of a firearm, bow and arrow, or other hunting weapon on public school property or other public property in this state.

2007 Acts, ch 28, §19

For applicable scheduled fines, see §805.8B, subsection 3, paragraph b  
Subsections 1 and 7 amended

## CHAPTER 484B

### HUNTING PRESERVES

#### **484B.10 Season — hunting license.**

1. A person shall not take a game bird or ungulate upon a hunting preserve, by shooting in any manner, except during the established season or as authorized by section 481A.56. The established season shall be September 1 through March 31 of the succeeding year, both dates inclusive. The owner of a hunting preserve shall establish the hunting season for nonnative, pen-reared ungulates on the hunting preserve.

2. Waterfowl shall not be shot over any area where pen-reared mallards may serve as live de-

coys for wild waterfowl. All persons hunting game birds or ungulates upon a licensed hunting preserve shall secure a hunting license to do so in accordance with the game laws of Iowa, with the exception that an unlicensed person may secure an annual hunting preserve license restricted to hunting preserves only for a license fee of five dollars. All persons who hunt on hunting preserves shall pay the wildlife habitat fee.

Remote control or internet hunting prohibited, see §481A.125A  
Section not amended; footnote added

## CHAPTER 484C

### PRESERVE WHITETAIL

#### 484C.9 Documentation — inspections.

1. The department shall prepare forms for documents, including records and reports, and provide such forms to landowners in order to comply with this section. The department shall provide procedures for the receipt, filing, processing, and return of documents in an electronic format. The department shall provide for the authentication of the documents that may include electronic signatures as provided in chapter 554D. However, this subsection does not require a landowner to complete or receive a document in an electronic format.

2. A landowner who operates a hunting preserve shall do all of the following:

*a.* Keep records as required by the department. The records shall be open for inspection at any reasonable time by the department.

*b.* File an annual report with the department

on or before June 30. The report shall describe the hunting preserve operations during the preceding twelve months. The original report shall be forwarded to the department and a copy shall be retained in the hunting preserve's file for three years from the date of expiration of the landowner's last registration as provided in section 484C.7.

*c.* Keep a record of a documented event as required by the department. The record of the documented event shall be entered in the annual report required in this section. The record of the documented event shall be maintained by the landowner and submitted to the department. The entry of the documented event shall be made within twenty-four hours after its occurrence as prescribed by departmental rule.

Remote control or internet hunting prohibited, see §481A.125A  
Section not amended; footnote added

## CHAPTER 490

### BUSINESS CORPORATIONS

#### 490.120 Filing requirements.

1. A document must satisfy the requirements of this section, and of any other section that adds to or varies these requirements, to be entitled to filing.

2. The document must be filed in the office of the secretary of state.

3. The document must contain the information required by this chapter. It may contain other information as well.

4. The document must be typewritten or printed. If the document is electronically transmitted, it must be in a format that can be retrieved or reproduced in typewritten or printed form.

5. The document must be in the English language. A corporate name need not be in English if written in English letters or Arabic or Roman numerals, and the certificate of existence required of foreign corporations need not be in English if accompanied by a reasonably authenticated English translation.

6. Except as provided in section 490.1622, subsection 2, the document must be executed by one of the following methods:

*a.* The chairperson of the board of directors of a domestic or foreign corporation, its president, or another of its officers.

*b.* If directors have not been selected or the corporation has not been formed, by an incorporator.

*c.* If the corporation is in the hands of a receiver, trustee, or other court-appointed fiduciary, by that fiduciary.

7. The person executing the document shall sign it and state beneath or opposite the person's signature, the person's name and the capacity in which the person signs. The document may, but need not, contain a corporate seal, attestation, acknowledgment, or verification.

The secretary of state may accept for filing a document containing a copy of a signature, however made.

8. If the secretary of state has prescribed a mandatory form for the document under section 490.121, the document must be in or on the prescribed form.

9. The document must be delivered to the office of the secretary of state for filing. Delivery may be made by electronic transmission if and to the extent permitted by the secretary of state. If it is filed in typewritten or printed form and not transmitted electronically, the secretary of state may require one exact or conformed copy to be delivered with the document, except as provided in sections 490.503 and 490.1509.

10. When the document is delivered to the office of the secretary of state for filing, the correct filing fee, and any franchise tax, license fee, or penalty, shall be paid in a manner permitted by the secretary of state.

11. The secretary of state may adopt rules for the electronic filing of documents and the certification of electronically filed documents.

12. Whenever a provision of this chapter permits any of the terms of a plan or a filed document to be dependent on facts objectively ascertainable outside of the plan or filed document, all of the following provisions apply:

a. The manner in which the facts will operate upon the terms of the plan or filed document shall be set forth in the plan or filed document.

b. The facts may include, but are not limited to any of the following:

(1) Any of the following that is available in a nationally recognized news or information medium either in print or electronically: statistical or market indices, market prices of any security or group of securities, interest rates, currency exchange rates, or similar economic or financial data.

(2) A determination or action by any person or body, including the corporation or any other party to a plan or filed document.

(3) The terms of, or actions taken under, an agreement to which the corporation is a party, or any other agreement or document.

c. As used in this subsection:

(1) “*Filed document*” means a document filed with the secretary of state under any provision of this chapter except division XV or section 490.1622.

(2) “*Plan*” means a plan of merger or share exchange.

d. The following provisions of a plan or filed document may not be made dependent on facts outside the plan or filed document:

(1) The name and address of any person required in a filed document.

(2) The registered office of any entity required in a filed document.

(3) The registered agent of any entity required in a filed document.

(4) The number of authorized shares and designation of each class or series of shares.

(5) The effective date of a filed document.

(6) Any required statement in a filed document of the date on which the underlying transaction was approved or the manner in which that approval was given.

e. If a provision of a filed document is made dependent on a fact ascertainable outside of the filed document, and that fact is not ascertainable by reference to a source described in paragraph “b”, subparagraph (1), or a document that is a matter of public record, or the affected shareholders have not received notice of the fact from the corporation, then the corporation shall file with the secretary of state articles of amendment setting forth the fact promptly after the time when the fact referred to is first ascertainable or thereafter changes. Articles of amendment under this paragraph are deemed to be authorized by the authorization

of the original filed document to which they relate and may be filed by the corporation without further action by the board of directors or the shareholders.

2007 Acts, ch 140, §1  
NEW subsection 12

**490.122 Filing, service, and copying fees.**

1. The secretary of state shall collect the following fees when the documents described in this subsection are delivered to the secretary’s office for filing:

DOCUMENT	FEE
a. Articles of incorporation . . . . .	\$ 50
b. Application for use of indistinguishable name . . . . .	\$ 10
c. Application for reserved name . . . . .	\$ 10
d. Notice of transfer of reserved name . . . . .	\$ 10
e. Application for registered name per month or part thereof . . . . .	\$ 2
f. Application for renewal of registered name . . . . .	\$ 20
g. Corporation’s statement of change of registered agent or registered office or both . . . . .	No fee
h. Agent’s statement of change of registered office for each affected corporation . . . . .	No fee
i. Agent’s statement of resignation . . . . .	No fee
j. Amendment of articles of incorporation . . . . .	\$ 50
k. Restatement of articles of incorporation with amendment of articles . . . . .	\$ 50
l. Articles of merger or share exchange . . . . .	\$ 50
m. Articles of dissolution . . . . .	\$ 5
n. Articles of revocation of dissolution . . . . .	\$ 5
o. Certificate of administrative dissolution . . . . .	No fee
p. Application for reinstatement following administrative dissolution . . . . .	\$ 5
q. Certificate of reinstatement . . . . .	No fee
r. Certificate of judicial dissolution . . . . .	No fee
s. Application for certificate of authority . . . . .	\$100
t. Application for amended certificate of authority . . . . .	\$100
u. Application for certificate of withdrawal . . . . .	\$ 10
v. Certificate of revocation of authority to transact business . . . . .	No fee
w. Articles of correction . . . . .	\$ 5
x. Application for certificate of existence or authorization . . . . .	\$ 5
y. Any other document required or permitted to be filed by this chapter . . . . .	\$ 5

2. The secretary of state shall collect a fee of five dollars each time process is served on the secretary under this chapter. The party to a proceeding causing service of process is entitled to recover this fee as costs if the party prevails in the proceeding.

3. The secretary of state shall collect the following fees for copying and certifying the copy of any filed document relating to a domestic or foreign corporation:

- a. \$1.00 a page for copying.
- b. \$5.00 for the certificate.

Filing fee for biennial report; §490.1622  
 Authority to refund fees; 2005 Acts, ch 173, §18; 2006 Acts, ch 1177, §21;  
 2007 Acts, ch 217, §20  
 Section not amended; footnote revised

#### 490.140 Definitions.

In this chapter, unless the context requires otherwise:

1. “*Articles of incorporation*” include amended and restated articles of incorporation and articles of merger.

2. “*Authorized shares*” means the shares of all classes a domestic or foreign corporation is authorized to issue.

3. “*Conspicuous*” means so written that a reasonable person against whom the writing is to operate should have noticed it. For example, printing in italics or boldface or contrasting color, or typing in capitals or underlined, is conspicuous.

4. “*Cooperative association*” means an entity which is structured and operated on a cooperative basis pursuant to 26 U.S.C. § 1381(a) and which meets the definitional requirements of an association as provided in 12 U.S.C. § 1141(j)(a) or 7 U.S.C. § 291.

5. “*Corporation*” or “*domestic corporation*” means a corporation for profit, which is not a foreign corporation, incorporated under or subject to this chapter.

6. “*Deliver*” or “*delivery*” means any method of delivery used in conventional commercial practice, including delivery in person, by mail, commercial delivery, and electronic transmission.

7. “*Distribution*” means a direct or indirect transfer of money or other property, except its own shares, or incurrence of indebtedness by a corporation to or for the benefit of its shareholders in respect of any of its shares. A distribution may be in the form of a declaration or payment of a dividend; a purchase, redemption, or other acquisition of shares; a distribution of indebtedness; or otherwise.

8. “*Effective date of notice*” is defined in section 490.141.

9. “*Electronic transmission*” or “*electronically transmitted*” means any process of communication not directly involving the physical transfer of paper that is suitable for the retention, retrieval, and reproduction of information by the recipient.

10. “*Employee*” includes an officer but not a director. A director may accept duties that make the director also an employee.

11. “*Entity*” includes corporation and foreign corporation; not-for-profit corporation; profit and not-for-profit unincorporated association; business trust, estate, partnership, trust, and two or

more persons having a joint or common economic interest; and state, United States, and foreign government.

12. The phrase “*facts objectively ascertainable*” outside of a filed document or plan is defined in section 490.120, subsection 12.

13. “*Foreign corporation*” means a corporation for profit incorporated under a law other than the law of this state.

14. “*Governmental subdivision*” includes authority, city, county, district, township, and other political subdivision.

15. “*Includes*” denotes a partial definition.

16. “*Individual*” includes the estate of an incompetent, a ward, or a deceased individual.

17. “*Means*” denotes an exhaustive definition.

18. “*Notice*” is defined in section 490.141.

19. “*Person*” means a person as defined in section 4.1.

20. “*Principal office*” means the office, in or out of this state, so designated in the biennial report, where the principal executive offices of a domestic or foreign corporation are located.

21. “*Proceeding*” includes civil suit and criminal, administrative, and investigatory action.

22. “*Record date*” means the date established under division VI or VII on which a corporation determines the identity of its shareholders for purposes of this chapter.

23. “*Secretary*” means the corporate officer to whom the board of directors has delegated responsibility under section 490.840, subsection 3, for custody of the minutes of the meetings of the board of directors and of the shareholders and for authenticating records of the corporation.

24. “*Share*” means the unit into which the proprietary interests in a corporation are divided.

25. “*Shareholder*” means the person in whose name shares are registered in the records of a corporation or the beneficial owner of shares to the extent of the rights granted by a nominee certificate on file with a corporation.

26. “*Sign*” or “*signature*” includes any manual, facsimile, conformed, or electronic signature.

27. “*State*”, when referring to a part of the United States, includes a state and commonwealth and their agencies and governmental subdivisions, and a territory and insular possession and their agencies and governmental subdivisions, of the United States.

28. “*Subscriber*” means a person who subscribes for shares in a corporation, whether before or after incorporation.

29. “*United States*” includes a district, authority, bureau, commission, department, and any other agency of the United States.

30. “*Voting group*” means all shares of one or more classes or series that under the articles of incorporation or this chapter are entitled to vote and be counted together collectively on a matter at a meeting of shareholders. All shares entitled by

the articles of incorporation or this chapter to vote generally on the matter are for that purpose a single voting group.

31. “*Voting power*” means the current power to vote in the election of directors.

2007 Acts, ch 140, §2

NEW subsection 12 and former subsections 12 – 30 renumbered as 13  
– 31

#### 490.202 Articles of incorporation.

1. The articles of incorporation must set forth all of the following:

a. A corporate name for the corporation that satisfies the requirements of section 490.401.

b. The number of shares the corporation is authorized to issue.

c. The street address of the corporation’s initial registered office and the name of its initial registered agent at that office.

d. The name and address of each incorporator.

2. The articles of incorporation may set forth any or all of the following:

a. The names and addresses of the individuals who are to serve as the initial directors.

b. Provisions not inconsistent with law regarding:

(1) The purpose or purposes for which the corporation is organized.

(2) Managing the business and regulating the affairs of the corporation.

(3) Defining, limiting, and regulating the powers of the corporation, its board of directors, and shareholders.

(4) A par value for authorized shares or classes of shares.

(5) The imposition of personal liability on shareholders for the debts of the corporation to a specified extent and upon specified conditions.

c. Any provision that under this chapter is required or permitted to be set forth in the bylaws.

d. A provision eliminating or limiting the liability of a director to the corporation or its shareholders for money damages for any action taken, or any failure to take any action, as a director, except liability for any of the following:

(1) The amount of a financial benefit received by a director to which the director is not entitled.

(2) An intentional infliction of harm on the corporation or the shareholders.

(3) A violation of section 490.833.

(4) An intentional violation of criminal law.

A provision shall not eliminate or limit the liability of a director for an act or omission occurring prior to the date when the provision in the articles of incorporation becomes effective.

e. A provision permitting or making obligatory indemnification of a director for liability, as defined in section 490.850, subsection 5, to any person for any action taken, or any failure to take any action, as a director, except liability for any of the following:

(1) Receipt of a financial benefit to which the

person is not entitled.

(2) An intentional infliction of harm on the corporation or its shareholders.

(3) A violation of section 490.833.

(4) An intentional violation of criminal law.

3. The articles of incorporation need not set forth any of the corporate powers enumerated in this chapter.

4. Provisions of the articles of incorporation may be made dependent upon facts objectively ascertainable outside the articles of incorporation in accordance with section 490.120.

2007 Acts, ch 140, §3

NEW subsection 4

#### 490.601 Authorized shares.

1. The articles of incorporation must set forth any classes of shares and series of shares within a class, and the number of shares of each class and series, that the corporation is authorized to issue. If more than one class or series of shares is authorized, the articles of incorporation must prescribe a distinguishing designation for each class or series and must describe, prior to the issuance of shares of a class or series, the terms, including the preferences, rights, and limitations of that class or series. Except to the extent varied as permitted by this section, all shares of a class or series must have terms, including preferences, rights, and limitations that are identical with those of other shares of the same class or series.

2. The articles of incorporation must authorize all of the following:

a. One or more classes or series of shares that together have unlimited voting rights.

b. One or more classes or series of shares, which may be the same class or classes as those with voting rights, that together are entitled to receive the net assets of the corporation upon dissolution.

3. The articles of incorporation may authorize one or more classes or series of shares that have any of the following qualities:

a. Have special, conditional, or limited voting rights, or no right to vote, except to the extent otherwise provided by this chapter.

b. Are redeemable or convertible as specified in the articles of incorporation in any of the following ways:

(1) At the option of the corporation, the shareholder, or another person or upon the occurrence of a specified event.

(2) For cash, indebtedness, securities, or other property.

(3) At prices and in amounts specified, or determined in accordance with a designated formula.

c. Entitle the holders to distributions calculated in any manner, including dividends that may be cumulative, noncumulative, or partially cumulative.

d. Have preference over any other class or se-

ries of shares with respect to distributions, including distributions upon the dissolution of the corporation.

4. The terms of shares may be made dependent upon facts objectively ascertainable outside the articles of incorporation in accordance with section 490.120, subsection 12.

5. The terms of shares may vary among holders of the same class or series so long as such variations are expressly set forth in the articles of incorporation.

6. The description of the preferences, rights, and limitations of classes or series of shares in subsection 3 is not exhaustive.

2007 Acts, ch 140, §4  
Section amended

#### **490.602 Terms of class or series determined by board of directors.**

1. If the articles of incorporation so provide, the board of directors is authorized, without shareholder approval, to do any of the following:

a. Classify any unissued shares into one or more series within a class.

b. Reclassify any unissued shares of any class into one or more classes or into one or more series within one or more classes.

c. Reclassify any unissued shares of any series of any class into one or more classes or into one or more series within a class.

2. If the board of directors acts pursuant to subsection 1, it must determine the terms, including the preferences, rights, and limitations, to the same extent permitted under section 490.601, of any of the following:

a. Any class of shares before the issuance of any shares of that class.

b. Any series within a class before the issuance of any shares of that series.

3. Before issuing any shares of a class or series created under this section, the corporation must deliver to the secretary of state for filing articles of amendment setting forth the terms determined under subsection 1.

2007 Acts, ch 140, §5  
Section stricken and rewritten

#### **490.624 Share options.**

1. A corporation may issue rights, options, or warrants for the purchase of shares or other securities of the corporation. The board of directors shall determine (i) the terms upon which the rights, options, or warrants are issued, and (ii) the terms, including the consideration for which the shares or other securities are to be issued. The authorization by the board of directors for the corporation to issue such rights, options, or warrants constitutes authorization of the issuance of the shares or other securities for which the rights, options, or warrants are exercisable.

2. The terms and conditions of such rights, options, or warrants, including those outstanding on

the effective date of this section, may include, without limitation, restrictions, or conditions that do any of the following:

a. Preclude or limit the exercise, transfer, or receipt of such rights, options, or warrants by any person or persons owning or offering to acquire a specified number or percentage of the outstanding shares or other securities of the corporation or by any transferee or transferees of any such person or persons.

b. Invalidate or void such rights, options, or warrants held by any such person or persons or any such transferee or transferees.

2007 Acts, ch 140, §6  
Section amended

#### **490.1005 Amendment by board of directors.**

Unless the articles of incorporation provide otherwise, a corporation's board of directors may adopt amendments to the corporation's articles of incorporation without shareholder approval for any of the following purposes:

1. To extend the duration of the corporation if it was incorporated at a time when limited duration was required by law.

2. To delete the names and addresses of the initial directors.

3. To delete the name and address of the initial registered agent or registered office, if a statement of change is on file with the secretary of state.

4. If the corporation has only one class of shares outstanding:

a. To change each issued and unissued authorized share of the class into a greater number of whole shares of that class.

b. To increase the number of authorized shares of the class to the extent necessary to permit the issuance of shares as a share dividend.

5. To change the corporate name by substituting the word "corporation", "incorporated", "company", "limited", or the abbreviation "corp.", "inc.", "co.", or "ltd.", for a similar word or abbreviation in the name, or by adding, deleting, or changing a geographical attribution for the name.

6. To reflect a reduction in authorized shares, as a result of the operation of section 490.631, subsection 2, when the corporation has acquired its own shares and the articles of incorporation prohibit the reissue of the acquired shares.

7. To delete a class of shares from the articles of incorporation, as a result of the operation of section 490.631, subsection 2, when there are no remaining shares of the class because the corporation has acquired all shares of the class and the articles of incorporation prohibit the reissue of the acquired shares.

8. To make any change expressly permitted by section 490.602, subsection 1 or 2, to be made without shareholder approval.

2007 Acts, ch 140, §7  
Subsection 8 amended



**490.1006 Articles of amendment.**

After an amendment to the articles of incorporation has been adopted and approved in the manner required by this chapter and by the articles of incorporation, the corporation shall deliver to the secretary of state, for filing, articles of amendment, which shall set forth all of the following:

1. The name of the corporation.
2. The text of each amendment adopted, or the information required by section 490.120, subsection 12, paragraph “e”.

3. If an amendment provides for an exchange, reclassification, or cancellation of issued shares, provisions for implementing the amendment, if not contained in the amendment itself, which may be made dependent upon facts objectively ascertainable outside the articles of amendment in accordance with section 490.120, subsection 12.

4. If an amendment:
  - a. Required approval by the shareholders, a statement that the amendment was duly approved by the shareholders in the manner required by this chapter and by the articles of incorporation.
  - b. Is being filed pursuant to section 490.120, subsection 12, a statement to that effect.

2007 Acts, ch 140, §8  
Section amended

**490.1102 Merger.**

1. One or more domestic corporations may merge with a domestic or foreign corporation or other entity pursuant to a plan of merger.

2. A foreign corporation, or domestic or foreign other entity, may be a party to the merger, or may be created by the terms of the plan of merger, only if both of the following are satisfied:

- a. The merger is permitted by the laws under which the corporation or other entity is organized or by which it is governed.

- b. In effecting the merger, the corporation or other entity complies with such laws and with its articles of incorporation or organizational documents.

3. The plan of merger must include all of the following:

- a. The name of each corporation or other entity that will merge and the name of the corporation or other entity that will be the survivor of the merger.

- b. The terms and conditions of the merger.

- c. The manner and basis of converting the shares of each merging corporation and interests of each merging other entity into shares, or other securities, interests, obligations, rights to acquire shares or other securities, cash, other property, or any combination of the foregoing.

- d. The articles of incorporation of any corporation, or the organizational documents of any other entity, to be created by the merger, or if a new corporation or other entity is not to be created by the merger, any amendments to the survivor’s articles

of incorporation or organizational documents.

- e. Any other provisions required by the laws under which any party to the merger is organized or by which it is governed, or by the articles of incorporation or organizational documents of any such party.

4. The terms of a plan of merger may be made dependent on facts objectively ascertainable outside the plan in accordance with section 490.120, subsection 12.

5. The plan of merger may also include a provision that the plan may be amended prior to filing the articles of merger with the secretary of state, provided that if the shareholders of a domestic corporation that is a party to the merger are required or permitted to vote on the plan, the plan must provide that subsequent to approval of the plan by such shareholders the plan shall not be amended to change any of the following:

- a. Change the amount or kind of shares or other securities, interests, obligations, rights to acquire shares or other securities, cash, or other property to be received by the shareholders or owners of interests in any party to the merger upon conversion of their shares or interests under the plan.

- b. Change the articles of incorporation of any corporation, or the organizational documents of any other entity, that will survive or be created as a result of the merger, except for changes permitted by section 490.1005 or by comparable provisions of the laws under which the foreign corporation or other entity is organized or governed.

- c. Change any of the other terms or conditions of the plan if the change would adversely affect such shareholders in any material respect.

2007 Acts, ch 140, §9  
Subsection 4 amended

**490.1103 Share exchange.**

1. Either of the following may occur through a share exchange:

- a. A domestic corporation may acquire all of the shares of one or more classes or series of shares of another domestic or foreign corporation, or all of the interests of one or more classes or series of interests of a domestic or foreign other entity, in exchange for shares or other securities, interests, obligations, rights to acquire shares or other securities, cash, other property, or any combination of the foregoing, pursuant to a plan of share exchange.

- b. All of the shares of one or more classes or series of shares of a domestic corporation may be acquired by another domestic or foreign corporation or other entity, in exchange for shares or other securities, interests, obligations, rights to acquire shares or other securities, cash, other property, or any combination of the foregoing, pursuant to a plan of share exchange.

2. A foreign corporation, or a domestic or foreign other entity, may be a party to the share ex-

change only if both of the following conditions are met:

*a.* The share exchange is permitted by the laws under which the corporation or other entity is organized or by which it is governed.

*b.* In effecting the share exchange, the corporation or other entity complies with such laws and with its articles of incorporation or organizational documents.

3. The plan of share exchange must include all of the following:

*a.* The name of each corporation or other entity whose shares or interests will be acquired and the name of the corporation or other entity that will acquire those shares or interests.

*b.* The terms and conditions of the share exchange.

*c.* The manner and basis of exchanging shares of a corporation or interests in an other entity whose shares or interests will be acquired under the share exchange into shares or other securities, interests, obligations, rights to acquire shares or other securities, cash, other property, or any combination of the foregoing.

*d.* Any other provisions required by the laws under which any party to the share exchange is organized or by the articles of incorporation or organizational documents of any such party.

4. The terms of a share exchange may be made dependent on facts objectively ascertainable outside the plan in accordance with section 490.120, subsection 12.

5. The plan of share exchange may also include a provision that the plan may be amended prior to filing of the articles of share exchange with the secretary of state, provided that if the shareholders of a domestic corporation that is a party to the share exchange are required or permitted to vote on the plan, the plan must provide that subsequent to approval of the plan by such shareholders the plan shall not be amended to change either of the following:

*a.* The amount or kind of shares or other securities, interests, obligations, rights to acquire shares or other securities, cash, or other property to be issued by the corporation or to be received by the shareholders of or owners of interests in any party to the share exchange in exchange for their shares or interests under the plan.

*b.* Any of the terms or conditions of the plan if the change would adversely affect such shareholders in any material respect.

6. This section does not limit the power of a domestic corporation to acquire shares of another corporation or interests in an other entity in a transaction other than a share exchange.

2007 Acts, ch 140, §10  
Subsection 4 amended

#### **490.1601 Corporate records.**

1. A corporation shall keep as permanent records minutes of all meetings of its shareholders and board of directors, a record of all actions taken by the shareholders or board of directors without a meeting, and a record of all actions taken by a committee of the board of directors in place of the board of directors on behalf of the corporation.

2. A corporation shall maintain appropriate accounting records.

3. A corporation or its agent shall maintain a record of its shareholders in a form that permits preparation of a list of the names and addresses of all shareholders in alphabetical order by class of shares showing the number and class of shares held by each.

4. A corporation shall maintain its records in written form or in another form capable of conversion into written form within a reasonable time.

5. A corporation shall keep a copy of the following records at its principal office:

*a.* Its articles or restated articles of incorporation, all amendments to them currently in effect, and any notices to shareholders referred to in section 490.120, subsection 12, paragraph “e”, regarding facts on which a filed document is dependent.

*b.* Its bylaws or restated bylaws and all amendments to them currently in effect.

*c.* Resolutions adopted by its board of directors creating one or more classes or series of shares, and fixing their relative rights, preferences, and limitations, if shares issued pursuant to those resolutions are outstanding.

*d.* The minutes of all shareholders’ meetings, and records of all action taken by shareholders without a meeting, for the past three years.

*e.* All written communications to shareholders generally within the past three years, including the financial statements furnished for the past three years under section 490.1620.

*f.* A list of the names and business addresses of its current directors and officers.

*g.* Its most recent biennial report delivered to the secretary of state under section 490.1622.

2007 Acts, ch 140, §11, 12  
Subsection 5, unnumbered paragraph 1 and paragraph a amended

## CHAPTER 490A

### LIMITED LIABILITY COMPANIES

#### 490A.1501 Definitions.

As used in this subchapter, unless the context otherwise requires:

1. “*Employees*” or “*agents*” does not include clerks, stenographers, secretaries, bookkeepers, technicians, or other persons who are not usually and ordinarily considered by custom and practice to be practicing a profession nor any other person who performs all that person’s duties for the professional limited liability company under the direct supervision and control of one or more managers, employees, or agents of the professional limited liability company who are duly licensed in this state to practice a profession which the limited liability company is authorized to practice in this state. This chapter does not require any such persons to be licensed to practice a profession if they are not required to be licensed under any other law of this state.
2. “*Foreign professional limited liability company*” means a limited liability company organized under laws other than the laws of this state for a purpose for which a professional limited liability company may be organized under this chapter.
3. “*Licensed*” includes registered, certified, admitted to practice, or otherwise legally authorized under the laws of this state.
4. “*Profession*” means the profession of certified public accountancy, architecture, chiropractic, dentistry, physical therapy, psychology, profes-

sional engineering, land surveying, landscape architecture, law, medicine and surgery, optometry, osteopathy, osteopathic medicine and surgery, accounting practitioner, podiatry, real estate brokerage, speech pathology, audiology, veterinary medicine, pharmacy, nursing, and marriage and family therapy, provided that the marriage and family therapist is licensed under chapters 147 and 154D.

5. “*Professional limited liability company*” means a limited liability company subject to this subchapter, except a foreign professional limited liability company.

6. “*Regulating board*” means any board, commission, court, or governmental authority which, under the laws of this state, is charged with the licensing, registration, certification, admission to practice, or other legal authorization of the practitioners of any profession.

7. “*Voluntary transfer*” includes a sale, voluntary assignment, gift, pledge, or encumbrance; a voluntary change of legal or equitable ownership or beneficial interest; or a voluntary change of persons having voting rights with respect to any membership interest, except as proxies; but does not include a transfer of an individual’s membership interest or other property to a guardian or conservator appointed for that individual or the individual’s property.

2007 Acts, ch 13, §1  
Subsection 4 amended

## CHAPTER 496C

### PROFESSIONAL CORPORATIONS

#### 496C.2 Definitions.

For words used in this chapter, unless the context otherwise requires, the definitions contained in the Iowa business corporation Act, chapter 490, apply, and:

1. “*Employees*” or “*agents*” does not include clerks, stenographers, secretaries, bookkeepers, technicians, or other persons who are not usually and ordinarily considered by custom and practice to be practicing a profession, nor any other person who performs all that person’s duties for the professional corporation under the direct supervision and control of one or more officers, employees, or agents of the professional corporation who are duly licensed in this state to practice a profession which the corporation is authorized to practice in this state. This chapter shall not be construed to require any such persons to be licensed to practice

a profession if they are not required to be licensed under any other law of this state.

2. “*Foreign professional corporation*” means a corporation organized under laws other than the laws of this state for a purpose for which a professional corporation may be organized under this chapter.

3. “*Licensed*” includes registered, certified, admitted to practice, or otherwise legally authorized under the laws of this state.

4. “*Profession*” means the profession of certified public accountancy, architecture, chiropractic, dentistry, physical therapy, psychology, professional engineering, land surveying, landscape architecture, law, medicine and surgery, optometry, osteopathy, osteopathic medicine and surgery, accounting practitioner, podiatry, real estate brokerage, speech pathology, audiology, veterinary medi-

cine, pharmacy, and the practice of nursing.

5. “*Professional corporation*” means a corporation subject to this Act, except a foreign professional corporation.

6. “*Regulating board*” means any board, commission, court, or governmental authority which, under the laws of this state, is charged with the licensing, registration, certification, admission to practice, or other legal authorization of the practitioners of any profession.

7. “*Voluntary transfer*” includes any sale, vol-

untary assignment, gift, pledge, or encumbrance; any voluntary change of legal or equitable ownership or beneficial interest; or any voluntary change of persons having voting rights with respect to any shares, except as proxies; but does not include any transfer of an individual’s shares or other property to a guardian or conservator appointed for such individual or the individual’s property.

2007 Acts, ch 13, §2  
Subsection 4 amended

## CHAPTER 499

### COOPERATIVE ASSOCIATIONS

#### 499.15 Certificates of membership or stock.

The association may issue certificates of membership or stock, each of which states the fixed dividend, if any, and the restrictions or limitations upon its ownership, voting, transfer, redemption, or cancellation.

2007 Acts, ch 23, §1  
Section amended

#### 499.16 Subscriptions — stock or membership.

If permitted by the association’s articles of incorporation, any eligible subscriber for common stock or membership may vote and be treated as a member after making part payment of the amount, if any, required to be paid for the common stock or membership in cash, giving the subscriber’s note for the balance, and satisfying any other requirement for the subscription as set forth in the articles. A subscription may be forfeited as provided in section 499.32. Stock or membership shall not be issued until payment of the amount, if any, required to be paid for the stock or membership is fully made. A subscriber shall not hold office until the association has issued the subscriber stock or membership.

2007 Acts, ch 23, §2  
Section amended

#### 499.17 Transfer of stock or membership.

No common stock shall be transferable, unless the articles expressly provide for transfer to others eligible for membership. Such provision may require that the transfer be preceded by an offer to the association, or be otherwise restricted. No nonstock membership shall be transferable, and if the association issues certificates of membership or stock to a member, the certificates shall be surrendered to the association on the member’s voluntary withdrawal.

2007 Acts, ch 23, §3  
Section amended

#### 499.44 Execution and filing of documents.

1. The secretary of state shall record all documents submitted to and required to be filed with the secretary under this chapter.

2. *a.* A document required to be filed with the secretary of state pursuant to this chapter must be executed. The person executing the document must be the association’s presiding officer of the board of directors, or the association’s president or other officer. However, if the board of directors has not been selected or the association has not been formed, the document must be signed by an incorporator of the association. If the association is under the control of a person acting as a fiduciary of the association, including a trustee or receiver, the document must be signed by the fiduciary.

*b.* A document required to be executed shall contain the printed name of the person executing the document and the capacity in which the person serves the association. The signature of the person must appear above or opposite the person’s printed name and capacity. In the discretion of the secretary of state, a document containing a copy of the person’s signature may be accepted for filing. The document may also contain a corporate seal, an attestation by the secretary of state or person charged by the secretary, or an acknowledgment, verification, or proof that the execution is valid.

3. Articles of incorporation, amendments to articles, or renewal of articles must be filed with the secretary of state. The association’s corporate existence shall begin upon approval by the secretary of state of the articles and issuance of the certificate of incorporation.

4. A document required to be filed with the secretary of state pursuant to this chapter is effective at the later of the following times:

*a.* The time of filing on the date it is filed, as evidenced by the secretary of state’s date and time endorsement on the original document.

*b.* The delayed effective time and date specified in the document. If a delayed effective date

but no time is specified in the document, the document is effective at the close of business on that date. A delayed effective date for a document shall not be later than the ninetieth day after the date it is filed.

5. *a.* A document filed under this section may be corrected if the document contains an incorrect statement or the execution of the document was defective. A document is corrected by filing with the secretary articles of correction which describe the document to be corrected, including its filing date or a copy of the document. The articles must specify the incorrect statement or defective execution, and correct the incorrect statement or defective execution.

*b.* Articles of correction are deemed to be effective on the date that the document corrected took or takes effect. However, as applied to persons relying upon the uncorrected document or adversely affected by the articles of correction, the effective date of the articles of correction is the date that the articles are filed.

2007 Acts, ch 23, §4  
Filing and recording, §491.5  
Subsection 2, former unnumbered paragraphs 1 and 2 designated as subsection 2, paragraphs a and b  
Subsection 3 amended  
Subsection 5, former unnumbered paragraphs 1 and 2 designated as subsection 5, paragraphs a and b

#### 499.47 Dissolution.

1. An association whose duration has expired, or which is sooner dissolved by voluntary act of its members, shall continue to exist for the purpose of winding up its affairs until its complete liquidation under subsection 3 hereof.

2. An association may be dissolved by two-thirds of all votes cast at any meeting called for

that purpose at which a majority of all voting members vote.

3. Upon the expiration or voluntary dissolution of an association, the members shall designate three of their number as trustees to replace the officers and directors and wind up its affairs. The trustees shall have all the powers of the board, including the power to sell and convey real or personal property and execute conveyances. Within the time fixed in their designation, or any extension of that time, the trustees shall liquidate the association's assets, pay its debts and expenses, and distribute remaining funds among the members. Upon distribution of remaining assets the association shall stand dissolved and cease to exist. The trustees shall make and sign a report of the dissolution. The report shall be filed with the secretary of state.

4. The trustees and their successors in office shall be chosen, and the time for their action fixed and extended, by a majority of all votes cast at any meeting called for such purpose.

2007 Acts, ch 23, §5; 2007 Acts, ch 215, §254  
Subsection 3 amended

#### 499.73A Change of principal office.

An association may change its principal office by delivering to the secretary of state for filing a statement of change that sets forth all of the following:

1. The name of the association.
2. The street address of its current principal office.
3. The street address of its new principal office.

2007 Acts, ch 23, §6  
NEW section

## CHAPTER 499A

### MULTIPLE HOUSING

#### 499A.101 Definitions.

As used in this subchapter, unless the context otherwise requires:

1. "*Advisor*" means a member of the association's advisory committee.
2. "*Association*" means a sweat equity housing cooperative association created pursuant to this subchapter.
3. "*Authority*" means a local housing authority created pursuant to section 499A.102.

4. "*Low income*" means the income of "*very low income families*" as defined in section 16.1.

5. "*Partner*" means a low-income sweat equity member of the association, and member of the sweat equity partners' committee.

6. "*Sweat equity*" means any contribution made by a partner to the operations of the association, including but not limited to physical labor.

Section not amended; internal reference change applied

## CHAPTER 499B

### HORIZONTAL PROPERTY (CONDOMINIUMS)

#### 499B.6 Copy of the floor plans to be filed.

There shall be attached to the declaration, at the time it is filed, a full and an exact copy of the plans of the building, which copy shall be entered of record along with the declaration. The plans shall show graphically all particulars of the building including, but not limited to, the dimensions, area, and location of common elements affording access

to each apartment. Other common elements, both limited and general, shall be shown graphically insofar as possible and shall be certified to by an engineer, architect, or land surveyor, who is registered or licensed to practice that profession in this state.

2007 Acts, ch 22, §85  
Section amended

## CHAPTER 501A

### COOPERATIVE ASSOCIATIONS ACT

#### 501A.1101 Merger and consolidation.

1. *Authorization.* Unless otherwise prohibited, cooperatives organized under the laws of this state, including cooperatives organized under this chapter or traditional cooperatives, may merge or consolidate with each other, an Iowa limited liability company under the provisions of section 490A.1207, or other business entities organized under the laws of another state by complying with the provisions of this section and the law of the state where the surviving or new business entity will exist. A cooperative shall not merge or consolidate with a business entity organized under the laws of this state, other than a traditional cooperative, unless the law governing the business entity expressly authorizes merger or consolidation with a cooperative. This subsection does not authorize a foreign business entity to do any act not authorized by the law governing the foreign business entity.

2. *Plan.* To initiate a merger or consolidation of a cooperative, a written plan of merger or consolidation shall be prepared by the board or by a committee selected by the board to prepare a plan. The plan shall state all of the following:

*a.* The names of the constituent domestic cooperative, the name of any Iowa limited liability company that is a party to the merger, to the extent authorized under section 490A.1207, and any foreign business entities.

*b.* The name of the surviving or new domestic cooperative, Iowa limited liability company as required by section 490A.1207, or other foreign business entity.

*c.* The manner and basis of converting membership or ownership interests of the constituent domestic cooperative, the Iowa limited liability company that is a party as provided in section 490A.1207, or foreign business entity into membership or ownership interests in the surviving or new domestic cooperative, the surviving Iowa lim-

ited liability company as authorized in section 490A.1207, or foreign business entity.

*d.* The terms of the merger or consolidation.

*e.* The proposed effect of the merger or consolidation on the members and patron members of each constituent domestic cooperative.

*f.* For a consolidation, the plan shall contain the articles of the entity or organizational documents to be filed with the state in which the entity is organized or, if the surviving organization is an Iowa limited liability company, the articles of organization.

3. *Notice.* The following shall apply to notice:

*a.* The board shall mail or otherwise transmit or deliver notice of the merger or consolidation to each member. The notice shall contain the full text of the plan, and the time and place of the meeting at which the plan will be considered.

*b.* A cooperative with more than two hundred members may provide the notice in the same manner as a regular members' meeting notice.

4. *Adoption of plan.*

*a.* A plan of merger or consolidation shall be adopted by a domestic cooperative as provided in this subsection.

*b.* The plan of merger or consolidation is adopted if all of the following apply:

(1) A quorum of the members eligible to vote is registered as being present or represented by mail vote or alternative ballot at the meeting.

(2) The plan is approved by the patron members, or if otherwise provided in the articles or bylaws, is approved by a majority of the votes cast in each class of votes cast. For a domestic cooperative with articles or bylaws requiring more than a majority of the votes cast or other conditions for approval, the plan must be approved by a proportion of the votes cast or a number of total members as required by the articles or bylaws and the conditions for approval in the articles or bylaws have been satisfied.

c. After the plan has been adopted, articles of merger or consolidation stating the plan and that the plan was adopted according to this subsection shall be signed by the chairperson, vice chairperson, or records officer of each cooperative merging or consolidating.

d. The articles of merger or consolidation shall be filed in the office of the secretary.

e. For a merger, the articles of the surviving domestic cooperative subject to this chapter are deemed amended to the extent provided in the articles of merger.

f. Unless a later date is provided in the plan, the merger or consolidation is effective when the articles of merger or consolidation are filed in the office of the secretary or the appropriate office of another jurisdiction.

g. The secretary shall issue a certificate of organization of the merged or consolidated cooperative.

5. *Effect of merger or consolidation.* For a merger that does not involve an Iowa limited liability company, the following shall apply to the effect of a merger:

a. After the effective date, the domestic cooperative, Iowa limited liability company, if party to the plan, and any foreign business entity that is a party to the plan become a single entity. For a merger, the surviving business entity is the busi-

ness entity designated in the plan. For a consolidation, the new domestic cooperative, the Iowa limited liability company, if any, and any foreign business entity is the business entity provided for in the plan. Except for the surviving or new domestic cooperative, Iowa limited liability company, or foreign business entity, the separate existence of each merged or consolidated domestic or foreign business entity that is a party to the plan ceases on the effective date of the merger or consolidation.

b. The surviving or new domestic cooperative, Iowa limited liability company, or foreign business entity possesses all of the rights and property of each of the merged or consolidated business entities and is responsible for all their obligations. The title to property of the merged or consolidated domestic cooperative, Iowa limited liability company, or foreign business entity is vested in the surviving or new domestic cooperative, Iowa limited liability company, or foreign business entity without reversion or impairment of the title caused by the merger or consolidation.

c. If a merger involves an Iowa limited liability company, this subsection is subject to the provisions of section 490A.1207.

2007 Acts, ch 126, §86  
Subsection 4, paragraph c amended

## CHAPTER 502

### UNIFORM SECURITIES ACT (Blue Sky Law)

#### **502.404 Investment adviser representative registration requirement and exemptions.**

1. *Registration requirement.* It is unlawful for an individual to transact business in this state as an investment adviser representative unless the individual is registered under this chapter as an investment adviser representative or is exempt from registration as an investment adviser representative under subsection 2.

2. *Exemptions from registration.* All of the following individuals are exempt from the registration requirement of subsection 1:

a. An individual who is employed by or associated with an investment adviser that is exempt from registration under section 502.403, subsection 2, or a federal covered investment adviser that is excluded from the notice filing requirements of section 502.405.

b. Any other individual exempted by rule adopted or order issued under this chapter.

3. *Registration effective only while employed or associated.* The registration of an investment adviser representative is not effective while the

investment adviser representative is not employed by or associated with an investment adviser registered under this chapter or a federal covered investment adviser that has made or is required to make a notice filing under section 502.405.

4. *Limit on affiliations.* An individual may transact business as an investment adviser representative for more than one investment adviser or federal covered investment adviser unless a rule adopted or order issued under this chapter prohibits or limits an individual from acting as an investment adviser representative for more than one investment adviser or federal covered investment adviser.

5. *Limits on employment or association.* It is unlawful for an individual acting as an investment adviser representative, directly or indirectly, to conduct business in this state on behalf of an investment adviser or a federal covered investment adviser if the registration of the individual as an investment adviser representative is suspended or revoked or the individual is barred from employment or association with an investment adviser.

er or a federal covered investment adviser by an order under this chapter, the securities and exchange commission, or a self-regulatory organization. Upon request from a federal covered investment adviser and for good cause, the administrator, by order issued, may waive, in whole or in part, the application of the requirements of this subsection to the investment adviser representative.

6. *Referral fees.* An investment adviser registered under this chapter, a federal covered investment adviser that has filed a notice under section 502.405, or a broker-dealer registered under this chapter is not required to employ or associate with an individual as an investment adviser representative if the only compensation paid to the individual for a referral of investment advisory clients is paid to an investment adviser registered under this chapter, a federal covered investment adviser who has filed a notice under section 502.405, or a broker-dealer registered under this chapter with whom the individual is employed or associated as an investment adviser representative.

2007 Acts, ch 126, §87  
Subsection 5 amended

#### **502.602 Investigations and subpoenas.**

1. *Authority to investigate.* The administrator may do any of the following:

a. Conduct public or private investigations within or outside of this state which the administrator considers necessary or appropriate to determine whether a person has violated, is violating, or is about to violate this chapter or a rule adopted or order issued under this chapter, or to aid in the enforcement of this chapter or in the adoption of rules and forms under this chapter.

b. Require or permit a person to testify, file a statement, or produce a record, under oath or otherwise as the administrator determines, as to all the facts and circumstances concerning a matter to be investigated or about which an action or proceeding is to be instituted.

c. Notwithstanding section 502.607, subsection 2, publish a record concerning an action, proceeding, or an investigation under, or a violation of, this chapter or a rule adopted or order issued under this chapter if the administrator determines it is necessary or appropriate in the public interest and for the protection of investors.

2. *Administrator powers to investigate.* For the purpose of an investigation under this chapter, the administrator or the administrator's designated officer may administer oaths and affirmations, subpoena witnesses, seek compulsion of attendance, take evidence, require the filing of statements, and require the production of any records that the administrator considers relevant or material to the investigation, all of which may be enforced pursuant to chapter 17A.

3. *Procedure and remedies for noncompliance.* If a person does not appear or refuses to testify, file

a statement, produce records, or otherwise does not obey a subpoena as required by the administrator under this chapter, the administrator may apply to the Polk county district court or the district court for the county in which the person resides or is located or a court of another state to enforce compliance. The court may do any of the following:

a. Hold the person in contempt.

b. Order the person to appear before the administrator.

c. Order the person to testify about the matter under investigation or in question.

d. Order the production of records.

e. Grant injunctive relief, including restricting or prohibiting the offer or sale of securities or the providing of investment advice.

f. Impose a civil penalty of an amount not to exceed a maximum of five thousand dollars for a single violation or five hundred thousand dollars for more than one violation.

g. Grant any other necessary or appropriate relief.

4. *Application for relief.* This section does not preclude a person from applying to district court or a court of another state for relief from a request to appear, testify, file a statement, produce records, or obey a subpoena.

5. *Use immunity procedure.* An individual is not excused from attending, testifying, filing a statement, producing a record or other evidence, or obeying a subpoena of the administrator under this chapter or in an action or proceeding instituted by the administrator under this chapter on the ground that the required testimony, statement, record, or other evidence, directly or indirectly, may tend to incriminate the individual or subject the individual to a criminal fine, penalty, or forfeiture. If the individual refuses to testify, file a statement, or produce a record or other evidence on the basis of the individual's privilege against self-incrimination, the administrator may apply to the district court to compel the testimony, the filing of the statement, the production of the record, or the giving of other evidence. The testimony, record, or other evidence compelled under such an order shall not be used, directly or indirectly, against the individual in a criminal case, except in a prosecution for perjury or contempt or otherwise failing to comply with the order.

6. *Assistance to securities regulator of another jurisdiction.* At the request of the securities regulator of another state or a foreign jurisdiction, the administrator may provide assistance if the requesting regulator states that it is conducting an investigation to determine whether a person has violated, is violating, or is about to violate a law or rule of the other state or foreign jurisdiction relating to securities matters that the requesting regulator administers or enforces. The administrator may provide the assistance by using the authority to investigate and the powers conferred by this



section as the administrator determines is necessary or appropriate. The assistance may be provided without regard to whether the conduct described in the request would also constitute a violation of this chapter or other law of this state if occurring in this state. In deciding whether to provide the assistance, the administrator may consider whether the requesting regulator is permitted and has agreed to provide assistance reciprocally within its state or foreign jurisdiction to the administrator on securities matters when requested, whether compliance with the request would violate or prejudice the public policy of this state, and the availability of resources and employees of the administrator to carry out the request for assistance.

2007 Acts, ch 137, §3  
Subsection 3, unnumbered paragraph 1 amended

### 502.603 Civil enforcement.

1. *Civil action instituted by administrator.* If the administrator believes that a person has engaged, is engaging, or is about to engage in an act, practice, or course of business constituting a violation of this chapter or a rule adopted or order issued under this chapter or that a person has, is, or is about to engage in an act, practice, or course of business that materially aids a violation of this chapter or a rule adopted or order issued under this chapter, the administrator may maintain an action in the county in which the person against whom the action is being brought resides, has a principal place of business, or is doing business, or in the county where the transaction or any substantial portion of the transaction which is the subject of the action occurred, or in the county in which one or more of the victims of the transaction which is the subject of the action resides, to enjoin the act, practice, or course of business and to enforce compliance with this chapter or a rule adopted or order issued under this chapter.

2. *Relief available.* In an action under this section and on a proper showing, the court may do any of the following:

a. Issue a permanent or temporary injunction, restraining order, or declaratory judgment.

b. Order other appropriate or ancillary relief, which may include any of the following:

(1) Ordering an asset freeze, accounting, writ of attachment, writ of general or specific execution, and appointment of a receiver or conservator, that may be the administrator, for the defendant or the defendant's assets.

(2) Ordering the administrator to take charge and control of a defendant's property, including investment accounts and accounts in a depository institution, rents, and profits; to collect debts; and to acquire and dispose of property.

(3) Imposing a civil penalty not to exceed a maximum of five thousand dollars for a single violation or five hundred thousand dollars for more than one violation; an order of rescission, restitu-

tion, or disgorgement directed to a person that has engaged in an act, practice, or course of business constituting a violation of this chapter or the predecessor chapter or a rule adopted or order issued under this chapter or the predecessor chapter.

(4) Ordering the payment of prejudgment and postjudgment interest.

c. Order such other relief as the court considers appropriate.

3. *No bond required.* The administrator shall not be required to post a bond in an action or proceeding under this chapter.

2007 Acts, ch 137, §4  
Subsection 1 amended

### 502.604 Administrative enforcement.

1. *Issuance of an order or notice.* If the administrator determines that a person has engaged, is engaging, or is about to engage in an act, practice, or course of business constituting a violation of this chapter or a rule adopted or order issued under this chapter or that a person has materially aided, is materially aiding, or is about to materially aid an act, practice, or course of business constituting a violation of this chapter or a rule adopted or order issued under this chapter, the administrator may do any of the following:

a. Issue an order directing the person to cease and desist from engaging in the act, practice, or course of business or to take other action necessary or appropriate to comply with this chapter.

b. Issue an order denying, suspending, revoking, or conditioning the exemptions for a broker-dealer under section 502.401, subsection 2, paragraph "a", subparagraph (4) or (6), or an investment adviser under section 502.403, subsection 2, paragraph "a", subparagraph (3).

c. Issue an order under section 502.204.

2. *Summary process.* An order under subsection 1 is effective on the date of issuance. Upon issuance of the order, the administrator shall promptly serve each person subject to the order with a copy of the order and a notice that the order has been entered. The order must include a statement of any civil penalty or costs of investigation the administrator will seek, a statement of the reasons for the order, and notice that, within thirty days after receipt of a request in a record from the person, the matter will be scheduled for a hearing. If a person subject to the order does not request a hearing and none is ordered by the administrator within thirty days after the date of service of the order, the order, including the imposition of a civil penalty or requirement for payment of costs of investigation sought in the order, becomes final as to that person by operation of law. If a hearing is requested or ordered, the administrator, after notice of and opportunity for hearing to each person subject to the order, may modify or vacate the order or extend it until final determination.

3. *Procedure for final order.* If a hearing is re-

requested or ordered pursuant to subsection 2, a hearing must be held pursuant to chapter 17A. A final order shall not be issued unless the administrator makes findings of fact and conclusions of law in a record in accordance with chapter 17A. The final order may make final, vacate, or modify the order issued under subsection 1.

4. *Civil penalty.* In a final order under subsection 3, the administrator may impose a civil penalty up to an amount not to exceed a maximum of five thousand dollars for a single violation or five hundred thousand dollars for more than one violation.

5. *Costs.* In a final order, the administrator may charge the actual cost of an investigation or proceeding for a violation of this chapter or a rule adopted or order issued under this chapter.

6. *Filing of certified final order with court — effect of filing.* If a petition for judicial review of a final order is not filed in accordance with section 502.609, the administrator may file a certified copy of the final order with the clerk of a court of competent jurisdiction. The order so filed has the

same effect as a judgment of the court and may be recorded, enforced, or satisfied in the same manner as a judgment of the court.

7. *Enforcement by court — further civil penalty.* If a person does not comply with an order under this section, the administrator may petition the Polk county district court or the district court for the county in which the person resides or is located to enforce the order. The court shall not require the administrator to post a bond in an action or proceeding under this section. If the court finds, after service and opportunity for hearing, that the person was not in compliance with the order, the court may adjudge the person in civil contempt of the order. The court may impose a further civil penalty against the person for contempt in an amount not less than three thousand dollars but not greater than ten thousand dollars for each violation and may grant any other relief the court determines is just and proper in the circumstances.

2007 Acts, ch 137, §5  
Subsections 2 and 7 amended

## CHAPTER 504

### REVISED IOWA NONPROFIT CORPORATION ACT

#### 504.113 Filing, service, and copying fees.

1. The secretary of state shall collect the following fees, as provided by the secretary of state, when the documents described in this subsection are delivered for filing:

DOCUMENT	FEE
a. Articles of incorporation . . . . .	\$ ___
b. Application for use of indistinguishable name . . . . .	\$ ___
c. Application for reserved name . . . . .	\$ ___
d. Notice of transfer of reserved name . . . . .	\$ ___
e. Application for registered name . . . . .	\$ ___
f. Application for renewal of registered name . . . . .	\$ ___
g. Corporation's statement of change of registered agent or registered office or both . . . . .	\$ ___
h. Agent's statement of change of registered office for each affected corporation not to exceed a total of . . . . .	\$ ___
i. Agent's statement of resignation . . . . .	No fee
j. Amendment of articles of incorporation . . . . .	\$ ___
k. Restatement of articles of incorporation with amendments . . . . .	\$ ___
l. Articles of merger . . . . .	\$ ___
m. Articles of dissolution . . . . .	\$ ___
n. Articles of revocation of dissolution . . . . .	\$ ___
o. Certificate of administrative dissolution . . . . .	\$ ___

p. Application for reinstatement following administrative dissolution . . . . .	\$ ___
q. Certificate of reinstatement . . . . .	No fee
r. Certificate of judicial dissolution . . . . .	No fee
s. Application for certificate of authority . . . . .	\$ ___
t. Application for amended certificate of authority . . . . .	\$ ___
u. Application for certificate of withdrawal . . . . .	\$ ___
v. Certificate of revocation of authority to transact business . . . . .	No fee
w. Biennial report . . . . .	\$ ___
x. Articles of correction . . . . .	\$ ___
y. Application for certificate of existence or authorization . . . . .	\$ ___
z. Any other document required or permitted to be filed by this chapter . . . . .	\$ ___

2. The secretary of state shall collect a fee upon being served with process under this chapter. The party to a proceeding causing service of process is entitled to recover the fee paid the secretary of state as costs if the party prevails in the proceeding.

3. The secretary of state shall collect fees for copying and certifying the copy of any filed document relating to a domestic or foreign corporation.

Authority to refund fees for fiscal year beginning July 1, 2007, and ending June 30, 2008; 2007 Acts, ch 217, §20  
Section not amended; footnote added

**504.801 Requirement for and duties of board.**

1. Each corporation must have a board of directors.

2. Except as otherwise provided in this chapter or subsection 3, all corporate powers shall be exercised by or under the authority of, and the affairs of the corporation managed under the direction of, its board.

3. The articles of incorporation may authorize a person or persons to exercise some or all of the powers which would otherwise be exercised by a board. To the extent so authorized, any such person or persons shall have the duties and responsibilities of the directors, and the directors shall be relieved to that extent from such duties and responsibilities.

2007 Acts, ch 126, §88  
Subsection 2 amended

**504.831 General standards for directors.**

1. Each member of the board of directors of a corporation, when discharging the duties of a director, shall act in conformity with all of the following:

*a.* In good faith.

*b.* In a manner the director reasonably believes to be in the best interests of the corporation.

2. The members of the board of directors or a committee of the board, when becoming informed in connection with their decision-making functions or when devoting attention to their oversight functions, shall discharge their duties with the care that a person in a like position would reasonably believe appropriate under similar circumstances.

3. In discharging board or committee duties, a director who does not have knowledge that makes reliance unwarranted is entitled to rely on the performance by any of the persons specified in subsection 5, paragraph “a”, to whom the board may have delegated, formally or informally by course of conduct, the authority or duty to perform one or more

of the board’s functions that are delegable under applicable law.

4. In discharging board or committee duties, a director who does not have knowledge that makes reliance unwarranted is entitled to rely on information, opinions, reports, or statements, including financial statements and other financial data, if prepared or presented by any of the persons specified in subsection 5.

5. A director is entitled to rely, in accordance with subsection 3 or 4, on any of the following:

*a.* One or more officers or employees of the corporation whom the director reasonably believes to be reliable and competent in the functions performed or the information, opinions, reports, or statements provided by the officer or employee.

*b.* Legal counsel, public accountants, or other persons as to matters involving skills or expertise the director reasonably believes are either of the following:

(1) Matters within the particular person’s professional or expert competence.

(2) Matters as to which the particular person merits confidence.

*c.* A committee of the board of which the director is not a member, as to matters within its jurisdiction, if the director reasonably believes the committee merits confidence.

*d.* In the case of religious corporations, religious authorities and ministers, priests, rabbis, or other persons whose position or duties in the religious organization the director believes justify reliance and confidence and whom the director believes to be reliable and competent in the matters presented.

6. A director shall not be deemed to be a trustee with respect to the corporation or with respect to any property held or administered by the corporation, including without limit, property that may be subject to restrictions imposed by the donor or transferor of such property.

2007 Acts, ch 15, §1  
Subsections 2 and 4 amended

## CHAPTER 505

### INSURANCE DIVISION

**505.8 General powers and duties.**

1. The commissioner of insurance shall be the head of the division, and shall have general control, supervision, and direction over all insurance business transacted in the state, and shall enforce all the laws of the state relating to such insurance.

2. The commissioner shall, subject to chapter 17A, establish, publish, and enforce rules not inconsistent with law for the enforcement of this subtitle and for the enforcement of the laws, the administration and supervision of which are imposed on the division, including rules to establish

fees sufficient to administer the laws, where appropriate fees are not otherwise provided for in rule or statute.

3. The commissioner shall supervise all transactions relating to the organization, reorganization, liquidation, and dissolution of domestic insurance corporations, and all transactions leading up to the organization of such corporations.

4. The commissioner shall also supervise the sale in the state of all stock, certificates, or other evidences of interest, either by domestic or foreign insurance companies or organizations proposing

to engage in any insurance business.

5. The commissioner shall supervise all health insurance purchasing cooperatives providing services or operating within the state and the organization of domestic cooperatives. The commissioner may admit nondomestic health insurance purchasing cooperatives under the same standards as domestic cooperatives.

6. *a.* Notwithstanding chapter 22, the commissioner shall keep confidential both information obtained in the course of an investigation and information submitted to the insurance division pursuant to chapters 514J and 515D.

*b.* The commissioner shall adopt rules protecting the privacy of information held by an insurer or an agent consistent with the federal Gramm-Leach-Bliley Act, Pub. L. No. 106-102.

*c.* However, notwithstanding paragraphs “*a*” and “*b*”, if the commissioner determines that it is necessary or appropriate in the public interest or for the protection of the public, the commissioner may share information with other regulatory authorities or governmental agencies or may publish information concerning a violation of this chapter or a rule or order under this chapter. Such information may be redacted so that personally identifiable information is not made available.

*d.* The commissioner may adopt rules protecting the privacy of information submitted to the insurance division consistent with this section.

7. Notwithstanding chapter 22, the commissioner may keep confidential any social security number, residence address, and residence telephone number that is contained in a record filed as part of a licensing, registration, or filing process if disclosure is not required in the performance of any duty or is not otherwise required under law.

8. The commissioner may, after a hearing conducted pursuant to chapter 17A, assess fines or penalties, order restitution, or take other corrective action as the commissioner deems necessary and appropriate to accomplish compliance with the laws of the state relating to all insurance business transacted in the state.

9. The commissioner may do any of the following:

*a.* Conduct public or private investigations within or outside of this state which the commissioner deems necessary or appropriate to determine whether a person has violated, is violating, or is about to violate a provision of any chapter of this subtitle or a rule adopted or order issued under any chapter of this subtitle, or to aid in the enforcement of any chapter of this subtitle or in the adoption of rules and forms under any chapter of this subtitle.

*b.* Require or permit a person to testify, file a statement, or produce a record under oath or otherwise as the commissioner determines, concerning facts and circumstances relating to a matter being investigated or about which an action or proceeding will be instituted.

*c.* Notwithstanding subsection 6, publish a record concerning an action, proceeding, or investigation under, or a violation of, any chapter of this subtitle or a rule adopted or order issued under any chapter of this subtitle, if the commissioner determines that such publication is in the public interest and is necessary and appropriate for the protection of the public.

10. For the purpose of an investigation made under any chapter of this subtitle, the commissioner or the commissioner’s designee may administer oaths and affirmations, subpoena witnesses, seek compulsory attendance, take evidence, require the filing of statements, and require the production of any records that the commissioner considers relevant or material to the investigation, pursuant to rules adopted under chapter 17A.

11. If a person does not appear or refuses to testify, or does not file a statement or produce records, or otherwise does not obey a subpoena or order issued by the commissioner under any chapter of this subtitle, the commissioner may, in addition to assessing the penalties contained in sections 505.7A, 507B.6A, 507B.7, 522B.11, and 522B.17, make application to a district court of this state or another state to enforce compliance with the subpoena or order. A court to whom application is made to enforce compliance with a subpoena or order pursuant to this subtitle may do any of the following:

*a.* Hold the person in contempt.

*b.* Order the person to appear before the commissioner.

*c.* Order the person to testify about the matter under investigation.

*d.* Order the production of records.

*e.* Grant injunctive relief, including restricting or prohibiting the offer or sale of insurance or insurance advice.

*f.* Impose a civil penalty as set forth in section 505.7A.

*g.* Grant any other necessary or appropriate relief.

12. This section shall not be construed to prohibit a person from applying to a district court of this state or another state for relief from a subpoena or order issued by the commissioner under any chapter of this subtitle.

13. An individual shall not be relieved of an order to appear, testify, file a statement, produce a record or other evidence, or obey a subpoena or other order of the commissioner made under any chapter of this subtitle on the grounds that fulfillment of the requirement may, directly or indirectly, tend to incriminate the individual or subject the individual to a criminal fine, penalty, or forfeiture. If an individual refuses to obey a subpoena or order by asserting that individual’s privilege against self-incrimination, the commissioner may apply to the district court to compel the individual to obey the subpoena or order of the commissioner. Testimony, records, or other evidence that is compelled

by a court enforcing an order of the commissioner shall not be used, directly or indirectly, against that individual in a criminal case, except in a prosecution for perjury or contempt or for otherwise failing to comply with the order.

14. Upon request of the insurance regulator of another state or foreign jurisdiction, the commissioner may provide assistance in conducting an investigation to determine whether a person has violated, is violating, or is about to violate an insurance law or rule of the other state or foreign jurisdiction administered or enforced by that insurance regulator. The commissioner may provide such assistance pursuant to the powers conferred under this section as the commissioner determines is necessary or appropriate under the circumstances. Such assistance may be provided regardless of whether the conduct being investigated would constitute a violation of this subtitle or any other law of this state if the conduct occurred in this state. In determining whether to provide such assistance the commissioner may consider whether the insurance regulator requesting the assistance is permitted to and has agreed to reciprocate in providing assistance to the commissioner

upon request, whether compliance with the request would violate or prejudice the public policy of this state, and the availability of division commissioner resources and employees to provide such assistance.

2007 Acts, ch 137, §6; 2007 Acts, ch 215, §117  
See also §523A.801 and 523I.201  
NEW subsections 8 – 14

**505.26 Prescription drug assistance clearinghouse program.** Repealed by 2007 Acts, ch 137, § 30.

**505.27A Sale of life insurance to military personnel.**

Notwithstanding any other provision of this title, the commissioner of insurance shall have the authority to adopt such rules related to the sale of life insurance, other than the servicemembers' group life insurance program under 38 U.S.C. pt. II, ch. 19, subch. III, as may be necessary to protect military personnel located either on a United States military installation or elsewhere in this state and to carry out the provisions of this title.

2007 Acts, ch 137, §7  
NEW section

## CHAPTER 506

### DOMESTIC INSURANCE COMPANIES

**506.13 New officers or directors — biographical affidavit required.**

Within thirty days after a quarterly or annual statement of an insurance company domiciled in this state first names an individual as an officer or director of the company on the jurat page of the quarterly or annual statement, the new officer or

director shall file a biographical affidavit with the commissioner. The affidavit shall be prepared on the current template for biographical affidavits prescribed by the national association of insurance commissioners.

2007 Acts, ch 137, §8  
NEW section

## CHAPTER 507

### EXAMINATION OF INSURANCE COMPANIES

**507.14 Confidential documents — exceptions.**

1. A preliminary report of an examination of a domestic or foreign insurer, and all notes, work papers, or other documents related to an examination of an insurer are confidential records under chapter 22 except when sought by the insurer to whom they relate, an insurance regulator of another state, or the national association of insurance commissioners, and shall be privileged and confidential in any judicial or administrative proceeding except any of the following:

- a. An action commenced by the commissioner under chapter 507C.
- b. An administrative proceeding brought by

the insurance division under chapter 17A.

c. A judicial review proceeding under chapter 17A brought by an insurer to whom the records relate.

d. An action or proceeding which arises out of the criminal provisions of the laws of this state or the United States.

e. An action brought in a shareholders' derivative suit against an insurer.

f. An action brought to recover moneys or to recover upon an indemnity bond for embezzlement, misappropriation, or misuse of insurer funds.

2. A report of an examination of a domestic or foreign insurer which is preliminary under the

rules of the division is a confidential record under chapter 22 except when sought by the insurer to which the report relates or an insurance regulator of another state, and is privileged and confidential in any judicial or administrative proceeding.

3. All work papers, notes, recorded information, documents, market conduct annual statements, and copies thereof that are produced or obtained by or disclosed to the commissioner or any other person in the course of analysis by the commissioner of the financial condition or market conduct of an insurer are confidential records under chapter 22 and shall be privileged and confidential in any judicial or administrative proceeding except any of the following:

a. An action commenced by the commissioner under chapter 507C.

b. An administrative proceeding brought by the insurance division under chapter 17A.

c. A judicial review proceeding under chapter 17A brought by an insurer to whom the records relate.

d. An action or proceeding which arises out of the criminal provisions of the laws of this state or the United States.

4. Confidential documents, materials, information, administrative or judicial orders, or other actions may be disclosed to a regulatory official of any state, federal agency, or foreign country provided that the recipients are required, under their law, to maintain their confidentiality. Confidential records may be disclosed to the national association of insurance commissioners provided that the association certifies by written statement that the confidentiality of the records will be maintained.

5. A financial statement filed by an employer

self-insuring workers' compensation liability pursuant to section 87.11, or the working papers of an examiner or the division in connection with calculating appropriate security and reserves for the self-insured employer are confidential records under chapter 22 except when sought by the employer to which the financial statement or working papers relate or an insurance or workers' compensation self-insurance regulator of another state, and are privileged and confidential in any judicial or administrative proceeding. The financial information of a nonpublicly traded employer which self-insures for workers' compensation liability pursuant to section 87.11 is protected as proprietary trade secrets to the extent consistent with the commissioner's duties to oversee the security of self-insured workers' compensation liability.

6. Analysis notes, work papers, or other documents related to the analysis of an insurer are confidential records under chapter 22.

Statements of actuarial opinion, see §515H.3  
Section not amended; footnote added

#### **507.16 Unlawful solicitation of business.**

It shall be unlawful for any officer, manager, agent, or representative of any insurance company contemplated by this chapter, who, with knowledge that its certificate of authority has been suspended or revoked, or that it is insolvent, or is doing an unlawful or unauthorized business, to solicit or receive applications for insurance for the company, or to do any other act or thing toward receiving or procuring any new business for the company. The provisions of sections 505.7A and 511.17 are extended to all companies contemplated by this chapter.

2007 Acts, ch 126, §89  
Section amended

## CHAPTER 507A

### UNAUTHORIZED INSURERS

#### **507A.4 Transactions where law not applicable.**

The provisions of this chapter shall not apply to:

1. The lawful transaction of surplus lines insurance as permitted by sections 515.120 through 515.122.

2. The lawful transaction of reinsurance by insurers.

3. Attorneys acting in the ordinary relation of attorney and client in the adjustment of claims or losses.

4. Transactions in this state involving a policy lawfully solicited, written, and delivered outside of this state, covering subjects of insurance not resident located, or expressly to be performed in this state at the time of issue, and which transactions are subsequent to the issuance of the policy.

5. Transactions in this state involving group or blanket insurance and group annuities where the master policy of such groups was lawfully issued and delivered in a state in which the company was authorized to do an insurance business.

6. Transactions in this state involving any policy of insurance issued prior to July 1, 1967.

7. Insurance on vessels, craft or hulls, cargoes, marine builder's risk, marine protection and indemnity or other risk including strikes and war risks commonly insured under ocean or wet marine forms of policy.

8. Transactions involving risks located in this state where the policy or contract of insurance for such risk was principally negotiated and delivered outside this state and was lawfully issued in a state or foreign country in which the foreign or

alien insurer was authorized to do an insurance business, and where such insurer has no contact with this state except in connection with inspections or losses required by virtue of the contract or policy of insurance covering the risk located in this state.

9. *a.* Transactions involving a multiple employer welfare arrangement, as defined in section 3 of the federal Employee Retirement Income Security Act of 1974, 29 U.S.C. § 1002, paragraph 40, if the multiple employer welfare arrangement meets all of the following conditions:

(1) The arrangement is administered by an authorized insurer or an authorized third-party administrator.

(2) The arrangement has been in existence and provided health insurance in Iowa for at least five years prior to July 1, 1997.

(3) The arrangement was established by a trade, industry, or professional association of employers that has a constitution or bylaws, and has been organized and maintained in good faith for at least ten continuous years prior to July 1, 1997.

(4) The arrangement registers with and obtains a certificate of registration issued by the commissioner of insurance.

(5) The arrangement is subject to the jurisdiction of the commissioner of insurance, including regulatory oversight and solvency standards as established by rules adopted by the commissioner of insurance pursuant to chapter 17A.

*b.* A multiple employer welfare arrangement registered with the commissioner of insurance that does not meet the solvency standards established by rule adopted by the commissioner of insurance is subject to chapter 507C.

*c.* A multiple employer welfare arrangement that meets all of the conditions of paragraph “*a*” shall not be considered any of the following:

(1) An insurance company or association of any kind or character under section 432.1.

(2) A member of the Iowa individual health benefit reinsurance association under section 513C.10.

(3) A member insurer of the Iowa life and health insurance guaranty association under section 508C.5, subsection 8.

*d.* A multiple employer welfare arrangement registered with the commissioner of insurance shall file with the commissioner of insurance on or before March 1 of each year a copy of the report required to be filed with the United States department of labor pursuant to 29 C.F.R. § 2520.101-2.

*e.* When not otherwise provided, a foreign or domestic multiple employer welfare arrangement doing business in this state shall pay to the commissioner of insurance the fees as required in section 511.24.

10. *a.* A self-funded health benefit plan sponsored by an employer in this state under the federal Employee Retirement Income Security Act of 1974, as codified in 29 U.S.C. § 1169, which pro-

vides health benefits to independent contractors of the employer and to spouses and dependents of the independent contractors, if the plan is granted a waiver from the provisions of this chapter by the commissioner and meets all of the following conditions:

(1) There is a written contract between the sponsor of the health benefit plan and the independent contractor which establishes the relationship between the parties to the contract and provides for the personal services to be provided by the independent contractor to the sponsor of the health benefit plan pursuant to the contract.

(2) The personal services to be provided by the independent contractor pursuant to the contract are directly related to the principal business of the sponsor of the health benefit plan.

(3) The contract provides that the independent contractor will provide services to the sponsor of the health benefit plan on an exclusive basis.

(4) The inclusion of the independent contractor in the sponsor’s health benefit plan is incidental to the contractual relationship between the sponsor of the health benefit plan and the independent contractor.

(5) Independent contractors and their spouses and dependents included in an employer-sponsored health benefit plan do not in total equal more than forty-nine percent of the total persons covered by the health benefit plan.

(6) The health benefit plan is administered by an authorized insurer or an authorized third-party administrator.

*b.* The sponsor of the health benefit plan shall file an application for waiver from the provisions of this chapter with the commissioner as prescribed by the commissioner and shall file periodic statements and information as required by the commissioner. The commissioner shall adopt rules pursuant to chapter 17A implementing this subsection. All statements and information filed with or disclosed to the commissioner pursuant to this subsection are confidential records pursuant to chapter 22.

*c.* If at any time the commissioner determines that a health benefit plan for which a waiver has been granted does not meet all of the conditions of paragraph “*a*”, and the rules adopted by the commissioner under paragraph “*b*”, the commissioner may terminate the waiver granted to the health benefit plan.

*d.* A self-funded employer-sponsored health benefit plan which has a valid waiver from the provisions of this chapter shall not be considered any of the following:

(1) An insurance company or association of any kind or character under section 432.1.

(2) A member insurer of the Iowa life and health insurance guaranty association as defined in section 508C.5, subsection 8.

(3) A carrier under chapter 513B.

(4) A member of the Iowa individual health

benefit reinsurance association under section 513C.10.

(5) An entity subject to chapter 514C.

(6) A multiple employer welfare arrangement as defined in subsection 9.

e. A self-funded employer-sponsored health benefit plan which has received a waiver from the provisions of this chapter shall be considered to be a self-funded employer-sponsored health benefit plan under the federal Employee Retirement Income Security Act of 1974, as codified in 29 U.S.C.

§ 1169, and not subject to this title so long as the waiver is in effect.

f. The provision of health benefits to an independent contractor by a self-funded employer-sponsored health benefit plan which meets all of the conditions of paragraph "a" shall not in and of itself create an employer-employee relationship between the independent contractor and the sponsor of the health benefit plan.

2007 Acts, ch 152, §52  
Subsection 1 amended

## CHAPTER 507B

### INSURANCE TRADE PRACTICES

#### **507B.4 Unfair methods of competition and unfair or deceptive acts or practices defined.**

The following are hereby defined as unfair methods of competition and unfair or deceptive acts or practices in the business of insurance:

1. *Misrepresentations and false advertising of insurance policies.* Making, issuing, circulating, or causing to be made, issued or circulated, any estimate, illustration, circular, statement, sales presentation, omission, or comparison which does any of the following:

a. Misrepresents the benefits, advantages, conditions, or terms of any insurance policy.

b. Misrepresents the dividends or share of the surplus to be received on any insurance policy.

c. Makes any false or misleading statements as to the dividends or share of surplus previously paid on any insurance policy.

d. Is misleading or is a misrepresentation as to the financial condition of any person, or as to the legal reserve system upon which any life insurer operates.

e. Uses any name or title of any insurance policy or class of insurance policies misrepresenting the true nature thereof.

f. Is a misrepresentation for the purpose of inducing or tending to induce the lapse, forfeiture, exchange, conversion, or surrender of any insurance policy.

g. Is a misrepresentation for the purpose of effecting a pledge or assignment of or effecting a loan against any insurance policy.

h. Misrepresents any insurance policy as being shares of stock.

i. Misrepresents any insurance policy to consumers by using the terms "burial insurance", "funeral insurance", "burial plan", or "funeral plan" in its names or titles, unless the policy is made with a funeral provider as beneficiary who specifies and fixes a price under contract with an insurance company. This paragraph does not prevent insurers from stating or advertising that insur-

ance benefits may provide cash for funeral or burial expenses.

j. Is a misrepresentation, including any intentional misquote of premium rate, for the purpose of inducing or tending to induce the purchase of an insurance policy.

2. *False information and advertising.*

a. *Generally.* Making, publishing, disseminating, circulating, or placing before the public, or causing, directly or indirectly, to be made, published, disseminated, circulated, or placed before the public in a newspaper, magazine, or other publication, or in the form of a notice, circular, pamphlet, letter, or poster, or over any radio or television station, or in any other way, an advertisement, announcement, or statement containing any assertion, representation, or statement with respect to the business of insurance or with respect to any person in the conduct of the person's insurance business, which is untrue, deceptive, or misleading.

b. *False statement of assets.* In the case of a company transacting the business of fire insurance within the state, stating or representing by advertisement in any newspaper, magazine, or periodical, or by any sign, circular, card, policy of insurance, or renewal certificate thereof or otherwise, that any funds or assets are in its possession and held available for the protection of holders of its policies unless so held, except the policy of insurance or certificate of renewal thereof may state, as a single item, the amount of capital set forth in the charter, or articles of incorporation, or association, or deed of settlement under which it is authorized to transact business.

c. *Statement of capital and surplus.* In the case of a foreign company transacting the business of casualty insurance in the state, or an officer, producer, or representative of such a company, issuing or publishing an advertisement, public announcement, sign, circular, or card that purports to disclose the company's financial standing and fails to exhibit: the capital actually paid in cash,



and the amount of net surplus of assets over all the company's liabilities actually held and available for the payment of losses by fire and for the protection of holders of fire policies; and the amount of net surplus of assets over all liabilities in the United States actually available for the payment of losses by fire and held in the United States for the protection of holders of fire policies in the United States, including in such liabilities the fund reserved for reinsurance of outstanding risks. The amounts stated for capital and net surplus shall correspond with the latest verified statement made by the company or association to the commissioner of insurance. Such a company shall not write, place, or cause to be written or placed, a policy or contract for insurance on property situated or located in this state except through a licensed producer authorized to do business in this state.

3. *Defamation.* Making, publishing, disseminating, or circulating, directly or indirectly, or aiding, abetting or encouraging the making, publishing, disseminating, or circulating of any oral or written statement or any pamphlet, circular, article or literature which is false, or maliciously critical of or derogatory to the financial condition of any person, and which is calculated to injure such person.

4. *Boycott, coercion and intimidation.* Entering into any agreement to commit, or by any concerted action committing, any act of boycott, coercion or intimidation resulting in or tending to result in unreasonable restraint of, or monopoly in, the business of insurance.

5. *False statements and entries.*

a. Knowingly filing with any supervisory or other public official, or knowingly making, publishing, disseminating, circulating or delivering to any person, or placing before the public, or knowingly causing directly or indirectly, to be made, published, disseminated, circulated, delivered to any person, or placed before the public, any false material statement of fact as to the financial condition of a person.

b. Knowingly making any false entry of a material fact in any book, report or statement of any person or knowingly omitting to make a true entry of any material fact pertaining to the business of such person in any book, report or statement of such person.

6. *Stock operations and advisory board contracts.* Issuing or delivering or permitting agents, officers or employees to issue or deliver, agency company stock or other capital stock, or benefit certificates or shares in any common law corporation, or securities or any special or advisory board contracts or other contracts of any kind promising returns and profits as an inducement to insurance.

7. *Unfair discrimination.*

a. Making or permitting any unfair discrimination between individuals of the same class and

equal expectation of life in the rates charged for any contract of life insurance or of life annuity or in the dividends or other benefits payable thereon, or in any other of the terms and conditions of such contract.

b. Making or permitting any unfair discrimination between insureds of the same class for essentially the same hazard in the amount of premium, policy fees, or rates charged for any policy or contract of insurance other than life or in the benefits payable thereunder, or in any of the terms or conditions of such contract, or in any other manner whatever.

c. Making or permitting any discrimination in the sale of insurance solely on the basis of domestic abuse as defined in section 236.2.

8. *Rebates.*

a. Except as otherwise expressly provided by law, knowingly permitting or offering to make or making any contract of life insurance, life annuity or accident and health insurance, or agreement as to such contract other than as plainly expressed in the contract issued thereon, or paying or allowing, or giving or offering to pay, allow, or give, directly or indirectly, as inducement to such insurance, or annuity, any rebate of premiums payable on the contract, or any special favor or advantage in the dividends or other benefits thereon, or any valuable consideration or inducement whatever not specified in the contract; or giving, or selling, or purchasing or offering to give, sell, or purchase as inducement to such insurance or annuity or in connection therewith, any stocks, bonds, or other securities of any insurance company or other corporation, association, or partnership, or any dividends or profits accrued thereon, or any thing of value whatsoever not specified in the contract.

b. Nothing in subsection 7 or paragraph "a" of this subsection shall be construed as including within the definition of discrimination or rebates any of the following practices:

(1) In the case of any contract of life insurance or life annuity, paying bonuses to policyholders or otherwise rebating their premiums in whole or in part out of surplus accumulated from nonparticipating insurance, provided that any such bonuses or rebatement of premiums shall be fair and equitable to policyholders and for the best interests of the company and its policyholders.

(2) In the case of life insurance policies issued on the industrial debit plan, making allowance to policyholders who have continuously for a specified period made premium payments directly to an office of the insurer in an amount which fairly represents the saving in collection expenses.

(3) Readjustment of the rate of premium for a group insurance policy based on the loss or expense experienced thereunder, at the end of the first or any subsequent policy year of insurance thereunder, which may be made retroactive only for such policy year.

c. Paying, allowing, or giving, or offering to

pay, allow, or give, directly or indirectly, as an inducement to purchase or acquire insurance other than life insurance, life annuity, or accident and health insurance, or after insurance has been effected, any rebate, discount, abatement, credit, or reduction of the premium named in a policy of insurance, or any special favor or advantage in the dividends or other benefits to accrue on the policy, or any valuable consideration or inducement, not specified in the policy, except to the extent provided for in an applicable filing. An insured named in a policy, or an employee of the insured, shall not knowingly receive or accept, directly or indirectly, any rebate, discount, abatement, credit, or reduction of premium, or any such special favor or advantage or valuable consideration or inducement.

This paragraph "c" shall not be construed to prohibit the payment of commissions or other compensation to duly licensed producers, or to prohibit any insurer from allowing or returning to its participating policyholders, members, or subscribers, dividends, savings, or unabsorbed premium deposits. As used in this paragraph "c", "insurance" includes suretyship and "policy" includes bond.

9. *Unfair claim settlement practices.* Committing or performing with such frequency as to indicate a general business practice any of the following:

a. Misrepresenting pertinent facts or insurance policy provisions relating to coverages of issue.

b. Failing to acknowledge and act reasonably promptly upon communications with respect to claims arising under insurance policies.

c. Failing to adopt and implement reasonable standards for the prompt investigation of claims arising under insurance policies.

d. Refusing to pay claims without conducting a reasonable investigation based upon all available information.

e. Failing to affirm or deny coverage of claims within a reasonable time after proof of loss statements have been completed.

f. Not attempting in good faith to effectuate prompt, fair, and equitable settlements of claims in which liability has become reasonably clear, or failing to include interest on the payment of claims when required under subsection 15 or section 511.38.

g. Compelling insureds to institute litigation to recover amounts due under an insurance policy by offering substantially less than the amounts ultimately recovered in actions brought by such insureds.

h. Attempting to settle a claim for less than the amount to which a reasonable person would have believed the person was entitled by reference to written or printed advertising material accompanying or made part of an application.

i. Attempting to settle claims on the basis of an application which was altered without notice to, or

knowledge or consent of the insured.

j. Making claims payments to insureds or beneficiaries not accompanied by a statement setting forth the coverage under which payments are being made.

k. Making known to insureds or claimants a policy of appealing from arbitration awards in favor of insureds or claimants for the purpose of compelling them to accept settlements or compromises less than the amount awarded in arbitration.

l. Delaying the investigation or payment of claims by requiring an insured, claimant, or the physician of either to submit a preliminary claim report and then requiring the subsequent submission of formal proof of loss forms, both of which submissions contain substantially the same information.

m. Failing to promptly settle claims, where liability has become reasonably clear, under one portion of the insurance policy coverage in order to influence settlements under other portions of the insurance policy coverage.

n. Failing to promptly provide a reasonable explanation of the basis in the insurance policy in relation to the facts or applicable law for denial of a claim or for the offer of a compromise settlement.

o. Failing to comply with the procedures for auditing claims submitted by health care providers as set forth by rule of the commissioner. However, this paragraph shall have no applicability to liability insurance, workers' compensation or similar insurance, automobile or homeowners' medical payment insurance, disability income, or long-term care insurance.

10. *Use of inquiries.* Considering either of the following events for purposes of surcharging, declining, nonrenewing, or canceling personal lines property and casualty insurance coverage or a binder for personal lines property and casualty insurance coverage:

a. An applicant's or insured's inquiry into the type or level of coverage of a policy, or an inquiry into whether a policy will cover a loss.

b. An insured's inquiry regarding coverage of a policy for a loss if the insured does not file a claim.

11. *History of a property.* Declining to insure a property not previously owned by an applicant for personal lines property and casualty insurance, based solely on the loss history of a previous owner of the property, unless the insurer can provide evidence that the previous owner did not repair damage to the property.

12. *Disclosure of use of claims history.* Failing to inform an applicant at the time that an application for personal lines property and casualty insurance is made, in writing or in the same medium as the application is made, that the insurer will consider the applicant's or insured's claims history in determining whether to decline, cancel, nonrenew, or surcharge such a policy, and that a

claim made by an insured will be reported to an insurance support organization.

13. *Misrepresentation in insurance applications.* Making false or fraudulent statements or representations on or relative to an application for an insurance policy, for the purpose of obtaining a fee, commission, money, or other benefit from any insurer, agent, broker, or individual.

14. *Omission from insurance application.* Failing to designate on an insurance policy application the licensee who has solicited and written the policy.

15. *Payment of interest.* Failure of an insurer to pay interest at the rate of ten percent per annum on all health insurance claims that the insurer fails to timely accept and pay pursuant to section 507B.4A, subsection 2, paragraph “d”. Interest shall accrue commencing on the thirty-first day after receipt of all properly completed proof of loss forms.

For purposes of this subsection, “insurer” means an entity providing a plan of health insurance, health care benefits, or health care services, or an entity subject to the jurisdiction of the commissioner performing utilization review, including an insurance company offering sickness and accident

plans, a health maintenance organization, an organized delivery system authorized under 1993 Iowa Acts, ch. 158, and licensed by the department of public health, a nonprofit health service corporation, a plan established pursuant to chapter 509A for public employees, or any other entity providing a plan of health insurance, health care benefits, or health care services. However, “insurer” does not include an entity that sells disability income or long-term care insurance.

16. *Rating organizations.* Any violation of section 515F.16.

17. *Minor traffic violations.* Failure of a person to comply with section 516B.3.

18. *Information.* Failing or refusing to furnish any policyholder or applicant, upon reasonable request, information to which that individual is entitled.

For purposes of subsections 10, 11, and 12, “personal lines property and casualty insurance” means insurance sold to individuals and families primarily for noncommercial purposes as provided in chapter 522B.

2007 Acts, ch 152, §53, 54  
See §513C.9 for additional unfair practices  
Subsection 2 amended  
Subsection 8, NEW paragraph c

## CHAPTER 508

### LIFE INSURANCE COMPANIES

#### 508.10 Foreign companies — capital or surplus — investments.

1. A company incorporated by or organized under the laws of any other state or government shall not transact business in this state unless it is possessed of the actual amount of capital and surplus required of any company organized by the laws of this state, or, if it be a mutual company, of surplus equal in amount thereto.

2. An alien insurer, with the approval of the commissioner, may be treated as a domestic insurer of this state in whole or in part, and if so approved is deemed to be organized under the laws of this state and is an Iowa domestic insurer as provided by rules adopted by the commissioner. The approval of the commissioner may be based upon such factors as:

a. Maintenance of an appropriate trust account, surplus account, or other financial mechanism in this state.

b. Maintenance of all books and records of United States operations in this state.

c. Maintenance of a separate financial reporting system for its United States operations.

d. Any other provisions deemed necessary by the commissioner.

3. A foreign company authorized to do business in this state shall not assumptively reinsure a block of business which includes policyholders residing in this state to a company not authorized to do business in this state without the prior written approval of the commissioner.

2007 Acts, ch 137, §9  
Section amended

## CHAPTER 509

### GROUP INSURANCE

#### 509.1 Form of policy.

No policy of group life, accident or health insurance shall be delivered in this state unless it conforms to one of the following descriptions:

1. A policy issued to an employer, or to the trustees of a fund established by an employer, which employer or trustee shall be deemed the policyholder, to insure employees of the employer for

the benefit of persons other than the employer, subject to the following requirements:

*a.* The employees eligible for insurance under the policy shall be all of the employees of the employer, or all of any class or classes thereof determined by conditions pertaining to their employment. The policy may provide that the term “employees” shall include the employees of one or more subsidiary corporations, and the employees, individual proprietors, and partners of one or more affiliated corporations, proprietors or partnerships if the business of the employer and of such affiliated corporations, proprietors or partnerships is under common control through stock ownership, contract, or otherwise. The policy may provide that the term “employees” shall include the individual proprietor or partners if the employer is an individual proprietor or a partnership. The policy may provide that the term “employees” shall include retired employees. The policy may also provide that the term “employees” shall include the board of directors if the employer is a corporation.

*b.* The premium for the group policy shall be paid by the policyholder, either from the employer’s funds or funds contributed by the insured employees, or from both. A policy of group accident and health insurance on which part of the premium is to be derived from funds contributed by the insured employees may be placed in force only if at least seventy-five percent of the then eligible employees, excluding any as to whom evidence of individual insurability is not satisfactory to the insurer, elect to make the required contributions. A policy on which no part of the premium is to be derived from funds contributed by the insured employees must insure all eligible employees, or all except any as to whom evidence of individual insurability is not satisfactory to the insurer. As used in this paragraph, “accident and health insurance” does not include disability income insurance.

*c.* The amounts of insurance under the policy must be based upon some plan precluding individual selection either by the employees or by the employer or trustees.

*d.* Group policies may include dependents of the employee, including the spouse.

*e.* The policy shall not exclude from coverage an employee or an employee’s spouse or dependents on the basis of the eligibility of the employee or the employee’s spouse or dependents for medical assistance under chapter 249A.

2. A policy issued to any one of the following to be considered the policyholder:

*a.* An advisory, supervisory, or governing body or bodies of a regularly organized religious denomination to insure its clergy, priests, or ministers of the gospel.

*b.* A teachers’ association, to insure its members.

*c.* A lawyers’ association, to insure its members.

*d.* A volunteer fire company, to insure all of its members.

*e.* A fraternal society or association, or any subordinate lodge or branch thereof, to insure its members.

*f.* A common principal of any group of persons similarly engaged between whom there exists a contractual relationship, to insure the members of such group.

*g.* An association, the members of which are students, teachers, administrators or officials of any elementary or secondary school or of any college, to insure the members thereof. For the purpose of this paragraph the students, teachers, administrators or officials of or for any such school or college shall constitute an association.

Provided that the provisions and requirements of subsection 1 of this section shall apply to such policy and the policyholder and insured in like manner as said subsection 1 of this section applies to employers and employees, except that if a policy is issued to a volunteer fire company or an association, the members of which are students, teachers, administrators or officials of any elementary or secondary school or of any college, the requirement for twenty-five members shall not apply, and, if issued to a teachers’ association or lawyers’ association, not less than sixty-five percent of the members thereof may be insured.

3. A policy issued to a creditor, who shall be deemed the policyholder, to insure debtors of the creditor, subject to the following requirements:

*a.* The debtors eligible for insurance under the policy shall be all of the debtors of the creditor, or all of any class or classes thereof determined by conditions pertaining to the indebtedness or to the purchase giving rise to the indebtedness. The policy may provide that the term “debtors” shall include the debtors of one or more subsidiary corporations, and the debtors of one or more affiliated corporations, proprietors or partnerships if the business of the policyholder and of such affiliated corporations, proprietors or partnerships is under common control through stock ownership, contract, or otherwise.

*b.* The premium for the policy shall be paid by the policyholder, either from the creditor’s funds, or from charges collected from the insured debtors, or from both. A policy on which part or all of the premium is to be derived from the collection from the insured debtors of identifiable charges not required of uninsured debtors shall not include, in the class or classes of debtors eligible for insurance, debtors under obligations outstanding at its date of issue without evidence of individual insurability unless at least seventy-five percent of the then eligible debtors elect to pay the required charges. A policy on which no part of the premium

is to be derived from the collection of such identifiable charges must insure all eligible debtors, or all except any as to whom evidence of individual insurability is not satisfactory to the insurer.

c. The policy may be issued only if the group of eligible debtors is then receiving new entrants at the rate of at least one hundred persons yearly, or may reasonably be expected to receive at least one hundred new entrants during the first policy year, and only if the policy reserves to the insurer the right to require evidence of individual insurability if less than seventy-five percent of the new entrants become insured.

d. The amount of insurance on the life of a debtor shall not exceed the amount owed by the debtor to the creditor, or the face amount of a totally or partially executed loan or loan commitment creating personal liability and made in good faith for general agricultural or horticultural purposes to a debtor with seasonal income. However, in no event shall the amount of insurance exceed two hundred thousand dollars.

e. The insurance shall be payable to the policyholder. Such payment shall reduce or extinguish the unpaid indebtedness of the debtor to the extent of such payment. Provided that in the case of a debtor for agricultural or horticultural purposes of the type described in paragraph "d", the insurance in excess of indebtedness to the creditor, if any, shall be payable to a named beneficiary, to the estate of the debtor or under the provision of a facility of payment clause.

4. A policy issued to a labor union, which shall be deemed the policyholder, to insure members of such union for the benefit of persons other than the union or any of its officials, representatives, or agents, subject to the following requirements:

a. The members eligible for insurance under the policy shall be all of the members of the union or all of any class or classes thereof determined by conditions pertaining to their employment, or to membership in the union, or both.

b. The premium for the group life policy shall be paid by the policyholder, either wholly from the union's funds, or partly from such funds and partly from funds contributed by the insured members specifically for their insurance. No policy, except accident and health, may be issued on which the entire premium is to be derived from funds contributed by the insured members specifically for their insurance. A policy on which part of the premium is to be derived from funds contributed by the insured members specifically for their insurance may be placed in force only if at least sixty-five percent of the then eligible members, excluding any as to whom evidence of individual insurability is not satisfactory to the insurer, elect to make the required contributions. A policy on which no part of the premium is to be derived from funds contributed by the insured members specifi-

cally for their insurance must insure all eligible members, or all except any as to whom evidence of individual insurability is not satisfactory to the insurer.

c. The policy must cover at least ten members at date of issue.

d. The amounts of insurance under the policy must be based upon some plan precluding individual selection either by the members or by the union.

e. Policies may include dependents of the insured, including the spouse.

f. The policy shall not exclude from coverage a member or a member's spouse or dependents on the basis of the eligibility of the member or the member's spouse or dependents for medical assistance under chapter 249A.

5. A policy issued to the trustees of a fund established by two or more employers in the same industry or by two or more labor unions or by one or more employers and by one or more labor unions which trustees shall be deemed the policyholder, to insure employees of the employers or members of the unions for the benefit of persons other than the employers or the unions, subject to the following requirements:

a. The persons eligible for insurance shall be all of the employees of the employers or all of the members of the unions, or all of any class or classes thereof determined by conditions pertaining to their employment, or to membership in the unions, or both. The policy may provide that the term "employees" shall include the individual proprietor or partners if an employer is an individual proprietor or a partnership. The policy may provide that the term "employees" shall include the trustees or their employees, or both, if their duties are principally connected with such trusteeship. The policy may provide that the term "employees" shall include retired employees. The policy may also provide that the term "employees" shall include the board of directors if the employer is a corporation.

b. The premium for the policy shall be paid by the trustees wholly from funds established by the employers of the insured persons. The policy must insure all eligible persons, or all except any as to whom evidence of individual insurability is not satisfactory to the insurer, if the funds are contributed wholly by the employer or unions.

c. The policy must cover at least one hundred persons at date of issue.

d. The amounts of insurance under the policy must be based upon some plan precluding individual selection either by the insured persons or by the policyholder, employers, or unions.

e. Policies may include dependents of the insured, including the spouse.

f. The policy shall not exclude from coverage an employee or member or an employee's or mem-

ber's spouse or dependents on the basis of the eligibility of the employee or member or employee's or member's spouse or dependents for medical assistance under chapter 249A.

6. A policy issued to any nonprofit industrial association (to be deemed the policyholder) incorporated for a period of at least ten years and organized for purposes other than obtaining insurance, subject to the following requirements:

*a.* If two or more members of the association, or any class or classes of members thereof determined by conditions pertaining to insurance, elect to insure their employees or any class or classes of employees determined by conditions pertaining to employment; and

*b.* The total number of insured employees must not be less than one thousand, and of these not less than seventy-five percent must be employees of members with at least twenty insured employees each, and further, not more than ten percent may be employees of members with less than ten insured employees each; and

*c.* The insurance premiums are paid by such members to the association; each member, insofar as applicable to the member's own employees, may collect part of the premium from insured employees, and the method of apportionment of the premium payment between the member and the member's employees may be varied as among individual members; and

*d.* Not less than seventy-five percent of the eligible employees of each participating member may be insured where the employees pay a part of the premium. The word "employees" as used in this subsection shall also include the individual members and employees of such association.

*e.* Policies may include dependents of the employees, including the spouse.

*f.* The policy shall not exclude from coverage an employee or an employee's spouse or dependents on the basis of the eligibility of the employee or the employee's spouse or dependents for medical assistance under chapter 249A. This paragraph shall also apply to corporations operating within the state who provide insurance coverage for their employees directly, and the commissioner shall have the authority to enforce the provisions of this paragraph.

7. A policy issued to the department of human services, which shall be deemed the policyholder, to insure eligible persons for medical assistance, or for both medical assistance and additional medical assistance, as defined by chapter 249A as hereafter amended.

8. A policy of group health insurance coverage, as defined in section 513B.2, issued by a small employer carrier, as defined in section 513B.2, to a bona fide association, subject to the following requirements:

*a.* The policy provides group health insurance coverage to eligible employees of members of a

bona fide association that are small employers as defined in section 513B.2, and to the spouses and dependents of such employees.

*b.* The policy is issued to a bona fide association. For the purposes of this subsection, a bona fide association is an association which meets all of the following requirements:

(1) The association is a trade, industry, or professional association which is organized in good faith as a nonprofit corporation under chapter 504 for purposes other than obtaining insurance and has been in existence and actively maintained for at least five continuous years at the time the policy is issued.

(2) The association does not condition membership in the association on the health status of employees of its members or the health status of the spouses and dependents of such employees.

(3) Group health insurance coverage offered by the association is available to all eligible employees of its members that are small employers as defined in section 513B.2 who choose to participate in the health insurance coverage offered, and to the spouses and dependents of such employees, regardless of the health status of such employees or their spouses and dependents.

(4) Group health insurance coverage offered by the association is available only to persons who are eligible employees of a small employer as defined in section 513B.2 that is a member of the association, or to the spouses or dependents of such employees.

9. A policy issued to a resident of this state under a group life, accident, or health insurance policy issued to a group other than one described in subsections 1 through 8, subject to the following requirements:

*a.* The commissioner determines that all of the following apply:

(1) The issuance of the group policy is not contrary to the best interest of the public.

(2) The issuance of the group policy will result in economies of acquisition or administration.

(3) The benefits under the group policy are reasonable in relation to the premium charged.

*b.* The commissioner need not make a determination under paragraph "a" if the commissioner determines that the group insurance coverage offered in this state by an insurer or other person is offered under a policy issued in another state and that state or another state in which the policy is offered, having requirements substantially similar to those in paragraph "a", has determined that the policy meets those requirements.

*c.* The premium for the policy shall be paid either from the policyholder's funds, or from funds contributed by the covered person, or both.

*d.* The insurer may exclude or limit the coverage on any person as to whom evidence of individual insurability is not satisfactory to the insurer.

*e.* If compensation of any kind will or may be

paid to the policyholder in connection with the group policy, the insurer shall provide to the prospective insured written notice that compensation will or may be paid. Notice shall be provided whether the compensation is direct or indirect, and whether the compensation is paid to or retained by the policyholder, or paid to or retained by a third party at the direction of the policyholder or

any entity affiliated with the policyholder by ownership, contract, or employment. The notice shall be placed on or accompany any document designed for the enrollment of prospective insureds.

2007 Acts, ch 57, §1, 2, 8  
NEW subsection 8 and former subsection 8 renumbered as 9  
Subsection 9, unnumbered paragraph 1 amended

## CHAPTER 509B

### CONTINUATION OF GROUP HEALTH INSURANCE

#### **509B.5 Notice of termination of membership or modification of coverage.**

1. Employers or group policyholders shall notify all employees or members of their continuation rights within ten days of termination of employment or membership. The notice shall be in writing and delivered in person or mailed to the person's last known address. However, continuation rights shall not be denied because of failure to provide proper notice. After receiving proper notice the employee or member may request and shall receive continuation coverage in accordance with this chapter within ten days of the request, notwithstanding any other time limitation provided by this chapter. Notification as provided in this section supersedes section 515.125 as that section relates to accident and health insurance.

2. If an employer or group policyholder terminates or substantially modifies an agreement to provide accident or health insurance for employees or members or if accident or health insurance for employees or members is terminated for failure to pay premiums or for another reason, the employer or group policyholder shall notify the employees or members, including persons being continued under the policy's continuation provisions, of the termination or substantial modification of their coverage. The notice shall be in writing and delivered in person to the entitled persons or mailed to their last known addresses at least ten days prior to the termination or substantial modification of the accident or health insurance coverage. The employer or group policyholder is solely liable for benefits, including extended benefits, other than extended benefits for which the insurer is liable in accordance with the provisions of the group policy, which would have been payable had

the accident or health insurance remained in force or not been terminated or substantially modified during the period of time following the termination or substantial modification until the person entitled to notice is given notice by the employer or group policyholder as required by this subsection.

3. The employer or group policyholder is also solely liable for benefits, including extended benefits, which would have been payable had the accident or health insurance been in force and the employees or members been covered during the period of time the employer or group policyholder failed to implement the plan for accident or health insurance which the employer or group policyholder had agreed to provide, until the employer or group policyholder gives notice of its failure or inability to provide the agreed plan. The notice shall be in writing and delivered in person to the employees or members or mailed to their last known addresses.

4. The employer or group policyholder is also solely liable for benefits, including extended benefits, which would have been payable had the accident or health insurance been in force and the employees or members been covered by the accident or health insurance during a period of time for which the employer or group policyholder has collected contributions through payroll, withholding, or otherwise, but has failed to enroll the employees or members, unless the employer or group policyholder has given actual notice that enrollment in the plan will not become effective until a later date or until the employee's or member's application for enrollment has been approved.

2007 Acts, ch 152, §55  
Subsection 1 amended

## CHAPTER 510

### MANAGING GENERAL AGENTS AND THIRD-PARTY ADMINISTRATORS

#### 510.21 Certificate of registration required.

A person shall not act as or represent oneself to be a third-party administrator in this state, other than an adjuster licensed in this state for the kinds of business for which the person is acting as a third-party administrator, unless the person holds a current certificate of registration as a third-party administrator issued by the commissioner of insurance. A certificate of registration as a third-party administrator is renewable every three years. Failure to hold a certificate subjects the third-party administrator to the sanctions set out in section 507B.7. The certificate shall be issued by the commissioner to a third-party administrator unless the commissioner, after due notice and hearing, determines that the third-party ad-

ministrator is not competent, trustworthy, financially responsible, or of good personal and business reputation, or has had a previous application for an insurance license denied for cause within the preceding five years.

An application for registration shall be accompanied by a filing fee of one hundred dollars. After notice and hearing, the commissioner may impose any or all of the sanctions set out in section 507B.7, upon finding that either the third-party administrator violated any of the requirements of section 515.145 and sections 510.1A through 510.20 and this section, or the third-party administrator is not competent, trustworthy, financially responsible, or of good personal and business reputation.

2007 Acts, ch 152, §56

Unnumbered paragraph 2 amended

## CHAPTER 510B

### REGULATION OF PHARMACY BENEFITS MANAGERS

Chapter is effective January 1, 2008; adoption of rules;  
2007 Acts, ch 193, §9

#### 510B.1 Definitions.

As used in this chapter, unless the context otherwise requires:

1. “*Commissioner*” means the commissioner of insurance.

2. “*Covered entity*” means a nonprofit hospital or medical services corporation, health insurer, health benefit plan, or health maintenance organization; a health program administered by a department or the state in the capacity of provider of health coverage; or an employer, labor union, or other group of persons organized in the state that provides health coverage. “*Covered entity*” does not include a self-funded health coverage plan that is exempt from state regulation pursuant to the federal Employee Retirement Income Security Act of 1974 (ERISA), as codified at 29 U.S.C. § 1001 et seq.; a plan issued for health coverage for federal employees; or a health plan that provides coverage only for accidental injury, specified disease, hospital indemnity, Medicare supplemental, disability income, or long-term care, or other limited benefit health insurance policy or contract.

3. “*Covered individual*” means a member, participant, enrollee, contract holder, policyholder, or beneficiary of a covered entity who is provided health coverage by the covered entity, and includes a dependent or other person provided

health coverage through a policy, contract, or plan for a covered individual.

4. “*Generic drug*” means a chemically equivalent copy of a brand-name drug with an expired patent.

5. “*Labeler*” means a person that receives prescription drugs from a manufacturer or wholesaler and repackages those drugs for later retail sale and that has a labeler code from the federal food and drug administration pursuant to 21 C.F.R. § 207.20.

6. “*Pharmacy*” means pharmacy as defined in section 155A.3.

7. “*Pharmacy benefits management*” means the administration or management of prescription drug benefits provided by a covered entity under the terms and conditions of the contract between the pharmacy benefits manager and the covered entity.

8. “*Pharmacy benefits manager*” means a person who performs pharmacy benefits management services. “*Pharmacy benefits manager*” includes a person acting on behalf of a pharmacy benefits manager in a contractual or employment relationship in the performance of pharmacy benefits management services for a covered entity. “*Pharmacy benefits manager*” does not include a health insurer licensed in the state if the health in-



suror or its subsidiary is providing pharmacy benefits management services exclusively to its own insureds, or a public self-funded pool or a private single employer self-funded plan that provides such benefits or services directly to its beneficiaries.

9. “*Prescription drug*” means prescription drug as defined in section 155A.3.

10. “*Prescription drug order*” means prescription drug order as defined in section 155A.3.

2007 Acts, ch 193, §1, 9

Section is effective January 1, 2008; 2007 Acts, ch 193, §9

NEW section

### **510B.2 Certification as a third-party administrator required.**

A pharmacy benefits manager doing business in this state shall obtain a certificate as a third-party administrator under chapter 510, and the provisions relating to a third-party administrator pursuant to chapter 510 shall apply to a pharmacy benefits manager.

2007 Acts, ch 193, §2, 9

Section is effective January 1, 2008; 2007 Acts, ch 193, §9

NEW section

### **510B.3 Enforcement — rules.**

1. The commissioner shall enforce the provisions of this chapter.

2. The commissioner shall adopt rules pursuant to chapter 17A to administer this chapter including rules relating to all of the following:

*a.* Timely payment of pharmacy claims.

*b.* A process for adjudication of complaints and settlement of disputes between a pharmacy benefits manager and a licensed pharmacy related to pharmacy auditing practices, termination of pharmacy agreements, and timely payment of pharmacy claims.

2007 Acts, ch 193, §3, 9

Section is effective January 1, 2008; 2007 Acts, ch 193, §9

NEW section

### **510B.4 Performance of duties — good faith — conflict of interest.**

1. A pharmacy benefits manager shall perform the pharmacy benefits manager’s duties exercising good faith and fair dealing in the performance of its contractual obligations toward the covered entity.

2. A pharmacy benefits manager shall notify the covered entity in writing of any activity, policy, practice ownership interest, or affiliation of the pharmacy benefits manager that presents any conflict of interest.

2007 Acts, ch 193, §4, 9

Section is effective January 1, 2008; 2007 Acts, ch 193, §9

NEW section

### **510B.5 Contacting covered individual — requirements.**

A pharmacy benefits manager, unless authorized pursuant to the terms of its contract with a covered entity, shall not contact any covered individual without the express written permission of the covered entity.

2007 Acts, ch 193, §5, 9

Section is effective January 1, 2008; 2007 Acts, ch 193, §9

NEW section

### **510B.6 Dispensing of substitute prescription drug for prescribed drug.**

1. The following provisions shall apply when a pharmacy benefits manager requests the dispensing of a substitute prescription drug for a prescribed drug to a covered individual:

*a.* The pharmacy benefits manager may request the substitution of a lower priced generic and therapeutically equivalent drug for a higher priced prescribed drug.

*b.* If the substitute drug’s net cost to the covered individual or covered entity exceeds the cost of the prescribed drug, the substitution shall be made only for medical reasons that benefit the covered individual.

2. A pharmacy benefits manager shall obtain the approval of the prescribing practitioner prior to requesting any substitution under this section.

3. A pharmacy benefits manager shall not substitute an equivalent prescription drug contrary to a prescription drug order that prohibits a substitution.

2007 Acts, ch 193, §6, 9

Section is effective January 1, 2008; 2007 Acts, ch 193, §9

NEW section

### **510B.7 Duties to pharmacy network providers.**

1. A pharmacy benefits manager shall not mandate basic recordkeeping that is more stringent than that required by state or federal law or regulation.

2. If a pharmacy benefits manager receives notice from a covered entity of termination of the covered entity’s contract, the pharmacy benefits manager shall notify, within ten working days of the notice, all pharmacy network providers of the effective date of the termination.

3. Within three business days of a price increase notification by a manufacturer or supplier, a pharmacy benefits manager shall adjust its payment to the pharmacy network provider consistent with the price increase.

2007 Acts, ch 193, §7, 9

Section is effective January 1, 2008; 2007 Acts, ch 193, §9

NEW section

## CHAPTER 511

### PROVISIONS APPLICABLE TO LIFE INSURANCE COMPANIES AND ASSOCIATIONS

#### **511.4 Advertisements — who deemed agent.**

The provisions of section 515.105 shall apply to life insurance companies and associations.

2007 Acts, ch 152, §57  
Section amended

#### **511.33 Application for insurance — duty to attach to policy.**

All life insurance companies or associations organized or doing business in this state under the provisions of the preceding chapters shall, upon the issue of any policy, attach to such policy, or endorse thereon, a true copy of any application or representation of the assured which by the terms of such policy are made a part thereof, or of the contract of insurance, or referred to therein, or which may in any manner affect the validity of such policy, or, upon reinstatement of a lapsed policy, shall attach to the renewal receipt a true copy of all representations made by the assured upon which the renewal or reinstatement is made.

Similar provisions, §515.133  
Section not amended; footnote revised

#### **511.34 Failure to attach — defenses — estoppel.**

The omission so to do shall not render the policy

invalid, but if any company or association neglects to comply with the requirements of section 511.33, it shall forever be precluded from pleading, alleging, or proving such application or representations, or any part thereof, or the falsity thereof, or any part thereof, in any action upon such policy, and the plaintiff in any such action shall not be required, in order to recover against such company or association, either to plead or prove such application or representation, but may do so at the plaintiff's option.

Similar provisions, §515.134  
Section not amended; footnote revised

#### **511.35 Limitation on proofs of loss.**

No stipulation or condition in any policy or contract of insurance or beneficiary certificate issued by any company or association mentioned or referred to in this chapter, limiting the time to a period of less than one year after knowledge by the beneficiary within which notice or proofs of death or the occurrence of other contingency insured against must be given, shall be valid.

Similar provisions, §514A.3, 515.137, and 518A.19  
Section not amended; footnote revised

## CHAPTER 512B

### FRATERNAL BENEFIT SOCIETIES

#### **512B.25 Annual license — renewal.**

The authority of a society to transact business in this state may be renewed annually. A license terminates on the first day of June following issuance or renewal. A society shall submit annually on or before March 1 a completed application for renewal of its license. For each license or renewal the society shall pay the commissioner a fee of fifty dollars. A society that fails to timely file an applica-

tion for renewal shall pay an administrative penalty of five hundred dollars to the treasurer of state for deposit in the general fund of the state as provided in section 505.7. A duly certified copy or duplicate of the license is prima facie evidence that the licensee is a fraternal benefit society within the meaning of this chapter.

2007 Acts, ch 126, §90  
Section amended

## CHAPTER 513B

### SMALL GROUP HEALTH COVERAGE

#### **513B.2 Definitions.**

As used in this subchapter, unless the context otherwise requires:

1. “*Actuarial certification*” means a written statement by a member of the American academy of actuaries or other individual acceptable to the

commissioner that a small employer carrier is in compliance with the provisions of section 513B.4, based upon the person's examination, including a review of the appropriate records and of the actuarial assumptions and methods utilized by the small employer carrier in establishing premium

rates for applicable health insurance coverages.

2. “*Base premium rate*” means, for each class of business as to a rating period, the lowest premium rate charged or which could have been charged under a rating system for that class of business, by the small employer carrier to small employers for health insurance plans with the same or similar coverage.

3. “*Basic health benefit plan*” means a plan established by the board of the small employer health reinsurance program pursuant to section 513B.13, subsection 8, paragraph “a”.

4. “*Carrier*” means an entity subject to the insurance laws and regulations of this state, or subject to the jurisdiction of the commissioner, that contracts or offers to contract to provide, deliver, arrange for, pay for, or reimburse any of the costs of health care services, including an insurance company offering sickness and accident plans, a health maintenance organization, a nonprofit health service corporation, or any other entity providing a plan of health insurance, health benefits, or health services.

5. “*Case characteristics*” means demographic or other relevant characteristics of a small employer, as determined by a small employer carrier, which are considered by the insurer in the determination of premium rates for the small employer. Claim experience, health status, and duration of coverage since issue are not case characteristics for the purpose of this subchapter.

6. “*Class of business*” means all or a distinct grouping of small employers as shown on the records of the small employer carrier.

a. A distinct grouping may only be established by the small employer carrier on the basis that the applicable health insurance coverages meet one or more of the following requirements:

(1) The coverages are marketed and sold through individuals and organizations which are not participating in the marketing or sales of other distinct groupings of small employers for the small employer carrier.

(2) The coverages have been acquired from another small employer carrier as a distinct grouping of plans.

(3) The coverages are provided by a policy of group health insurance coverage through a bona fide association as provided in section 509.1, subsection 8, which meets the requirements for a class of business under section 513B.4. A small employer carrier may condition coverages under such a policy of group health insurance coverage on any of the following requirements:

(a) Minimum levels of participation by employees of each member of a bona fide association that offers the coverage to its employees.

(b) Minimum levels of contribution by each member of a bona fide association that offers the coverage to its employees.

(c) A specified policy term, subject to annual

premium rate adjustments as permitted by section 513B.4.

(4) The coverages are provided by a policy of group health insurance coverage through two or more bona fide associations as provided in section 509.1, subsection 8, which a small employer carrier has aggregated as a distinct grouping that meets the requirements for a class of business under section 513B.4. After a distinct grouping of bona fide associations is established as a class of business, the small employer carrier shall not remove a bona fide association from the class based on the claims experience of that association. A small employer carrier may condition coverages under such a policy of group health insurance coverage on any of the following requirements:

(a) Minimum levels of participation by employees of each member of a bona fide association in the class that offers the coverage to its employees.

(b) Minimum levels of contribution by each member of a bona fide association in the class that offers the coverage to its employees.

(c) A specified policy term, subject to annual premium rate adjustments as permitted by section 513B.4.

b. A small employer carrier may establish additional groupings under each of the subparagraphs in paragraph “a” on the basis of underwriting criteria which are expected to produce substantial variation in the health care costs.

c. The commissioner may approve the establishment of additional distinct groupings upon application to the commissioner and a finding by the commissioner that such action would enhance the efficiency and fairness of the small employer insurance marketplace.

7. “*Commissioner*” means the commissioner of insurance.

8. “*Creditable coverage*” means health benefits or coverage provided to an individual under any of the following:

a. A group health plan.

b. Health insurance coverage.

c. Part A or Part B Medicare pursuant to Title XVIII of the federal Social Security Act.

d. Medicaid pursuant to Title XIX of the federal Social Security Act, other than coverage consisting solely of benefits under section 1928 of that Act.

e. 10 U.S.C. ch. 55.

f. A health or medical care program provided through the Indian health service or a tribal organization.

g. A state health benefits risk pool.

h. A health plan offered under 5 U.S.C. ch. 89.

i. A public health plan as defined under federal regulations.

j. A health benefit plan under section 5(e) of the federal Peace Corps Act, 22 U.S.C. § 2504(e).

k. An organized delivery system licensed by

the director of public health.

l. A short-term limited duration policy.

9. "Division" means the division of insurance.

10. "Eligible employee" means an employee who works on a full-time basis and has a normal workweek of thirty or more hours. The term includes a sole proprietor, a partner of a partnership, and an independent contractor, if the sole proprietor, partner, or independent contractor is included as an employee under health insurance coverage of a small employer, but does not include an employee who works on a part-time, temporary, or substitute basis.

11. a. "Group health plan" means an employee welfare benefit plan as defined in section 3(1) of the federal Employee Retirement Income Security Act of 1974, to the extent that the plan provides medical care including items and services paid for as medical care to employees or their dependents as defined under the terms of the plan directly or through insurance, reimbursement, or otherwise.

b. For purposes of this subsection, "medical care" means amounts paid for any of the following:

(1) The diagnosis, cure, mitigation, treatment, or prevention of disease, or amounts paid for the purpose of affecting a structure or function of the body.

(2) Transportation primarily for and essential to medical care referred to in subparagraph (1).

(3) Insurance covering medical care referred to in subparagraph (1) or (2).

c. For purposes of this subsection, a partnership which establishes and maintains a plan, fund, or program to provide medical care to present or former partners in the partnership or to their dependents directly or through insurance, reimbursement, or other method, which would not be an employee benefit welfare plan but for this paragraph, shall be treated as an employee benefit welfare plan which is a group health plan.

(1) For purposes of a group health plan, an employer includes the partnership in relation to any partner.

(2) For purposes of a group health plan, the term "participant" also includes both of the following:

(a) An individual who is a partner in relation to a partnership which maintains a group health plan.

(b) An individual who is a self-employed individual in connection with a group health plan maintained by the self-employed individual where one or more employees are participants, if the individual is or may become eligible to receive a benefit under the plan or the individual's beneficiaries may be eligible to receive a benefit.

12. a. "Health insurance coverage" means benefits consisting of health care provided directly, through insurance or reimbursement, or otherwise and including items and services paid for as

health care under a hospital or health service policy or certificate, hospital or health service plan contract, or health maintenance organization contract offered by a carrier.

b. "Health insurance coverage" does not include any of the following:

(1) Coverage for accident-only, or disability income insurance.

(2) Coverage issued as a supplement to liability insurance.

(3) Liability insurance, including general liability insurance and automobile liability insurance.

(4) Workers' compensation or similar insurance.

(5) Automobile medical-payment insurance.

(6) Credit-only insurance.

(7) Coverage for on-site medical clinic care.

(8) Other similar insurance coverage, specified in federal regulations, under which benefits for medical care are secondary or incidental to other insurance coverage or benefits.

c. "Health insurance coverage" does not include benefits provided under a separate policy as follows:

(1) Limited scope dental or vision benefits.

(2) Benefits for long-term care, nursing home care, home health care, or community-based care.

(3) Any other similar limited benefits as provided by rule of the commissioner.

d. "Health insurance coverage" does not include benefits offered as independent noncoordinated benefits as follows:

(1) Coverage only for a specified disease or illness.

(2) A hospital indemnity or other fixed indemnity insurance.

e. "Health insurance coverage" does not include Medicare supplemental health insurance as defined under § 1882(g)(1) of the federal Social Security Act, coverage supplemental to the coverage provided under 10 U.S.C. ch. 55, and similar supplemental coverage provided to coverage under group health insurance coverage.

f. "Group health insurance coverage" means health insurance coverage offered in connection with a group health plan.

13. "Index rate" means, for each class of business for small employers, the average of the applicable base premium rate and the corresponding highest premium rate.

14. "Late enrollee" means an eligible employee or dependent who requests enrollment in a health benefit plan of a small employer following the initial enrollment period for which such individual is entitled to enroll under the terms of the health benefit plan, provided the initial enrollment period is a period of at least thirty days. An eligible employee or dependent shall not be considered a late enrollee if any of the following apply:

a. The individual meets all of the following:

(1) The individual was covered under creditable coverage at the time of the initial enrollment.

(2) The individual lost creditable coverage as a result of termination of the individual's employment or eligibility, the involuntary termination of the creditable coverage, death of the individual's spouse, or the individual's divorce.

(3) The individual requests enrollment within thirty days after termination of the creditable coverage.

b. The individual is employed by an employer that offers multiple health insurance coverages and the individual elects a different coverage during an open enrollment period.

c. A court has ordered that coverage be provided for a spouse or minor or dependent child under a covered employee's health insurance coverage and the request for enrollment is made within thirty days after issuance of the court order.

d. The individual changes status and becomes an eligible employee and requests enrollment within sixty-three days after the date of the change in status.

e. The individual was covered under a mandated continuation of group health plan or group health insurance coverage plan until the coverage under that plan was exhausted.

15. "New business premium rate" means, for each class of business as to a rating period, the lowest premium rate charged or offered by the small employer carrier to small employers for newly issued health insurance coverages with the same or similar coverage.

16. "Preexisting conditions exclusion" means, with respect to health insurance coverage, a limitation or exclusion of benefits relating to a condition based on the fact that the condition was present before the date of enrollment for such coverage, whether or not any medical advice, diagnosis, care, or treatment was recommended or received before such date.

17. "Rating period" means the calendar period for which premium rates established by a small employer carrier are assumed to be in effect, as determined by the small employer carrier.

18. "Small employer" means a person actively engaged in business who, on at least fifty percent of the employer's working days during the preceding year, employed not less than two and not more than fifty full-time equivalent eligible employees. In determining the number of eligible employees, companies which are affiliated companies or which are eligible to file a combined tax return for purposes of state taxation are considered one employer.

19. "Small employer carrier" means any carrier which offers health benefit plans covering the employees of a small employer.

20. "Standard health benefit plan" means a plan established by the board of the small employ-

er health reinsurance program pursuant to section 513B.13, subsection 8, paragraph "a".

2007 Acts, ch 57, §3 - 5, 8; 2007 Acts, ch 215, §255  
Subsection 6, paragraph a, subparagraph (3) stricken and rewritten  
Subsection 6, paragraph a, NEW subparagraph (4)  
Subsection 6, paragraph b amended

#### 513B.4 Restrictions relating to the premium rates.

1. Premium rates for health benefit plans subject to this subchapter are subject to the following requirements:

a. The index rate for a rating period for any class of business shall not exceed the index rate for any other class of business by more than twenty percent.

b. For a class of business, the premium rates charged during a rating period to small employers with similar case characteristics for the same or similar coverage, or the rates which could be charged to such employers under the rating system for that class of business, shall not vary from the index rate by more than twenty-five percent of the index rate.

c. The percentage increase in the premium rate charged to a small employer for a new rating period shall not exceed the sum of the following:

(1) The percentage change in the new business premium rate measured from the first day of the prior rating period to the first day of the new rating period. In the case of a class of business for which the small employer carrier is not issuing new policies, the small employer carrier shall use the percentage change in the base premium rate, provided that the change does not exceed, on a percentage basis, the change in the new business premium rate for the most similar health insurance coverage into which the small employer carrier is actively enrolling new insureds who are small employers.

(2) An adjustment, not to exceed fifteen percent annually and adjusted pro rata for rating periods of less than one year, due to the claim experience, health status, or duration of coverage of the employees or dependents of the small employer as determined from the small employer carrier's rate manual for the class of business.

(3) Any adjustment due to change in coverage or change in the case characteristics of the small employer as determined from the small employer carrier's rate manual for the class of business.

d. Any adjustment in rates for claims experience, health status, and duration of coverage shall not be charged to individual employees or dependents. Any such adjustment shall be applied uniformly to the rates charged for all employees and dependents of the small employer.

2. This section does not affect the use by a small employer carrier of legitimate rating factors other than claim experience, health status, or duration of coverage in the determination of premium rates. Small employer carriers shall apply

rating factors, including case characteristics, consistently with respect to all small employers in a class of business.

Case characteristics other than age, geographic area, family composition, and group size shall not be used by a small employer carrier without the prior approval of the commissioner.

Rating factors shall produce premiums for identical groups which differ only by amounts attributable to coverage design and do not reflect differences due to the nature of the groups assumed to select particular health benefit plans. A small employer carrier shall treat all health insurance coverages issued or renewed in the same calendar month as having the same rating period.

3. For purposes of this section, a health insurance coverage that contains a restricted network provision shall not be considered similar coverage to a health insurance coverage that does not contain such a provision, if the restriction of benefits to network providers results in substantial differences in claims costs.

4. A small employer shall not be involuntarily transferred by a small employer carrier into or out of a class of business. A small employer carrier shall not offer to transfer a small employer into or out of a class of business unless the offer is made to transfer all small employers in the class of business without regard to case characteristics, claim experience, health status, or duration since issue.

5. Notwithstanding subsection 1, the commissioner, with the concurrence of the board of the Iowa small employer health reinsurance program established in section 513B.13, may by order reduce or eliminate the allowed rating bands provided under subsection 1, paragraphs “a”, “b”, and “c”, or otherwise limit or eliminate the use of experience rating.

6. Notwithstanding subsection 4, a small employer carrier may offer to transfer a small employer into a different class of business with a low-

er index rate based upon claims experience, implementation of managed care or wellness programs, or health status improvement of the small employer since issue.

2007 Acts, ch 57, §6, 8  
NEW subsection 6

#### **513B.4B Small employer incentives — suspension or modification of premium rate restrictions.**

1. In order to encourage voluntary participation in wellness or disease management programs, a small employer carrier may offer premium credits or discounts to a small employer for the benefit of eligible employees of that small employer who participate in such a program. An employee shall not be penalized in any way for not participating in such a program.

2. The commissioner shall adopt, by rule or order, provisions allowing suspension or modification of premium rate restrictions to enable a small employer carrier to provide premium credits or discounts to a small employer based on measurable reductions in costs of that small employer, including but not limited to tobacco use cessation, participation in established wellness or disease management programs, and economies of acquisition or administration.

2007 Acts, ch 57, §7, 8  
NEW section

#### **513B.18 Uniform application form.**

The commissioner shall develop, by rule, a uniform application form for use by small employers applying for new health insurance coverage under group health plans offered by small employer carriers. Small employer carriers shall be required to use the uniform application form not less than six months after the rules developing the form become effective under chapter 17A.

2007 Acts, ch 169, §1  
NEW section

## CHAPTER 514

### NONPROFIT HEALTH SERVICE CORPORATIONS

#### **514.1 Applicability — definitions.**

1. A corporation organized under chapter 504, Code 1989, or current chapter 504 for the purpose of establishing, maintaining, and operating a nonprofit hospital service plan, whereby hospital service may be provided by the corporation or by a hospital with which it has a contract for service, to the public who become subscribers to this plan under a contract which entitles each subscriber to hospital service; or a corporation organized for the purpose of establishing, maintaining, and operating a plan whereby health care service may be pro-

vided at the expense of this corporation, by licensed physicians and surgeons, dentists, podiatric physicians, osteopathic physicians, osteopathic physicians and surgeons or chiropractors, to subscribers under contract, entitling each subscriber to health care service, as provided in the contract; or a corporation organized for the purpose of establishing, maintaining, and operating a nonprofit pharmaceutical service plan or optometric service plan, whereby pharmaceutical or optometric service may be provided by this corporation or by a licensed pharmacy with which it has a con-

tract for service, to the public who become subscribers to this plan under a contract which entitles each subscriber to pharmaceutical or optometric service; shall be governed by this chapter and is exempt from all other provisions of the insurance laws of this state, unless specifically designated in this chapter, not only in governmental relations with the state but for every other purpose, and additions enacted after July 1, 1939, shall not apply to these corporations unless they are expressly designated in the additions.

2. For the purposes of this chapter, “*subscriber*” means an individual who enters into a contract for health care services with a corporation subject to this chapter and includes a person eligible for medical assistance or additional medical assistance as defined under chapter 249A, with respect to whom the department of human services has entered into a contract with a firm operating under this chapter. For purposes of this chapter, “*provider*” means a person as defined in section 4.1, subsection 20, which is licensed or authorized in this state to furnish health care services. “*Health care*” means that care necessary for the purpose of preventing, alleviating, curing, or healing human physical or mental illness, injury, or disability.

2007 Acts, ch 22, §86

Unnumbered paragraph 1 numbered editorially as subsection 1

Unnumbered paragraph 2 amended and numbered editorially as subsection 2

#### 514.4 Directors.

At least two-thirds of the directors of a hospital service corporation, medical service corporation, dental service corporation, or pharmaceutical or optometric service corporation subject to this chapter shall be at all times subscribers and not more than one-third of the directors shall be providers as provided in this section. The board of directors of each corporation shall consist of at least nine members.

A subscriber director is a director of the board of a corporation who is a subscriber and who is not a provider of health care pursuant to section 514B.1, subsection 7, a person who has material financial or fiduciary interest in the delivery of health care services or a related industry, an employee of an institution which provides health care services, or a spouse or a member of the immediate family of such a person. However, a subscriber director of a dental service corporation may be an employee, officer, director, or trustee of a hospital that does not contract with the dental service corporation. A subscriber director of a hospital or medical service corporation shall be a subscriber of the services of that corporation.

A provider director of a corporation subject to this chapter shall be at all times a person who has a material financial interest in or is a fiduciary to or an employee of or is a spouse or member of the immediate family of a provider having a contract

with such corporation to render to its subscribers the services of such corporation or who is a hospital trustee.

A director may serve on a board of only one corporation at a time subject to this chapter.

The commissioner of insurance shall adopt rules pursuant to chapter 17A to implement the process of the election of subscriber directors of the board of directors of a corporation to ensure the representation of a broad spectrum of subscriber interest on each board and establish criteria for the selection of nominees. The rules shall provide for an independent subscriber nominating committee to serve until the composition of the board of directors meets the percentage requirements of this section. Once the composition requirements of this section are met, the nominations for subscriber directors shall be made by the subscriber directors of the board under procedures the board establishes which shall also permit nomination by a petition of at least fifty subscribers. The board shall also establish procedures to permit nomination of provider directors by petition of at least fifty participating providers. A member of the board of directors of a corporation subject to this chapter shall not serve on the independent subscriber nominating committee. The nominating committee shall consist of subscribers as defined in this section. The rules of the commissioner of insurance shall also permit nomination of subscriber directors by a petition of at least fifty subscribers, and nomination of provider directors by a petition of at least fifty participating providers. These petitions shall be considered only by the independent nominating committee during the duration of the committee. Following the discontinuance of the committee, the petition process shall be continued and the board of directors of the corporation shall consider the petitions. The independent subscriber nominating committee is not subject to chapter 17A. The nominating committee shall not receive per diem or expenses for the performance of their duties.

Population factors, representation of different geographic regions, and the demography of the service area of the corporation subject to this chapter shall be considered when making nominations for the board of directors of a corporation subject to this chapter.

A corporation serving states in addition to Iowa shall be required to implement this section only for directors who are residents of Iowa and elected as board members from Iowa.

2007 Acts, ch 137, §10

Unnumbered paragraph 2 amended

#### 514.19 Combined service corporations.

A corporation subject to this chapter may combine with any other corporation subject to this chapter as permitted under chapter 504 and upon the approval by the commissioner of insurance. Each corporation shall comply with chapter 504,

the corporation's articles of incorporation, and the corporation's bylaws. The combined service corporation shall continue the service benefits previously provided by each corporation and may, subject to the approval of the commissioner of in-

surance, offer other service benefits not previously provided by the corporations before combining, which are permitted under this chapter.

2007 Acts, ch 22, §87  
Section amended

## CHAPTER 514F

### UTILIZATION AND COST CONTROL

#### 514F.1 Utilization and cost control review committees.

The licensing boards under chapters 148, 149, 150, 150A, 151, and 152 shall establish utilization and cost control review committees of licensees under the respective chapters, selected from licensees who have practiced in Iowa for at least the previous five years, or shall accredit and designate other utilization and cost control organizations as utilization and cost control committees under this section, for the purposes of utilization review of the appropriateness of levels of treatment and of giving opinions as to the reasonableness of charges for diagnostic or treatment services of licensees. Persons governed by the various chapters of Title XIII, subtitle 1, of the Code and self-insurers for

health care benefits to employees may utilize the services of the utilization and cost control review committees upon the payment of a reasonable fee for the services, to be determined by the respective boards. The respective boards under chapters 148, 149, 150, 150A, 151, and 152 shall adopt rules necessary and proper for the administration of this section pursuant to chapter 17A. It is the intent of this general assembly that conduct of the utilization and cost control review committees authorized under this section shall be exempt from challenge under federal or state antitrust laws or other similar laws in regulation of trade or commerce.

2007 Acts, ch 10, §177  
Section amended

## CHAPTER 514I

### HEALTHY AND WELL KIDS IN IOWA PROGRAM

#### 514I.5 Hawk-i board.

1. A hawk-i board for the hawk-i program is established. The board shall meet not less than six and not more than twelve times annually, for the purposes of establishing policy for, directing the department on, and adopting rules for the program. The board shall consist of seven members, including all of the following:

*a.* The commissioner of insurance, or the commissioner's designee.

*b.* The director of the department of education, or the director's designee.

*c.* The director of public health, or the director's designee.

*d.* Four public members appointed by the governor and subject to confirmation by the senate. The public members shall be members of the general public who have experience, knowledge, or expertise in the subject matter embraced within this chapter.

*e.* Two members of the senate and two members of the house of representatives, serving as ex officio members. The legislative members of the board shall be appointed by the majority leader of the senate, after consultation with the president of the senate, and by the minority leader of the

senate, and by the speaker of the house, after consultation with the majority leader, and by the minority leader of the house of representatives. Legislative members shall receive compensation pursuant to section 2.12.

2. A public member shall not have a conflict of interest with the administrative contractor.

3. Members appointed by the governor shall serve two-year staggered terms as designated by the governor, and legislative members of the board shall serve two-year terms. The filling of positions reserved for the public representatives, vacancies, membership terms, payment of compensation and expenses, and removal of the members are governed by chapter 69. Members of the board are entitled to receive reimbursement of actual expenses incurred in the discharge of their duties. Public members of the board are also eligible to receive compensation as provided in section 7E.6. The members shall select a chairperson on an annual basis from among the membership of the board.

4. The board shall approve any contract entered into pursuant to this chapter. All contracts entered into pursuant to this chapter shall be made available to the public.

5. The department of human services shall act



as support staff to the board.

6. The board may receive and accept grants, loans, or advances of funds from any person and may receive and accept from any source contributions of money, property, labor, or any other thing of value, to be held, used, and applied for the purposes of the program.

7. The hawk-i board shall do all of the following:

*a.* Develop the criteria to be included in a request for proposals for the selection of any administrative contractor for the program.

*b.* Define, in consultation with the department, the regions of the state for which plans are offered in a manner as to ensure access to services for all children participating in the program.

*c.* Approve the benefit package design, review the benefit package design on a periodic basis, and make necessary changes in the benefit design to reflect the results of the periodic reviews.

*d.* Develop, with the assistance of the department, an outreach plan, and provide for periodic assessment of the effectiveness of the outreach plan. The plan shall provide outreach to families of children likely to be eligible for assistance under the program, to inform them of the availability of and to assist the families in enrolling children in the program. The outreach efforts may include, but are not limited to, solicitation of cooperation from programs, agencies, and other persons who are likely to have contact with eligible children, including but not limited to those associated with the educational system, and the development of community plans for outreach and marketing.

*e.* In consultation with the clinical advisory committee, assess the initial health status of children participating in the program, establish a baseline for comparison purposes, and develop appropriate indicators to measure the subsequent health status of children participating in the program.

*f.* Review, in consultation with the department, and take necessary steps to improve interaction between the program and other public and private programs which provide services to the population of eligible children. The board, in consultation with the department, shall also develop and implement a plan to improve the medical assistance program in coordination with the hawk-i program, including but not limited to a provision to coordinate eligibility between the medical assistance program and the hawk-i program, and to provide for common processes and procedures under both programs to reduce duplication and bureaucracy.

*g.* By January 1, annually, prepare, with the assistance of the department, and submit a report to the governor, the general assembly, and the council on human services, concerning the board's activities, findings, and recommendations.

*h.* Solicit input from the public regarding the program and related issues and services.

*i.* Establish and consult with a clinical advisory committee to make recommendations to the board regarding the clinical aspects of the hawk-i program.

*j.* Prescribe the elements to be included in a health improvement program plan required to be developed by a participating insurer. The elements shall include but are not limited to health maintenance and prevention and health risk assessment.

*k.* Establish an advisory committee to make recommendations to the board and to the general assembly by January 1 annually concerning the provision of health insurance coverage to children with special health care needs. The committee shall include individuals with experience in, knowledge of, or expertise in this area. The recommendations shall address, but are not limited to, all of the following:

(1) The definition of the target population of children with special health care needs for the purposes of determining eligibility under the program.

(2) Eligibility options for and assessment of children with special health care needs for eligibility.

(3) Benefit options for children with special health care needs.

(4) Options for enrollment of children with special health care needs in and disenrollment of children with special health care needs from qualified child health plans utilizing a capitated fee form of payment.

(5) The appropriateness and quality of care for children with special health care needs.

(6) The coordination of health services provided for children with special health care needs under the program with services provided by other publicly funded programs.

8. The hawk-i board, in consultation with the department of human services, shall adopt rules which address, but are not limited to addressing, all of the following:

*a.* Implementation and administration of the program.

*b.* The program application form. The form shall include a request for information regarding other health insurance coverage for each child.

*c.* Criteria for the selection of an administrative contractor for the program.

*d.* Qualifying standards for selecting participating insurers for the program.

*e.* The benefits to be included in a qualified child health plan which are those included in a benchmark or benchmark equivalent plan and which comply with Title XXI of the federal Social Security Act. Benefits covered shall include but are not limited to all of the following:

(1) Inpatient hospital services including medical, surgical, intensive care unit, mental health, and substance abuse services.

(2) Nursing care services including skilled

nursing facility services.

(3) Outpatient hospital services including emergency room, surgery, lab, and x-ray services and other services.

(4) Physician services, including surgical and medical, and including office visits, newborn care, well-baby and well-child care, immunizations, urgent care, specialist care, allergy testing and treatment, mental health visits, and substance abuse visits.

(5) Ambulance services.

(6) Physical therapy.

(7) Speech therapy.

(8) Durable medical equipment.

(9) Home health care.

(10) Hospice services.

(11) Prescription drugs.

(12) Dental services including preventive services.

(13) Medically necessary hearing services.

(14) Vision services including corrective lenses.

*f.* Standards for program eligibility. The standards shall not discriminate on the basis of diagnosis. Within a defined group of covered eligible children, the standards shall not cover children of higher income families without covering children of families with lower incomes. The standards shall not deny eligibility based on a child having a preexisting medical condition.

*g.* Presumptive eligibility criteria for the program.

*h.* The amount of any cost sharing under the program which shall be assessed based on family income and which complies with federal law.

*i.* The reasons for disenrollment including, but not limited to, nonpayment of premiums, eligibility for medical assistance or other insurance coverage, admission to a public institution, relocation from the area, and change in income.

*j.* Conflict of interest provisions applicable to the administrative contractor and participating insurers, and between public members of the board and the administrative contractor and participating insurers.

*k.* Penalties for breach of contract or other violations of requirements or provisions under the program.

*l.* A mechanism for participating insurers to report any rebates received to the department.

*m.* The data to be maintained by the administrative contractor including data to be collected for the purposes of quality assurance reports.

*n.* The use of provider guidelines in assessing the well-being of children, which may include the use of the bright futures for infants, children, and adolescents program as developed by the federal maternal and child health bureau and the American academy of pediatrics guidelines for well-child care.

9. The hawk-i board may provide approval to the director to contract with participating insurers to provide dental-only services. In determining whether to provide such approval to the director, the board shall take into consideration the impact on the overall program of single source contracting for dental services.

2007 Acts, ch 218, §106

Confirmation, see §2.32

Subsection 8, NEW paragraph n

## CHAPTER 514J

### EXTERNAL REVIEW OF HEALTH CARE COVERAGE DECISIONS

#### 514J.2 Definitions.

1. “*Carrier*” means an entity subject to the insurance laws and regulations of this state, or subject to the jurisdiction of the commissioner, performing utilization review, including an insurance company offering sickness and accident plans, a health maintenance organization, a nonprofit health service corporation, a plan established pursuant to chapter 509A for public employees, or any other entity providing a plan of health insurance, health care benefits, or health care services.

2. “*Commissioner*” means the commissioner of insurance.

3. “*Coverage decision*” means a final adverse decision based on medical necessity. This definition does not include a denial of coverage for a service or treatment specifically listed in plan or evi-

dence of coverage documents as excluded from coverage, or a denial of coverage for a service or treatment that has already been received and for which the enrollee has no financial liability.

4. “*Enrollee*” means an individual, or an eligible dependent, who receives health care benefits coverage through a carrier or organized delivery system.

5. “*Independent review entity*” means a reviewer or entity, certified by the commissioner pursuant to section 514J.6.

6. “*Organized delivery system*” means an organized delivery system authorized under 1993 Iowa Acts, chapter 158, and licensed by the director of public health, and performing utilization review.

2007 Acts, ch 137, §11

Subsection 3 amended

## CHAPTER 515

### INSURANCE OTHER THAN LIFE

**515.6 Nature of organization entered on policy.** Transferred to § 515.100; 2007 Acts, ch 152, § 1.

**515.10 Subscriptions of stock — applications.**

After compliance by the incorporators with sections 515.1 and 515.2, the secretary of state shall certify the articles of incorporation to the commissioner of insurance. When the commissioner of insurance is satisfied that all provisions of law in relation to the promotion and organization of said corporation, including sections 506.4 to 506.6, have been complied with, the commissioner shall issue a certificate to that effect, and thereupon such corporation may open books for subscriptions to the stock of stock companies or if a mutual company take applications and receive premiums for insurance at such times and places as it may find convenient, and may keep such books open until the full amount required is subscribed or taken, or the time granted therefor has expired, or until an order is issued by the commissioner of insurance to desist for failure to comply with the provisions of law in reference thereto.

2007 Acts, ch 152, §2

Section transferred from §515.25 in Code Supplement 2007 pursuant to directive in 2007 Acts, ch 152, §2

**515.25 Subscriptions of stock — applications.** Transferred to § 515.10; 2007 Acts, ch 152, § 2.

**515.35 Investments.**

1. *General considerations.* The following considerations apply in the interpretation of this section:

a. This section applies to the investments of insurance companies other than life insurance companies.

b. The purpose of this section is to protect and further the interests of policyholders, claimants, creditors, and the public by providing standards for the development and administration of programs for the investment of the assets of companies organized under this chapter. These standards, and the investment programs developed by companies, shall take into account the safety of the company's principal, investment yield and growth, stability in the value of the investment, and liquidity necessary to meet the company's expected business needs, and investment diversification.

c. Financial terms relating to insurance companies have the meanings assigned to them under statutory accounting methods. Financial terms relating to companies other than insurance com-

panies have the meanings assigned to them under generally accepted accounting principles.

d. Investments shall be valued in accordance with the valuation procedures established by the national association of insurance commissioners, unless the commissioner requires or finds another method of valuation reasonable under the circumstances.

e. If an investment qualifies under more than one subsection, a company may elect to hold the investment under the subsection of its choice. This section does not prevent a company from electing to hold an investment under a subsection different from the one under which it previously held the investment.

2. *Definitions.* For purposes of this section:

a. "*Admitted assets*", for purposes of computing percentage limitations on particular types of investments, means the assets which are authorized to be shown on the national association of insurance commissioner's annual statement blank as admitted assets as of the December 31 immediately preceding the date the company acquires the investment.

b. "*Capital and surplus*", for purposes of computing percentage limitations on particular types of investments, means the capital and surplus that is authorized to be shown as capital and surplus on the national association of insurance commissioners' annual statement blank as of the December 31 immediately preceding the date the company acquires the investment.

c. "*Clearing corporation*" means as defined in section 554.8102.

d. "*Custodian bank*" means a bank or trust company that is supervised and examined by state or federal authority having supervision over banks and is acting as custodian for a clearing corporation.

e. "*Issuer*" means as defined in section 554.8201.

f. "*Member bank*" means a national bank, state bank, or trust company which is a member of the United States federal reserve system.

g. "*National securities exchange*" means an exchange registered under section 6 of the Securities Exchange Act of 1934 or an exchange regulated under the laws of the Dominion of Canada.

h. "*Obligations*" includes bonds, notes, debentures, transportation equipment certificates, domestic repurchase agreements, and obligations for the payment of money not in default as to payments of principal and interest on the date of investment, which constitute general obligations of the issuer or payable only out of certain revenues or certain funds pledged or otherwise dedicated for payment of principal and interest on the obli-

gations. A lease is an obligation if the lease is assigned to the insurer and is nonterminable by the lessee upon foreclosure of any lien upon the leased property, and if rental payments are sufficient to amortize the investment over the primary lease term.

3. *Investments in name of company or nominee and prohibitions.*

a. A company's investments shall be held in its own name or the name of its nominee, except as follows:

(1) Investments may be held in the name of a clearing corporation or of a custodian bank or in the name of the nominee of either on the following conditions:

(a) The clearing corporation, custodian bank, or nominee must be legally authorized to hold the particular investment for the account of others.

(b) When the investment is evidenced by a certificate and held in the name of a custodian bank or the nominee of a custodian bank, a written agreement shall provide that certificates so deposited shall at all times be kept separate and apart from other deposits with the depository, so that at all times they may be identified as belonging solely to the company making the deposit.

(c) If a clearing corporation is to act as depository, the investment may be merged or held in bulk in the name of the clearing corporation or its nominee with other investments deposited with the clearing corporation by any other person, if a written agreement between the clearing corporation and the company provides that adequate evidence of the deposit is to be obtained and retained by the company or a custodian bank.

(2) A company may loan securities held by it to a broker-dealer registered under the Securities Exchange Act of 1934, a national bank, or a state bank, foreign bank, or trust company that is a member of the United States federal reserve system, and the loaned securities shall continue to be allowable investments of the company.

(a) The loan shall be fully collateralized by cash, cash equivalents, or obligations issued or guaranteed by the United States or an agency or instrumentality of the United States. The company shall take delivery of the collateral either directly or through an authorized custodian.

(b) If the loan is collateralized by cash or cash equivalents, the cash or cash equivalent collateral may be reinvested by the company in either individual securities which are allowable investments of the company or in repurchase agreements fully collateralized by such securities if the company takes delivery of the collateral either directly or through an authorized custodian or a pooled fund comprised of individual securities which are allowable investments of the company. If such reinvestment is made in individual securities or in repurchase agreements, the individual securities or the securities which collateralize the repurchase agreements shall mature in less than two

hundred seventy days. If such reinvestment is made in a pooled fund, the average maturity of the securities comprising such pooled fund must be less than two hundred seventy days. Individual securities and securities comprising the pooled fund shall be investment grade.

(c) The loan shall be evidenced by a written agreement which provides all of the following:

(i) That the loan will be fully collateralized at all times during the term of the loan, and that the collateral will be adjusted as necessary each business day during the term of the loan to maintain the required collateralization in the event of market value changes in the loaned securities or collateral.

(ii) If the loan is fully collateralized by cash or cash equivalents, the cash or cash equivalent collateral may be reinvested by the company as provided in subparagraph subdivision (b).

(iii) That the loan may be terminated by the company at any time, and that the borrower shall return the loaned stocks and obligations or equivalent stocks or obligations within five business days after termination.

(iv) That the company has the right to retain the collateral or use the collateral to purchase investments equivalent to the loaned securities if the borrower defaults under the terms of the agreement, and that the borrower remains liable for any losses and expenses incurred by the company due to default that are not covered by the collateral.

(d) Securities loaned pursuant to this subparagraph (2) are not eligible for investment of the company in excess of twenty percent of admitted assets.

(3) A company may participate through a member bank in the United States federal reserve book-entry system, and the records of the member bank shall at all times show that the investments are held for the company or for specific accounts of the company.

(4) An investment may consist of an individual interest in a pool of obligations or a fractional interest in a single obligation if the certificate of participation or interest or the confirmation of participation or interest in the investment is issued in the name of the company or the name of the custodian bank or the nominee of either and if the interest as evidenced by the certificate or confirmation is, if held by a custodian bank, kept separate and apart from the investments of others so that at all times the participation may be identified as belonging solely to the company making the investment.

(5) Transfers of ownership of investments held as described in paragraph "a", subparagraph (1), subparagraph subdivision (c), and subparagraphs (3) and (4) may be evidenced by bookkeeping entry on the books of the issuer of the investment, its transfer or recording agent, or the clearing corporation without physical delivery of certificate, if

any, evidencing the company's investment.

b. Except as provided in paragraph "a", subparagraph (5), if an investment is not evidenced by a certificate, adequate evidence of the company's investment shall be obtained from the issuer or its transfer or recording agent and retained by the company, a custodian bank, or clearing corporation. Adequate evidence, for purposes of this paragraph, means a written receipt or other verification issued by the depository or issuer or a custodian bank which shows that the investment is held for the company.

4. *Investments.* Except as otherwise permitted by this section, a company organized under this chapter may invest in the following and no other:

a. *United States government obligations.* Obligations issued or guaranteed by the United States or an agency or instrumentality of the United States.

Bonds or other evidences of indebtedness issued, assumed, or guaranteed by the United States of America, or by any agency or instrumentality of the United States of America include investments in an open-end management investment company registered with the federal securities and exchange commission under the federal Investment Company Act of 1940, 15 U.S.C. § 80(a), and operated in accordance with 17 C.F.R. § 270.2a-7, the portfolio of which is limited to the United States government obligations described in this paragraph "a", and which are included in the national association of insurance commissioners' securities valuation office's United States direct obligation – full faith and credit list.

b. *Certain development bank obligations.* Obligations issued or guaranteed by the international bank for reconstruction and development, the Asian development bank, the inter-American development bank, the export-import bank, the world bank, or any United States government-sponsored organization of which the United States is a member, if the principal and interest is payable in United States dollars. A company shall not invest more than five percent of its total admitted assets in the obligations of any one of these banks or organizations, and shall not invest more than a total of ten percent of its total admitted assets in the obligations authorized by this paragraph.

c. *State obligations.* Obligations issued or guaranteed by a state of the United States, or a political subdivision of a state, or an instrumentality of a state or political subdivision of a state.

d. *Canadian government obligations.* Obligations issued or guaranteed by the Dominion of Canada, or by an agency or province of Canada, or by a political subdivision of a province, or by an instrumentality of any of those provinces or political subdivisions.

e. *Corporate and business trust obligations.* Obligations issued, assumed, or guaranteed by a

corporation or business trust organized under the laws of the United States or a state of the United States, or the laws of Canada or a province of Canada, provided that a company shall not invest more than five percent of its admitted assets in the obligations of any one corporation or business trust.

Aggregate investments in below investment grade bonds shall not exceed five percent of assets.

f. *Stocks.* A company may invest in common stocks, common stock equivalents, mutual fund shares, securities convertible into common stocks or common stock equivalents, or preferred stocks issued or guaranteed by a corporation incorporated under the laws of the United States or a state of the United States, or the laws of Canada or a province of Canada.

(1) Stocks purchased under this section shall not exceed one hundred percent of capital and surplus. With the approval of the commissioner, a company may invest any amount in common stocks, preferred stocks, or other securities of one or more subsidiaries provided that after such investments the insurer's surplus as regards policyholders will be reasonable in relation to the insurer's outstanding liabilities and adequate to its financial needs.

(2) A company shall not invest more than ten percent of its capital and surplus in the stocks of any one corporation.

g. *Real estate mortgages.* Mortgages and other interest-bearing securities that are first liens upon real estate located within this state or any other state of the United States. However, a mortgage or other security does not qualify as an investment under this paragraph if at the date of acquisition the total indebtedness secured by the lien exceeds seventy-five percent of the value of the property that is subject to the lien. Improvements shall not be considered in estimating value unless the owner contracts to keep them insured during the life of the loan in one or more reliable fire insurance companies authorized to transact business in this state and for a sum at least equal to the excess of the loan above seventy-five percent of the value of the ground, exclusive of improvements, and unless this insurance is payable in case of loss to the company investing its funds as its interest may appear at the time of loss. For the purpose of this section, a lien upon real estate shall not be held or construed to be other than a first lien by reason of the fact that drainage or other improvement assessments have been levied against the real estate covered by the lien, whether or not the installment of the assessments have matured, but in determining the value of the real estate for loan purposes the amount of drainage or other assessment tax that is unpaid shall be first deducted.

h. *Real estate.*

(1) Except as provided in subparagraphs (2), (3), and (4) of this paragraph, a company may ac-

quire, hold, and convey real estate only as follows:

(a) Real estate mortgaged to it in good faith as security for loans previously contracted, or for moneys due.

(b) Real estate conveyed to it in satisfaction of debts previously contracted in the course of its dealings.

(c) Real estate purchased at sales on judgments, decrees, or mortgages obtained or made for debts previously contracted in the course of its dealings.

(d) Real estate subject to a contract for deed under which the company holds the vendor's interest to secure the payments the vendee is required to make under the contract.

All real estate specified in subdivisions (a), (b), and (c) of this subparagraph shall be sold and disposed of within three years after the company acquires title to it, or within three years after the real estate ceases to be necessary for the accommodation of the company's business, and the company shall not hold any of those properties for a longer period unless the company elects to hold the property under another paragraph of this section, or unless the company procures a certificate from the commissioner of insurance that its interest will suffer materially by the forced sale of those properties and that the time for the sale is extended to the time the commissioner directs in the certificate.

(2) A company may acquire, hold, and convey real estate as required for the convenient accommodation and transaction of its business.

(3) A company may acquire real estate or an interest in real estate as an investment for the production of income, and may hold, improve, or otherwise develop, subdivide, lease, sell, and convey real estate so acquired directly or as a joint venture or through a limited or general partnership in which the company is a partner.

(4) A company may also acquire and hold real estate if the purpose of the acquisition is to enhance the sale value of real estate previously acquired and held by the company under this paragraph, and if the company expects the real estate so acquired to qualify under subparagraph (2) or (3) of this paragraph within three years after acquisition.

(5) A company may, after securing the written approval of the commissioner, acquire and hold real estate for the purpose of providing necessary living quarters for its employees. However, the company shall dispose of the real estate within three years after it has ceased to be necessary for that purpose unless the commissioner agrees to extend the holding period upon application by the company.

(6) A company shall not invest more than twenty-five percent of its total admitted assets in real estate. The cost of a parcel of real estate held for both the accommodation of business and for the production of income shall be allocated between

the two uses annually. A company shall not invest more than ten percent of its total admitted assets in real estate held under subparagraph (3) of this paragraph.

(7) A company is not required to divest itself of real estate assets owned or contracted for prior to July 1, 1982, in order to comply with the limitations established under this paragraph.

*i. Foreign investments.* Obligations of and investments in foreign countries, as follows:

(1) A company may acquire and hold other investments in foreign countries that are required to be held as a condition of doing business in those countries, so long as such investments are of substantially the same types as those eligible for investment under this section.

(2) A company shall not invest more than two percent of its admitted assets in the stocks or stock equivalents of foreign corporations or business trusts, other than the stocks or stock equivalents of foreign corporations or business trusts incorporated or formed under the laws of Canada, and then only if the stocks or stock equivalents of such foreign corporations or business trusts are regularly traded on the New York, London, Paris, Zurich, Hong Kong, Toronto, or Tokyo stock exchange, or a similar exchange approved by the commissioner by rule or order.

(3) A company may invest in the obligations of a foreign government other than Canada or of a corporation incorporated under the laws of a foreign government other than Canada. Any such governmental obligation must be valid, legally authorized and issued, and on the date of acquisition have predominantly investment qualities and characteristics as provided by rule. Any such corporate obligation must on the date of acquisition have investment qualities and characteristics, and must not have speculative elements which are predominant, as provided by rule. A company shall not invest more than two percent of its admitted assets in the obligations of a foreign government other than Canada and the United Kingdom. Investments in obligations of the United Kingdom are not eligible in excess of four percent of admitted assets. A company shall not invest more than two percent of its admitted assets in the obligations of a corporation incorporated under the laws of a foreign government other than a corporation incorporated under the laws of Canada.

(4) A company shall not invest more than twenty percent of its admitted assets in foreign investments pursuant to this paragraph.

*j. Personal property under lease.* Personal property for intended lease or rental by the company in the United States or Canada. A company shall not invest more than five percent of its admitted assets under this paragraph.

*k. Collateral loans.* Obligations secured by the pledge of an investment authorized by paragraphs "a" through "j", subject to the following conditions:

(1) The pledged investment shall be legally assigned or delivered to the company.

(2) The pledged investment shall at the time of purchase have a market value of at least one hundred ten percent of the amount of the unpaid balance of the obligations.

(3) The company shall reserve the right to declare the obligation immediately due and payable if at any time after purchase the security depreciates to the point where the investment would not qualify under subparagraph (2) of this paragraph. However, additional qualifying security may be pledged to allow the investment to remain qualified.

*l. Options transactions.*

(1) A domestic fire and casualty company may only engage in the following transactions in options on an exchange and only when in accordance with the rules of the exchange on which the transactions take place:

(a) The sale of exchange-traded covered options.

(b) The purchase of exchange-traded covered options solely in closing purchase transactions.

(2) The commissioner shall adopt rules pursuant to chapter 17A regulating option sales under this subparagraph.

*m. Venture capital funds.* Shares or equity interests in venture capital funds which agree to invest an amount equal to at least fifty percent of the investments by a company in small businesses having their principal offices within this state and having either more than one-half of their assets within this state or more than one-half of their employees employed within this state. A company shall not invest more than five percent of its capital and surplus under this paragraph. For purposes of this paragraph, “*venture capital fund*” means a corporation, partnership, proprietorship, or other entity formed under the laws of the United States, or a state, district, or territory of the United States, whose principal business is or will be the making of investments in, and the provision of significant managerial assistance to, small businesses which meet the small business administration definition of small business. “*Equity interests*” means limited partnership interests and other equity interests in which liability is limited to the amount of the investment, but does not mean general partnership interests or other interests involving general liability.

“*Venture capital fund*” includes an equity interest in the Iowa fund of funds as defined in section 15E.62.

*n. Other investments.*

(1) A company organized under this chapter may invest up to five percent of its admitted assets in securities or property of any kind, without restrictions or limitations except those imposed on business corporations in general.

(2) A company organized under this chapter

may invest its assets in any additional forms not specifically included in paragraphs “a” through “o” when authorized by rules adopted by the commissioner.

*o. Rules.* The commissioner may adopt rules pursuant to chapter 17A to carry out the purposes and provisions of this section.

2007 Acts, ch 137, §12  
Similar provisions, §511.8  
Subsection 2, NEW paragraph b and former paragraphs b – g redesignated as c – h

**515.50 Loans — reinsurance.** Repealed by 2007 Acts, ch 152, § 84.

**515.65 Certificate refused — administrative penalty.** Transferred to § 515.146; 2007 Acts, ch 152, § 3.

**515.67 Inquiry by commissioner.** Repealed by 2007 Acts, ch 152, § 84.

**515.73 Additional statements — impaired capital.**

Such company shall also file with the commissioner a certified copy of its charter or deed of settlement, together with a statement under oath of the president or vice president or other chief officer and the secretary of the company for which they may act, stating the name of the company, the place where located, the amount of its capital, with a detailed statement of the facts and items required from companies organized under the laws of this state, and a copy of the last annual report, if any, made under any law of the state by which such company was incorporated; and no agent shall be allowed to transact business for any company whose capital is impaired by liabilities as specified in this chapter to the extent of twenty percent thereof, while such deficiency shall continue.

2007 Acts, ch 152, §6  
Former §515.73 transferred to §515.76; 2007 Acts, ch 152, §4  
Section transferred from §515.75 in Code Supplement 2007 pursuant to directive in 2007 Acts, ch 152, §6

**515.74 Foreign mutual companies — surplus.**

1. Any mutual insurance company organized outside of this state and authorized to transact the business of insurance on the mutual plan in any other state of the United States or in the District of Columbia, may be admitted to this state and authorized to transact herein any of the kinds of insurance authorized by its charter or articles of incorporation, when so permitted by the provisions of this chapter, with the powers and privileges and subject to the conditions and limitations specified in said chapter; provided, however, such company has complied with all the statutory provisions which require stock companies to file papers and to furnish information and to submit to examina-

tion, and is also solvent according to the requirements of this chapter and is possessed of a surplus safely invested as follows:

*a.* In case of a mutual company issuing policies for a cash premium without an additional contingent liability equal to or greater than the cash premium, the surplus shall be at least two million dollars.

*b.* In case of any other such mutual company issuing policies for a cash premium or payment with an additional contingent liability equal to or greater than the cash premium or payment, the surplus shall be such an amount as the commissioner of insurance of Iowa may require, but in no case less than three hundred thousand dollars, provided that the provisions of this section fixing a minimum surplus of three hundred thousand dollars shall not apply to companies now admitted to do business in Iowa; provided, further, that no such mutual company shall be authorized to transact compensation insurance without a surplus of at least three hundred thousand dollars unless all liability for each adjusted claim in this state, the payment of any part of which is deferred for more than one year, shall be provided for by a special deposit, in a trust company or a bank having fiduciary powers, located in this state, which shall be a trust fund applicable solely and exclusively to the payment of the compensation benefits for which such deposit is made, or shall be re-insured in an authorized stock company, or in an authorized mutual company with a surplus of at least three hundred thousand dollars.

2. Notwithstanding subsection 1, a mutual insurance company authorized to transact business under this section shall comply with the minimum surplus requirements of this section or chapter 521E, whichever is greater.

2007 Acts, ch 152, §7

Former §515.74 transferred to §515.77; 2007 Acts, ch 152, §5

Section transferred from §515.76 in Code Supplement 2007 pursuant to directive in 2007 Acts, ch 152, §7

#### **515.75 Certificate to foreign company.**

When a foreign company has fully complied with the requirements of law and become entitled to do business, the commissioner of insurance shall issue to the company a certificate of that fact, which certificate shall be renewed annually on the first day of June, if the commissioner is satisfied that the capital, securities, and investments of the company remain unimpaired, and the company has complied with the provisions of law applicable to the company. However, the commissioner shall not grant or continue authority to transact insurance in this state to an insurer the management of which is found by the commissioner, after a hearing is provided, in which the commissioner shall establish and consider any prior criminal records or any other matters, to be untrustworthy or so lacking in insurance experience as to make the proposed operation hazardous to the insurance-

buying public; or which, after a hearing is provided, the commissioner has good reason to believe is affiliated directly or indirectly through ownership, control, reinsurance transactions, or other insurance or business relations, with a person whose business operations are or have been marked, to the detriment of policyholders or stockholders or investors or creditors or of the public, by manipulation or dissipation of assets, or manipulation of accounts, or of reinsurance, or by similar injurious actions.

2007 Acts, ch 152, §8

Former §515.75 transferred to §515.73; 2007 Acts, ch 152, §6

Section transferred from §515.77 in Code Supplement 2007 pursuant to directive in 2007 Acts, ch 152, §8

#### **515.76 Commissioner as process agent.**

Any company desiring to transact the business of insurance under this chapter shall file with the commissioner of insurance a power of attorney and a signed written instrument authorizing the commissioner to accept service of notice or process on behalf of such company that shall be as valid as if served upon the company according to the laws of this or any other state, and waiving all claim or right of error due to the filing of the power of attorney and the agreement regarding service of notice or process.

2007 Acts, ch 152, §4

Former §515.76 transferred to §515.74; 2007 Acts, ch 152, §7

Section transferred from §515.73 in Code Supplement 2007 pursuant to directive in 2007 Acts, ch 152, §4

#### **515.77 Service of process.**

Any notice or process, with three copies of the notice or process, may be mailed to the commissioner at Des Moines, Iowa, in a certified mail letter addressed to the commissioner by the commissioner's official title. The commissioner shall acknowledge service on behalf of the defendant foreign insurance company by writing, giving the date of receipt of the notice or process, and shall return the notice or process in a certified mail letter to the clerk of the court in which the suit is pending, addressed to the clerk by the clerk's official title, and shall also mail a copy, with a copy of the commissioner's acknowledgment of service written thereon, in a certified mail letter addressed to the person or corporation named or designated by such company in the written instrument. Notice or process received prior to 10 a.m. shall be forwarded the same working day. Notice or process received after 10 a.m. shall be forwarded the next working day. A fee of fifteen dollars must accompany the request for notice or process.

2007 Acts, ch 152, §5

Former §515.77 transferred to §515.75; 2007 Acts, ch 152, §8

Section transferred from §515.74 in Code Supplement 2007 pursuant to directive in 2007 Acts, ch 152, §5

#### **515.78 Foreign companies may become domestic.**

An insurer which is organized under the laws of any state, and is admitted to do business in this state for the purpose of writing insurance autho-



rized by this chapter may become a domestic insurer by complying with section 490.902 or 491.33 and with all of the requirements of law relative to the organization and licensing of a domestic insurer of the same type and by designating its principal place of business in this state, and, upon payment to the commissioner of insurance of a transfer tax in a sum equal to twenty-five percent of the premium tax paid pursuant to the provisions of chapter 432 for the last calendar year immediately preceding its becoming a domestic corporation or the sum of ten thousand dollars, whichever is the lesser but not less than one thousand dollars, may become a domestic corporation and be entitled to like certificates of its corporate existence and license to transact business in this state, and be subject in all respects to the authority and jurisdiction thereof.

The certificates of authority, agent's appointments and licenses, rates, and other items which are in existence at the time any insurer transfers its corporate domicile to this state, pursuant to this section, shall continue in full force and effect upon such transfer. For purposes of existing authorizations and all other corporate purposes, the insurer is deemed the same entity as it was prior to the transfer of its domicile. All outstanding policies of any transferring insurer shall remain in full force and effect and need not be endorsed as to any new name of the company or its new location unless so ordered by the commissioner of insurance.

2007 Acts, ch 152, §25  
Section transferred from §515.99 in Code Supplement 2007 pursuant to directive in 2007 Acts, ch 152, §25

**515.79 Notes taken for insurance.** Repealed by 2007 Acts, ch 152, § 84.

**515.80 Forfeiture of policies — notice.** Transferred to § 515.125; 2007 Acts, ch 152, § 9.

**515.81 Cancellation of policy — notice to insured or mortgagee.** Transferred to § 515.126; 2007 Acts, ch 152, § 10.

**515.81A Cancellation of commercial lines policies or contracts.** Transferred to § 515.127; 2007 Acts, ch 152, § 11.

**515.81B Nonrenewal of commercial lines policies or contracts.** Transferred to § 515.128; 2007 Acts, ch 152, § 12.

**515.81C Cancellation or nonrenewal of commercial umbrella or excess policies or contracts.** Transferred to § 515.129; 2007 Acts, ch 152, § 13.

**515.82 Short rates.** Transferred to § 515.130; 2007 Acts, ch 152, § 14.

**515.83 Policy restored.** Transferred to § 515.131; 2007 Acts, ch 152, § 15.

**515.84 Right of insured to cancel.** Transferred to § 515.132; 2007 Acts, ch 152, § 16.

**515.85 through 515.87** Reserved.

**515.88 Transfers pending investigation.** Transferred to § 515.142; 2007 Acts, ch 152, § 17.

**515.89 Revocation of certificate of foreign company.** Transferred to § 515.143; 2007 Acts, ch 152, § 18.

**515.90 Suspension and summary suspension.** Transferred to § 515.144; 2007 Acts, ch 152, § 19.

**515.91 False statement of assets.** Repealed by 2007 Acts, ch 152, § 84. See § 507B.4.

**515.92 Statement of capital and surplus.** Repealed by 2007 Acts, ch 152, § 84. See § 507B.4.

**515.93 Violations.** Repealed by 2007 Acts, ch 152, § 84.

**515.94 Copy of application — duty to provide.** Transferred to § 515.133; 2007 Acts, ch 152, § 20.

**515.95 Failure to attach — effect.** Transferred to § 515.134; 2007 Acts, ch 152, § 21.

**515.96 Presumption as to value.** Transferred to § 515.135; 2007 Acts, ch 152, § 22.

**515.97 Value of building — liability.** Transferred to § 515.136; 2007 Acts, ch 152, § 23.

**515.98 Prima facie right of recovery.** Transferred to § 515.137; 2007 Acts, ch 152, § 24.

**515.99 Foreign companies may become domestic.** Transferred to § 515.78; 2007 Acts, ch 152, § 25.

## POLICY PROVISIONS AND RATES

**515.100 Nature of organization entered on policy.**

Every domestic and foreign insurance company organized and doing business under this chapter shall indicate upon the first page of every policy and renewal receipt that the policy is issued by a mutual company in case of a mutual company, and by a stock company in case of a stock company.

2007 Acts, ch 152, §1  
Former §515.100 transferred to §515.138; 2007 Acts, ch 152, §26  
Section transferred from §515.6 in Code Supplement 2007 pursuant to directive in 2007 Acts, ch 152, §1

**515.101 Conditions and stipulations invalidating policy — avoidance — pleadings — applicability.**

1. Any condition or stipulation in an application, policy, or contract of insurance making the policy void before the loss occurs shall not prevent recovery on the policy by the insured, if the plaintiff shows that the failure to observe such provision or the violation thereof did not contribute to the loss.

2. Any such condition or stipulation in an application, policy, or contract of insurance that refers to any of the following shall not be changed or affected by the provisions of subsection 1:

- a. Any other insurance, valid or invalid.
- b. Vacancy of the insured premises.
- c. The title or ownership of the property insured.

d. Liens or encumbrances on the property insured created by the voluntary act of the insured and within the insured's control.

e. Suspension or forfeiture of the policy during default or failure to pay any written obligation given to the insurance company for the premium.

f. The assignment or transfer of such policy of insurance before the loss occurs without the consent of the insurance company.

g. The removal of the property insured.

h. A change in the occupancy or use of the property insured, if such change or use makes the risk more hazardous.

i. The fraud of the insured in the procurement of the contract of insurance.

3. Subsections 1 and 2 shall not be construed to change limitations or restrictions related to the pleading or proving of any defense by any insurance company to which the company is subject by law.

4. The provisions of subsections 1, 2, and 3 apply to all contracts of insurance on real and personal property.

2007 Acts, ch 152, §64  
Section amended

**515.102 Forms of policies and endorsements — approval.**

1. The form of all policies, and of applications,

and of agreements or endorsements modifying the provisions of policies, and of all permits and riders used generally throughout the state, that are issued or proposed to be issued by any insurance company doing business in this state under the provisions of this chapter, shall first be examined and approved by the commissioner of insurance.

2. The commissioner, upon a determination that the examination required under subsection 1 is unnecessary to achieve the purpose of this section, may exempt either of the following:

a. Any specified person by order, or any class of persons by rule.

b. Any specified risk by order, or any line or kind of insurance, or subdivision of insurance, or any class of risk or combination of classes of risks by rule.

3. Forms of policies issued or proposed to be issued shall provide for the cancellation of the policy at the request of the insured upon equitable terms, and the return to the insured of any premium paid in excess of the customary short rates for the insurance up to the time of cancellation, or the release of the insured from any liability beyond such short rates, or for losses after the cancellation of the policy if the insurance is issued or proposed to be issued by a mutual company.

2007 Acts, ch 152, §65  
Former §515.102 repealed by 2007 Acts, ch 152, §84; see §515.101  
With respect to proposed amendment to former §515.102 by 2007 Acts, ch 22, §88, see Code editor's note to §29A.28  
NEW section

**515.103 Use of credit information — personal insurance.**

1. *Definitions.* As used in this section unless the context otherwise requires:

a. "*Adverse action*" means a denial of issuance, cancellation, or refusal to renew, an increase in any charge for, or a reduction or other unfavorable change in the terms of coverage or amount of any personal insurance existing or applied for, or in connection with the underwriting of personal insurance.

b. "*Affiliate*" means any company that controls, is controlled by, or is under common control with another company.

c. "*Applicant*" means an individual who has applied to be covered by a personal insurance policy with an insurer.

d. "*Consumer*" means an insured whose credit information is used or whose insurance score is calculated in the underwriting or rating of a personal insurance policy or an applicant for such a personal insurance policy.

e. "*Consumer reporting agency*" means any person that, for monetary fees, dues, or on a cooperative nonprofit basis, regularly engages in whole or in part in the practice of assembling or evaluating consumer credit information or other information concerning consumers for the purpose of furnishing consumer credit reports to third parties.

f. “*Credit information*” means any information related to credit that is contained in or derived from a credit report, or provided in an application for personal insurance. Information that is not related to credit shall not be considered “credit information” regardless of whether the information is contained in or derived from a credit report or an application for credit or is used to calculate an insurance score.

g. “*Credit report*” means any written, oral, or other communication of information by a consumer reporting agency that relates to a consumer’s creditworthiness, credit standing, or credit capacity and that is used or expected to be used or is collected, in whole or in part, for the purpose of serving as a factor in determining personal insurance premiums, eligibility for personal insurance coverage, or tier placement.

h. “*Insurance score*” means a number or rating that is derived from an algorithm, computer application, model, or other process that is based in whole or in part on credit information for the purposes of predicting the future insurance loss exposure of a consumer.

i. “*Insured*” means an individual who is covered by a personal insurance policy.

j. “*Personal insurance*” means personal insurance and not commercial insurance and is limited to private passenger automobile, homeowners, farm owners, personal farm liability, motorcycle, mobile home owners, noncommercial dwelling fire, boat, personal watercraft, snowmobile, and recreational vehicle insurance policies, that are individually underwritten for personal, family, farm, or household use. No other type of insurance is included as personal insurance for the purposes of this section.

2. *Use of credit information.* An insurer authorized to do business in Iowa that uses credit information to underwrite or rate risks for a policy of personal insurance shall not do any of the following:

a. Use an insurance score that is calculated using income, gender, address, zip code, ethnic group, religion, marital status, race, or nationality of a consumer as a factor.

b. Deny issuance, cancel, or refuse to renew a policy of personal insurance solely on the basis of credit information, without consideration of any other applicable underwriting factors independent of credit information that are not otherwise prohibited under paragraph “a”.

c. Base a consumer’s renewal rates for personal insurance solely on the basis of credit information, without consideration of any other applicable underwriting factors independent of credit information that are not otherwise prohibited under paragraph “a”.

d. Take adverse action against a consumer solely because the consumer does not have a credit

card account, without consideration of any other applicable underwriting factors independent of credit information that are not otherwise prohibited under paragraph “a”.

e. Consider an absence of credit information or an inability to calculate an insurance score in underwriting or rating personal insurance unless the insurer does one of the following:

(1) Treats the consumer as if the consumer has neutral credit information, as defined by the insurer.

(2) Excludes the use of credit information as an underwriting factor and only uses other underwriting criteria.

f. Take adverse action against a consumer based on credit information, unless the insurer obtains and uses a credit report issued or an insurance score calculated within ninety days before the date a personal insurance policy is first written or a renewal is issued.

g. Use credit information unless not later than every thirty-six months following the last time that the insurer obtained current credit information for the insured, the insurer recalculates the insurance score or obtains an updated credit report for the insured. Regardless of the requirements of this paragraph:

(1) At annual renewal, upon the request of the consumer or the consumer’s agent, the insurer shall re-underwrite and re-rate the personal insurance policy based upon a current credit report or insurance score. An insurer is not required to recalculate an insurance score or obtain a current credit report more than once in a twelve-month period.

(2) The insurer shall have the discretion to obtain current credit information for a consumer more frequently than every thirty-six months, if consistent with the insurer’s underwriting guidelines.

(3) Notwithstanding subparagraph (1), an insurer is not required to obtain current credit information for a consumer if any of the following applies:

(a) The insurer is treating the consumer as otherwise approved by the commissioner of insurance.

(b) The consumer is in the most favorably priced tier of the insurer, within a group of affiliated insurers. However, the insurer shall have the discretion to obtain current credit information, if consistent with the insurer’s underwriting guidelines.

(c) Credit information was not used for underwriting or rating the insured when the personal insurance policy was initially written. However, the insurer shall have the discretion to use current credit information for underwriting or rating the insured upon renewal of the policy, if consistent with the insurer’s underwriting guidelines.

(d) The insurer reevaluates the insured beginning no later than thirty-six months after the personal insurance policy was initially written and thereafter, based on other underwriting or rating factors, excluding credit information.

*h.* Use any of the following as a negative factor in any insurance scoring methodology or in reviewing credit information for the purpose of underwriting or rating a personal insurance policy:

(1) Credit inquiries not initiated by the consumer or inquiries requested by the consumer for the consumer's own credit information.

(2) Inquiries relating to insurance coverage, if so identified on a consumer's credit report.

(3) Collection accounts with a medical industry code, if so identified on a consumer's credit report.

(4) Multiple lender inquiries, if coded by a consumer reporting agency on the consumer's credit report as being from the home mortgage industry and made within thirty days of one another, unless only one inquiry is considered.

(5) Multiple lender inquiries, if coded by a consumer reporting agency on the consumer's credit report as being from the automobile lending industry and made within thirty days of one another, unless only one inquiry is considered.

3. *Dispute resolution and error correction.* If it is determined through the dispute resolution process set forth under the federal Fair Credit Reporting Act, 15 U.S.C. § 1681i(a)(5), that the credit information of a current insured is incorrect or incomplete and the insurer receives notice of such determination from either the consumer reporting agency or from the insured, the insurer shall re-underwrite and re-rate the insured within thirty days of receiving the notice. After re-underwriting or re-rating the insured, the insurer shall make any adjustments necessary, consistent with the insurer's underwriting and rating guidelines. If an insurer determines that an insured has overpaid the premium on a personal insurance policy, the insurer shall refund the amount of the overpayment to the insured, calculated for either the last twelve months of coverage or the actual policy period, whichever is shorter.

4. *Initial notification.*

*a.* If an insurer writing personal insurance uses credit information in underwriting or rating a consumer, the insurer or the insurer's agent shall disclose, either on the insurance application or at the time that the insurance application is taken, that the insurer may obtain credit information of the consumer in connection with the application. Such disclosure to a consumer shall either be written or provided in the same medium as the application for insurance. An insurer is not required to provide the disclosure statement required under this subsection to a consumer in connection with the renewal of a personal insurance

policy if the consumer has previously been provided with such a disclosure statement.

*b.* An insurer that uses the following statement of disclosure shall be deemed to be in compliance with this subsection:

"In connection with this application for insurance, we may review your credit report or obtain or use a credit-based insurance score based on the information contained in that credit report. We may use a third party in connection with the development of your insurance score."

5. *Notification of adverse action.* If an insurer takes adverse action against a consumer based on credit information, the insurer shall do all of the following:

*a.* Provide notification to the consumer that adverse action has been taken, in accordance with the requirements of the federal Fair Credit Reporting Act, 15 U.S.C. § 1681m(a).

*b.* Provide notification to the consumer explaining the reasons for the adverse action taken. Such notice shall give reasons for the adverse action taken in language that is sufficiently clear and specific so that a person can identify the basis for the insurer's decision to take adverse action. Such notification shall include a description of up to four factors that were the primary influences for the adverse action taken. The use of generalized terms such as "poor credit history", "poor credit rating", or "poor insurance score" does not meet the explanation requirements of this paragraph. Standardized credit explanations that are provided by consumer reporting agencies or other third-party vendors are deemed to comply with this paragraph.

6. *Information filed with the commissioner of insurance.*

*a.* An insurer that uses insurance scores to underwrite and rate risks for personal insurance shall file the insurer's scoring models or other scoring processes with the commissioner of insurance. A third party may file scoring models on behalf of an insurer. Information filed with the commissioner that includes insurance scoring models may include information including loss experience that justifies the insurer's use of credit information.

*b.* Information filed with the commissioner of insurance pursuant to this subsection shall be considered a confidential record and be recognized and protected as a trade secret pursuant to section 22.7, subsection 3.

7. *Indemnification.* An insurer shall indemnify, defend, and hold harmless agents or producers of the insurer from and against all liability, fees, and costs, arising out of or relating to the actions, errors, or omissions of an agent or producer who obtains or uses credit information or insurance scores on behalf of an insurer, provided that the agent or producer follows the instructions or

procedures established by the insurer and complies with any applicable law or regulation. This subsection shall not be construed to provide a consumer or other insured with a cause of action that does not exist in the absence of this subsection.

8. *Consumer reporting agency — sale of credit information.*

a. A consumer reporting agency shall not provide or sell data or lists that include any information that was submitted, in whole or in part, in conjunction with an insurance inquiry about a consumer's credit information or a request for a credit report or insurance score. Such information includes, but is not limited to, the expiration dates of an insurance policy or any other information that can be used to identify the expiration date of a consumer's insurance policy or the terms and conditions of the consumer's insurance coverage.

b. This subsection does not apply to the provision of information, including data or lists, by a consumer reporting agency to the agent or producer from whom the information was received, to the insurer on whose behalf the agent or producer acted, or to the insurer's affiliates or holding companies.

c. This subsection shall not be construed to restrict an insurer from obtaining a claims history report or a motor vehicle report of a consumer.

9. *Severability.* If any subsection, paragraph, sentence, clause, phrase, or any other part of this section is declared invalid due to an interpretation of or a future change in the federal Fair Credit Reporting Act, the remaining subsections, paragraphs, sentences, clauses, phrases, or parts thereof shall be in no manner affected thereby but shall remain in full force and effect.

10. *Applicability date.* This section applies to personal insurance contracts or policies delivered, issued for delivery, continued, or renewed in this state on or after October 1, 2004.

2007 Acts, ch 152, §28  
Section transferred from §515.109A in Code Supplement 2007 pursuant to directive in 2007 Acts, ch 152, §28

#### **515.104 Coinsurance or contribution clause.**

Contracts of insurance against loss or damage by fire or other perils may contain a coinsurance or contribution clause or clause having similar effect, provided the form setting up the terms of the same has been approved by the commissioner of insurance.

2007 Acts, ch 152, §29  
Section transferred from §515.111 in Code Supplement 2007 pursuant to directive in 2007 Acts, ch 152, §29

#### **515.105 Agency relationship.**

Any officer, insurance producer, or representative of an insurance company doing business in this state who may solicit insurance, procure applications, issue policies, adjust losses, or transact the business generally of such companies, shall be

held to be the agent of such insurance company with authority to transact all business within the scope of the agency relationship, anything in the application, policy, contract, bylaws, or articles of incorporation of such company to the contrary notwithstanding.

2007 Acts, ch 152, §33  
Applicable to life companies, §511.4  
Former §515.105 repealed by 2007 Acts, ch 152, §84; see §515.101  
Section transferred from §515.125 in Code Supplement 2007 pursuant to directive in 2007 Acts, ch 152, §33

#### **515.106 Limitation on termination of independent producers.**

An insurance company organized under this chapter or authorized to do business in this state shall not terminate a contract of an insurance producer who is an independent contractor but who is not an exclusive insurance producer as defined in section 522B.1 without at least one hundred eighty days' notice, except for loss of license, fraud, nonpayment of company premiums that are due and not in dispute by the producer, or the withdrawal of operations in the state by the insurance company. This section does not apply to insurance producers or a business entity whose contract with an insurer authorized to do business in this state contains a written provision expressly reserving to the insurer all right, title, and interest to the ownership or the use of insurance business written by such an insurance producer or business entity.

2007 Acts, ch 152, §34  
Former §515.106 repealed by 2007 Acts, ch 152, §84; see §515.101  
Section transferred from §515.125A in Code Supplement 2007 pursuant to directive in 2007 Acts, ch 152, §34

#### **515.107 Applicability to organizations and individuals.**

The provisions of the foregoing sections relative to insurance companies shall apply to all such companies, partnerships, associations, or individuals, whether incorporated or not.

2007 Acts, ch 152, §35  
Section transferred from §515.127 in Code Supplement 2007 pursuant to directive in 2007 Acts, ch 152, §35

#### **515.108 Insurance in unauthorized companies.**

No action shall be maintained in any court in the state upon any policy or contract of fire insurance issued upon any property situated in the state by any company, association, partnership, individual, or individuals that have not been authorized by the commissioner of insurance to transact such insurance business, unless it shall be shown that the insurer or insured, within six months after the issuing of such policy or contract of insurance, has paid into the state treasury two percent of the gross premium paid or agreed to be paid for such policy or contract of insurance.

2007 Acts, ch 152, §43  
Former §515.108 transferred to §515.110; 2007 Acts, ch 152, §27  
Section transferred from §515.137 in Code Supplement 2007 pursuant to directive in 2007 Acts, ch 152, §43

**515.109 Fire insurance contract — standard policy provisions — permissible variations.**

1. The printed form of a policy of fire insurance as set forth in subsection 6 shall be known and designated as the “standard policy” to be used in the state of Iowa.

2. *Standard policy, additions, riders, and clauses.* It shall be unlawful for any insurance company to issue any policy of fire insurance upon any property in this state except upon automobiles, airplanes, seaplanes, dirigibles, or other aircraft, farm crops until stored, marine and inland marine risks other or different from the standard form of fire insurance policy herein set forth.

There shall be printed at the head of said policy the name of the insurer or insurers issuing the policy; the location of the home office thereof; a statement whether said insurer or insurers are stock or mutual corporations or are reciprocal insurers; and subject to the approval of the commissioner of insurance, there may be added thereto such device or devices as the insurer or insurers issuing said policy shall desire. Provided, however, that any company organized under special charter provisions may so indicate upon its policy, and may add a statement of the plan under which it operates in this state.

The standard policy provided for herein need not be used for effecting reinsurance between insurers.

If the policy is issued by a mutual, cooperative, or reciprocal insurer having special regulations with respect to the payment by the policyholder of assessments, such regulations shall be printed upon the policy, and any such insurer may print upon the policy such regulations as may be required by its home state or appropriate to its form of organization.

3. Binders or other contracts for temporary insurance may be made and shall be deemed to include all the terms of such standard policy and all such applicable endorsements as may be designated in such contract of temporary insurance; except that the cancellation clause of such standard policy, and the clause thereof specifying the hour of the day at which the insurance shall commence, may be superseded by the express terms of such contract of temporary insurance.

4. Two or more insurers authorized to do in this state the business of fire insurance, may, with the approval of the commissioner of insurance, issue a combination standard form of policy which shall contain the following:

a. A provision substantially to the effect that the insurers executing such policy shall be severally liable for the full amount of any loss or damage, according to the terms of the policy, or for specified percentages or amounts thereof, aggregating the full amount of such insurance under such policy.

b. A provision substantially to the effect that service of process, or of any notice or proof of loss required by such policy, upon any of the insurers executing such policy, shall be deemed to be service upon all such insurers.

5. Appropriate forms of other contracts or endorsements, insuring against one or more of the perils incident to the ownership, use or occupancy of said property, other than fire and lightning, which the insurer is empowered to assume, may be used in connection with the standard policy. Such forms of other contracts or endorsements attached or printed thereon may contain provisions and stipulations inconsistent with the standard policy if applicable only to such other perils. The pages of the standard policy may be renumbered and rearranged to provide space for the listing of rates and premiums for coverages insured thereunder or under endorsements attached or printed thereon, and such other data as may be included for duplication on daily reports for office records. An insurer may issue a policy, either on an unspecified basis as to coverage or for an indivisible premium, which contains coverage against the peril of fire and substantial coverage against other perils, if such policy includes provisions with respect to the peril of fire which are the substantial equivalent of the minimum provisions of such standard policy, provided further the policy is complete as to all its terms of coverage without reference to any other document and is approved in accordance with section 515.102, subsections 1 and 2.

6. The form of the standard policy (with permission to substitute for the word “company” a more accurate descriptive term for the type of insurer) shall be as follows:

FIRST PAGE OF STANDARD FIRE POLICY

No. . . . .

(Space for insertion of name of company or companies issuing the policy and other matter permitted to be stated at the head of the policy.)

(Space for listing amounts of insurance, rates and premiums for the basic coverages insured under the standard form of policy and for additional coverages or perils insured under endorsements attached.)

IN CONSIDERATION OF THE PROVISIONS AND STIPULATIONS HEREIN OR ADDED HERETO AND OF . . . . . DOLLARS PREMIUM this company, for the term of . . . . . from the . . . . . day of . . . . . (month), . . . . . (year), to the . . . . . day of . . . . . (month), . . . . . (year), at noon, Standard Time, at location of property involved, to an amount not exceeding . . . . . Dollars, does insure . . . . . and legal representatives, to the extent of the actual cash value of the property at the time of loss, but not exceeding the amount which it would cost to repair or replace the proper-

ty with material of like kind and quality within a reasonable time after such loss, without allowance for any increased cost of repair or reconstruction by reason of any ordinance or law regulating construction or repair, and without compensation for loss resulting from interruption of business or manufacture, nor in any event for more than the interest of the insured, against all DIRECT LOSS BY FIRE, LIGHTNING AND BY REMOVAL FROM PREMISES ENDANGERED BY THE PERILS INSURED AGAINST IN THIS POLICY, EXCEPT AS HEREINAFTER PROVIDED, to the property described hereinafter while located or contained as described in this policy, or pro rata for five days at each proper place to which any of the property shall necessarily be removed for preservation from the perils insured against in this policy, but not elsewhere.

Assignment of this policy shall not be valid except with the written consent of this company.

This policy is made and accepted subject to the foregoing provisions and stipulations and those hereinafter stated, which are hereby made a part of this policy, together with such other provisions, stipulations and agreements as may be added hereto, as provided in this policy.

IN WITNESS WHEREOF, this company has executed and attested these presents; but this policy shall not be valid unless countersigned by the duly authorized agent of this company at .....

.....  
 Secretary. President.  
 Countersigned this .....  
 day of ..... (month), ..... (year).  
 .....  
 Agent.

SECOND PAGE OF STANDARD FIRE POLICY

*Concealment — fraud.* This entire policy shall be void if, whether before or after a loss, an insured has willfully concealed or misrepresented any material fact or circumstance concerning this insurance or the subject thereof, or the interest of an insured therein, or in case of any fraud or false swearing by an insured relating thereto.

*Uninsurable and excepted property.* This policy shall not cover accounts, bills, currency, deeds, evidences of debt, money or securities; nor, unless specifically named hereon in writing, bullion or manuscripts.

*Perils not included.* This company shall not be liable for loss by fire or other perils insured against in this policy caused, directly or indirectly, by: (a) Enemy attack by armed forces, including action taken by military, naval or air forces in resisting an actual or an immediately impending enemy attack; (b) invasion; (c) insurrection; (d) rebellion; (e) revolution; (f) civil war; (g) usurped power; (h) order of any civil authority except acts of destruction at the time of and for the purpose of preventing the

spread of fire, provided that such fire did not originate from any of the perils excluded by this policy; (i) neglect of an insured to use all reasonable means to save and preserve the property at and after a loss, or when the property is endangered by fire in neighboring premises; (j) nor shall this company be liable for loss by theft.

*Other insurance.* Other insurance may be prohibited or the amount of insurance may be limited by endorsement attached hereto.

*Conditions suspending or restricting insurance.* Unless otherwise provided in writing added hereto this company shall not be liable for loss occurring under any of the following circumstances:

a. While the hazard is created or increased by any means within the control or knowledge of an insured.

b. While a described building, whether intended for occupancy by owner or tenant, is vacant or unoccupied beyond a period of sixty consecutive days.

c. As a result of explosion or riot, unless fire ensue, and in that event for loss by fire only.

*Other perils or subjects.* Any other peril to be insured against or subject of insurance to be covered in this policy shall be by endorsement in writing hereon or added hereto.

*Added provisions.* The extent of the application of insurance under this policy and of the contribution to be made by this company in case of loss, and any other provision or agreement not inconsistent with the provisions of this policy, may be provided for in writing added hereto, but no provision may be waived except such as by the terms of this policy is subject to change.

*Waiver provisions.* No permission affecting this insurance shall exist, or waiver of any provision be valid, unless granted herein or expressed in writing added hereto. No provision, stipulation or forfeiture shall be held to be waived by any requirement or proceeding on the part of this company relating to appraisal or to any examination provided for herein.

*Cancellation of policy.* This policy shall be canceled at any time at the request of the insured, in which case this company shall, upon demand and surrender of this policy, refund the excess of paid premium above the customary short rates for the expired time. This policy may be canceled at any time by this company by giving to the insured a five days' written notice of cancellation with or without tender of the excess of paid premium above the pro rata premium for the expired time, which excess, if not tendered, shall be refunded on demand. Notice of cancellation shall state that said excess premium (if not tendered) will be refunded on demand.

*Mortgagee interests and obligations.* If loss hereunder is made payable, in whole or in part, to a designated mortgagee not named herein as the

insured, such interest in this policy may be canceled by giving to such mortgagee a ten days' written notice of cancellation.

If the insured fails to render proof of loss such mortgagee, upon notice, shall render proof of loss in the form herein specified within sixty days thereafter and shall be subject to the provisions hereof relating to appraisal and time of payment and of bringing suit. If this company shall claim that no liability existed as to the mortgagor or owner, it shall, to the extent of payment of loss to the mortgagee, be subrogated to all the mortgagee's rights of recovery, but without impairing mortgagee's right to sue; or it may pay off the mortgage debt and require an assignment thereof and of the mortgage. Other provisions relating to the interests and obligations of such mortgagee may be added hereto by agreement in writing.

*Pro rata liability.* This company shall not be liable for a greater proportion of any loss than the amount hereby insured shall bear to the whole insurance covering the property against the peril involved, whether collectible or not.

*Requirements in case loss occurs.* The insured shall give immediate written notice to this company of any loss, protect the property from further damage, forthwith separate the damaged and undamaged personal property, put it in the best possible order, furnish a complete inventory of the destroyed, damaged and undamaged property, showing in detail quantities, costs, actual cash value and amounts of loss claimed; AND WITHIN SIXTY DAYS AFTER THE LOSS, UNLESS SUCH TIME IS EXTENDED IN WRITING BY THIS COMPANY, THE INSURED SHALL RENDER TO THIS COMPANY A PROOF OF LOSS, signed and sworn to by the insured, stating the knowledge and belief of the insured as to the following: The time and origin of the loss, the interest of the insured and of all others in the property, the actual cash value of each item thereof and the amount of loss thereto, all encumbrances thereon, all other contracts of insurance, whether valid or not, covering any of said property, any changes in the title, use, occupation, location, possession or exposures of said property since the issuing of this policy, by whom and for what purpose any building herein described and the several parts thereof were occupied at the time of loss and whether or not it then stood on leased ground, and shall furnish a copy of all the descriptions and schedules in all policies and, if required, verified plans and specifications of any building, fixtures or machinery destroyed or damaged. The insured, as often as may be reasonably required, shall exhibit to any person designated by this company all that remains of any property herein described, and submit to examinations under oath by any

person named by this company, and subscribe the same; and, as often as may be reasonably required, shall produce for examination all books of account, bills, invoices and other vouchers, or certified copies thereof if originals be lost, at such reasonable time and place as may be designated by this company or its representative, and shall permit extracts and copies thereof to be made.

*Appraisal.* In case the insured and this company shall fail to agree as to the actual cash value or the amount of loss, then, on the written demand of either, each shall select a competent and disinterested appraiser and notify the other of the appraiser selected within twenty days of such demand. The appraisers shall first select a competent and disinterested umpire; and failing for fifteen days to agree upon such umpire, then, on request of the insured or this company, such umpire shall be selected by a judge of a court of record in the state in which the property covered is located. The appraisers shall then appraise the loss, stating separately actual cash value and loss to each item; and, failing to agree, shall submit their differences, only, to the umpire. An award in writing, so itemized, of any two when filed with this company shall determine the amount of actual cash value and loss. Each appraiser shall be paid by the party selecting the appraiser and the expenses of appraisal and umpire shall be paid by the parties equally.

*Company's options.* It shall be optional with this company to take all, or any part, of the property at the agreed or appraised value, and also to repair, rebuild or replace the property destroyed or damaged with other of like kind and quality within a reasonable time, on giving notice of its intention so to do within thirty days after the receipt of the proof of loss herein required.

*Abandonment.* There can be no abandonment to this company of any property.

*When loss payable.* The amount of loss for which this company may be liable shall be payable sixty days after proof of loss, as herein provided, is received by this company and ascertainment of the loss is made either by agreement between the insured and this company expressed in writing or by the filing with this company of an award as herein provided.

*Suit.* No suit or action on this policy for the recovery of any claim shall be sustainable in any court of law or equity unless all the requirements of this policy shall have been complied with, and unless commenced within twelve months next after inception of the loss.

*Subrogation.* This company may require from the insured an assignment of all right of recovery against any party for loss to the extent that payment therefor is made by this company.



THIRD PAGE OF STANDARD FIRE POLICY

ATTACH FORM BELOW THIS LINE

FOURTH PAGE OF STANDARD FIRE POLICY

STANDARD FIRE INSURANCE POLICY

Expires .....		
Property .....		
	Total	
Amount \$ .....		Premium \$ .....
Insured .....		

SEE INSIDE OF POLICY FOR PERILS COVERED  
No.

(Space of approximately two (2) inches for use of  
Agent or Insurer.)

(Space of approximately two (2) inches for use of  
Agent or Insurer.)

It is important that the written portions of all policies covering the same property read exactly alike. If they do not, they should be made uniform at once.

2007 Acts, ch 152, §44, 73  
Former §515.109 repealed by 2007 Acts, ch 152, §84; see §515.102  
Section transferred from §515.138 in Code Supplement 2007 pursuant to directive in 2007 Acts, ch 152, §44  
Subsection 5 amended

**515.109A Use of credit information — personal insurance.** Transferred to § 515.103; 2007 Acts, ch 152, § 28.

**515.110 More favorable conditions.**

Nothing contained in section 515.109 shall be so construed as to prohibit any insurance company not required by the statutes of Iowa to issue a standard form of policy, from embodying, with the approval of the commissioner of insurance, in any insurance contract issued by it, provisions or conditions which are more favorable to the insured than those authorized in said statutes.

2007 Acts, ch 152, §27, 66  
Former §515.110 repealed by 2007 Acts, ch 152, §84; see §515.102  
Section transferred from §515.108 in Code Supplement 2007 pursuant to directive in 2007 Acts, ch 152, §27  
Section amended

**515.111 Nuclear loss or damage excluded.**

Insurers issuing the standard policy pursuant to section 515.109 are authorized to affix thereto or include therein a written statement that the

policy does not cover loss or damage caused by nuclear reaction or nuclear radiation or radioactive contamination, all whether directly or indirectly resulting from an insured peril under said policy; provided, however, that nothing herein contained shall be construed to prohibit the attachment to any such policy of an endorsement or endorsements specifically assuming coverage for loss or damage caused by nuclear reaction or nuclear radiation or radioactive contamination.

2007 Acts, ch 152, §45, 74  
Former §515.111 transferred to §515.104; 2007 Acts, ch 152, §29  
Section transferred from §515.139 in Code Supplement 2007 pursuant to directive in 2007 Acts, ch 152, §45  
Section amended

**515.112 Violations — status of policy.**

It shall be unlawful for any insurance company, its officers or agents, or either of them, to violate any of the provisions of section 515.109 by issuing, delivering, or offering to issue or deliver any policy of fire insurance on property in this state other than the standard form as provided in statute, but any policy so issued or delivered shall, nevertheless, be binding upon the company issuing or delivering the policy. The company shall, until the payment of a penalty assessed by order after hearing, be disqualified from doing any insurance business in this state.

2007 Acts, ch 152, §46, 75  
Section transferred from §515.140 in Code Supplement 2007 pursuant to directive in 2007 Acts, ch 152, §46  
Section amended

**515.113 Existing statutes — waiver.**

Nothing contained in sections 515.109 and 515.112, nor any provisions or conditions in the standard form of policy provided for in section 515.109, shall be deemed to repeal or in any way modify any existing statutes or to prevent any insurance company issuing such policy, from waiving any of the provisions or conditions contained therein, if the waiver of such provisions or conditions shall be in the interest of the insured.

2007 Acts, ch 152, §47, 76  
Section transferred from §515.141 in Code Supplement 2007 pursuant to directive in 2007 Acts, ch 152, §47  
Section amended

**515.114 Policy — formal execution.**

1. Every fire insurance company and association authorized to transact business in this state shall conduct its business in the name under which it is incorporated, and the policies issued by it shall be headed or entitled only by such name. There shall not appear on the face of the policy or on its filing back anything that would indicate that it is the obligation of any other than the company responsible for the payment of losses under the policy, though it is permissible to stamp or print on the bottom of the filing back the name or names of the department or general agency issuing the same, and the group of companies with which the company is financially affiliated.

2. Nothing contained in subsection 1 shall be

construed to prevent any representative of an insurance company from advertising the representative's own individual business without specific mention of the name of the company or companies which the person may represent.

2007 Acts, ch 152, §67  
NEW section

**515.115 through 515.118** Reserved.

**515.119 Compliance with law.** Transferred to § 515.149; 2007 Acts, ch 152, § 30.

#### SURPLUS LINES INSURANCE

**515.120 Business with nonadmitted insurers.**

This chapter does not prevent a licensed resident or nonresident agent of this state, qualified to write excess and surplus lines insurance, from procuring insurance in certain nonadmitted insurers if such insurance is restricted to the type and kind of insurance authorized by this chapter, excluding insurance authorized under section 515.48, subsection 5, paragraph "a", and the agent makes oath to the commissioner of insurance in the form prescribed by the commissioner that the agent has made diligent effort to place the insurance in authorized insurers and has either exhausted the capacity of all authorized insurers or has been unable to obtain the desired insurance in insurers licensed to transact business in this state. The procuring of a contract of insurance in a nonadmitted insurer makes the insurer liable for, and the agent shall pay, the taxes on the premiums as if the insurer were duly authorized to transact business in the state. A sworn report of all business transacted by agents of this state in nonadmitted insurers shall be made to the commissioner of insurance on or before March 1 of each year for the preceding calendar year, on the form required by the commissioner of insurance. The report shall be accompanied by a remittance to cover the taxes on the premiums. An agent who makes the oath, pays the taxes on the premiums, and files the report has not written such contracts of insurance unlawfully, and is not personally liable for the contracts.

2007 Acts, ch 152, §48  
Former §515.120 transferred to §515.150; 2007 Acts, ch 152, §31  
Section transferred from §515.147 in Code Supplement 2007 pursuant to directive in 2007 Acts, ch 152, §48

**515.121 Administrative penalty.**

1. An excess and surplus lines insurance agent that fails to timely file the report required in section 515.120 is in violation of this section and shall pay an administrative penalty of five hundred dollars to the treasurer of state for deposit in the general fund of the state as provided in section 505.7.

2. The commissioner shall refuse to renew the

license of an agent that fails to comply with the provisions of section 515.120 and this section and the agent's right to transact new business in this state shall immediately cease until the agent has so complied.

3. The commissioner may give notice to an agent that the agent has not timely filed the report required under section 515.120 and is in violation of this section. If the agent fails to file the required report within ten days of the date of the notice, the agent shall pay an additional administrative penalty of one hundred dollars for each day that the failure continues to the treasurer of state for deposit in the general fund of the state as provided in section 505.7.

2007 Acts, ch 152, §49, 77  
Former §515.121 transferred to §515.151; 2007 Acts, ch 152, §32  
Section transferred from §515.147A in Code Supplement 2007 pursuant to directive in 2007 Acts, ch 152, §49  
Section amended

**515.122 Banned companies — information required.**

1. An insurance producer shall not knowingly place insurance, either directly or through an intermediary broker, in insurers who are insolvent or unsound financially; and shall not place or renew insurance with nonadmitted insurers found by the commissioner of insurance to have failed or refused to furnish, in the manner provided in subsection 2, information reasonably showing the ability or willingness of the insurers to satisfy obligations undertaken with respect to insurance issued by them.

2. The information required of nonadmitted insurers under subsection 1 may consist of a copy of such insurer's current annual statement, duly verified, or evidence of any trust funds or deposits maintained by such insurers for the protection of their policyholders, or both, or other material of such general description and relevancy, as the commissioner may require. Such information shall be furnished at the sole cost and expense of the unauthorized insurers either to the commissioner directly, or furnished to the national association of insurance commissioners for the use of its members and their staffs, including the commissioner of insurance of this state and the commissioner's staff, or for dissemination to the commissioner by the central nonadmitted insurers information bureau of the national association of insurance commissioners or by any other agency or instrumentality of that association designed to receive and disseminate such information. The provisions of this section and section 515.120 shall not apply to insurance of vessels, craft or hulls, cargoes, marine builder's risk, marine protection and indemnity, or other risk including strikes and war risks commonly insured under ocean or wet marine forms of policy.

2007 Acts, ch 152, §68  
NEW section

## DUTIES OF INSURERS

**515.125 Forfeiture of policies — notice.**

1. A policy or contract of insurance, unless otherwise provided in section 515.127 or 515.128, provided for in this chapter shall not be forfeited, suspended, or canceled except by notice to the insured as provided in this chapter. A notice of cancellation is not effective unless mailed or delivered by the insurer to the named insured at least thirty days before the effective date of cancellation, or, where cancellation is for nonpayment of a premium, assessment, or installment provided for in the policy, or in a note or contract for the payment thereof, at least ten days prior to the date of cancellation. The notice may be made in person, or by sending by mail a letter addressed to the insured at the insured's address as given in or upon the policy, anything in the policy, application, or a separate agreement to the contrary notwithstanding.

2. An insurer shall not fail to renew a policy except by notice to the insured as provided in this chapter. A notice of intention not to renew is not effective unless mailed or delivered by the insurer to the named insured at least thirty days prior to the expiration date of the policy. A notice of intention not to renew is not required if the insured is transferred from an insurer to an affiliate for future coverage as a result of a merger, acquisition, or company restructuring and if the transfer results in the same or broader coverage.

If the reason does not accompany the notice of cancellation or nonrenewal, the insurer shall, upon receipt of a timely request by the named insured, state in writing the reason for cancellation or nonrenewal.

2007 Acts, ch 152, §9, 58  
Continuation rights and notice under group accident and health insurance, see §509B.5  
See §515D.5, 515D.7  
Former §515.125 transferred to §515.105; 2007 Acts, ch 152, §33  
Section transferred from §515.80 in Code Supplement 2007 pursuant to directive in 2007 Acts, ch 152, §9  
Subsection 1 amended

**515.125A Limitation on termination of independent producers.** Transferred to § 515.106; 2007 Acts, ch 152, § 34.

**515.126 Cancellation of policy — notice to insured or mortgagee.**

Unless otherwise provided in section 515.127 or 515.128, at any time after the maturity of a premium, assessment, or installment provided for in the policy, or a note or contract for the payment thereof, or after the suspension, forfeiture, or cancellation of a policy or contract of insurance, the insured may pay to the company the customary short rates and costs of action, if one has been commenced or judgment rendered thereon, and may, if the insured so elects, have the policy and all contracts or obligations connected with the policy, whether in judgment or otherwise, canceled, and

all such policy and contracts shall be void; and in case of suspension, forfeiture, or cancellation of a policy or contract of insurance, the insured is not liable for a greater amount than the short rates earned at the date of the suspension, forfeiture, or cancellation and the costs of action provided for in this section. If the policy is canceled by the insurance company, the insurer may retain only the pro rata premium, and if the initial cash premium, or any part of the premium, has not been paid, the policy may be canceled by the insurance company by giving notice to the insured as provided in section 515.125 and ten days' notice to the mortgagee, or other person to whom the policy is made payable, if any, without tendering any part of the premium, anything to the contrary in the policy notwithstanding.

2007 Acts, ch 152, §10, 59  
See §515D.5, 515D.7  
Section transferred from §515.81 in Code Supplement 2007 pursuant to directive in 2007 Acts, ch 152, §10  
Section amended

**515.127 Cancellation of commercial lines policies or contracts.**

1. A commercial line policy or contract of insurance, except a policy or contract for crop hail or multiperil crop insurance, which has not been previously renewed may be canceled by the insurer if it has been in effect for less than sixty days at the time notice of cancellation is mailed or delivered.

2. A commercial line policy or contract of insurance, except a policy or contract for crop hail or multiperil crop insurance, which has been renewed or which has been in effect for more than sixty days shall not be canceled unless at least one of the following conditions occurs:

- a. Nonpayment of premium.
- b. Misrepresentation or fraud made by or with the knowledge of the insured in obtaining the policy or contract, when renewing the policy or contract, or in presenting a claim under the policy or contract.
- c. Actions by the insured which substantially change or increase the risk insured.
- d. Determination by the commissioner that the continuation of the policy will jeopardize the insurer's solvency or will constitute a violation of the law of this or any other state.

e. The insured has acted in a manner which the insured knew or should have known was in violation or breach of a policy or contract term or condition.

3. A commercial line policy or contract of insurance, except a policy or contract for crop hail or multiperil crop insurance, may be canceled at any time if the insurer loses reinsurance coverage which provides coverage to the insurer for a significant portion of the underlying risk insured and if the commissioner determines that cancellation because of loss of reinsurance coverage is justified. In determining whether a cancellation because of loss of reinsurance coverage is justified, the com-

missioner shall consider all of the following factors:

- a. The volatility of the premiums charged for reinsurance in the market.
- b. The number of reinsurers in the market.
- c. The variance in the premiums for reinsurance offered by the reinsurers in the market.
- d. The attempt by the insurer to obtain alternate reinsurance.
- e. Any other factors deemed necessary by the commissioner.

4. A commercial line policy or contract of insurance, except a policy or contract for crop hail or multiperil crop insurance, shall not be canceled except by notice to the insured as provided in this subsection. A notice of cancellation shall include the reason for cancellation of the policy or contract. A notice of cancellation is not effective unless mailed or delivered to the named insured and a loss payee at least ten days prior to the effective date of cancellation, or if the cancellation is because of loss of reinsurance, at least thirty days prior to the effective date of cancellation. A post office department certificate of mailing to the named insured at the address shown in the policy or contract is proof of receipt of the mailing; however, such a certificate of mailing is not required if cancellation is for nonpayment of premium.

2007 Acts, ch 152, §11  
See §515D.5, 515D.7  
Former §515.127 transferred to §515.107; 2007 Acts, ch 152, §35  
Section transferred from §515.81A in Code Supplement 2007 pursuant to directive in 2007 Acts, ch 152, §11

#### **515.128 Nonrenewal of commercial lines policies or contracts.**

1. An insurer shall not fail to renew a commercial line policy or contract of insurance except by notice to the insured as provided in this section. Nonrenewal of a commercial line policy or contract includes a decision by the insurer not to renew the policy or contract, an increase in the premium of twenty-five percent or more, an increase in the deductible of twenty-five percent or more, or a material reduction in the limits or coverage of the policy or contract. However, a premium charge which is assessed after the beginning date of the policy period for which the premium is due shall not be deemed a premium increase for the purpose of this section.

2. A notice of nonrenewal is not effective unless mailed or delivered by the insurer to the named insured and any loss payee at least forty-five days prior to the expiration date of the policy. If the insurer fails to meet the notice requirements of this section, the insured has the option of continuing the policy for the remainder of the notice period plus an additional thirty days at the premium rate of the existing policy or contract. A post office department certificate of mailing to the named insured at the address shown in the policy or contract is proof of receipt of the mailing.

3. This section applies to all forms of commercial

property and casualty insurance written pursuant to this chapter. It does not apply if the insurer has offered to renew or if the insured fails to pay a premium due or any advance premium required by the insurer for renewal. A notice of nonrenewal is not required if the insured is transferred from an insurer to an affiliate for future coverage as a result of a merger, acquisition, or company restructuring and if the transfer results in the same or broader coverage.

2007 Acts, ch 152, §12  
See §515D.7  
Former §515.128 transferred to §515.147; 2007 Acts, ch 152, §36  
Section transferred from §515.81B in Code Supplement 2007 pursuant to directive in 2007 Acts, ch 152, §12

#### **515.129 Cancellation or nonrenewal of commercial umbrella or excess policies or contracts.**

1. As used in this section, “*umbrella or excess insurance policy*” means a commercial line policy or contract of insurance providing liability or property coverage over one or more underlying policies or over a specified amount of self-insured retention. Umbrella or excess insurance policy includes policies or contracts written over an umbrella or excess insurance policy or policies.

2. An umbrella or excess insurance policy which has not previously been renewed may be canceled by the insurer if it has been in effect for less than sixty days at the time notice of cancellation is mailed or delivered.

3. An umbrella or excess insurance policy which has been renewed or which has been in effect for sixty or more days shall not be canceled by the insurer, except as provided in section 515.127, subsections 2 and 3, except by notice to the insured as required by this section or unless at least one of the following conditions occurs:

a. A material change in the limits, scope of coverage, or exclusions in one or more of the underlying policies.

b. Cancellation or nonrenewal of one or more of the underlying policies where the policies are not replaced without lapse.

c. A reduction in the financial rating or grade of one or more of the insurers insuring one or more of the underlying policies based on an evaluation by a recognized financial rating organization.

4. A notice of cancellation is not effective unless mailed by certified mail or delivered to the named insured and any loss payee at least ten days prior to the effective date of cancellation. A notice of cancellation shall include the reason for cancellation of the umbrella or excess insurance policy. A post office department certificate of mailing to the named insured at the address shown in the umbrella or excess policy is proof of receipt of the mailing; however, such a certificate of mailing is not required if cancellation is for nonpayment of premium.

5. An insurer shall not fail to renew an umbrella or excess insurance policy except by notice to the

insured as provided in this section; however, an insurer may condition renewal of an umbrella or excess insurance policy upon requirements relating to the underlying policy or policies. If the requirements are not satisfied as of the expiration date of the umbrella or excess insurance policy, or thirty days after mailing or delivery of the notice, whichever is later, the conditional renewal notice shall be deemed to be an effective notice of nonrenewal. This subsection does not apply if the insurer has offered to renew or if the insured fails to pay a premium due or any advance premium required by the insurer for renewal.

6. A notice of nonrenewal is not effective unless mailed by certified mail or delivered to the named insured and any loss payee at least forty-five days prior to the expiration date of the umbrella or excess insurance policy. If the insurer fails to meet the notice requirements of this subsection the insured has the option of continuing the policy for the remainder of the notice period plus an additional thirty days at the premium rate of the existing umbrella or excess policy.

7. Sections 515.127 and 515.128 are not applicable to umbrella or excess insurance policies except as provided in subsection 3.

2007 Acts, ch 152, §13, 60  
Former §515.129 transferred to §515.148; 2007 Acts, ch 152, §37  
Section transferred from §515.81C in Code Supplement 2007 pursuant to directive in 2007 Acts, ch 152, §13  
Subsections 3 and 7 amended

#### 515.130 Short rates.

The commissioner of insurance shall prepare and promulgate tables of the short rates provided for in sections 515.125 and 515.126, for the various kinds and classes of insurance governed by the provisions of this chapter, which, when promulgated, shall be for the guidance of all companies covered in this chapter and shall be the rate to be given in any notice therein required. No company shall discriminate unfairly between like assureds in the rate or rates so provided.

2007 Acts, ch 152, §14, 61; 2007 Acts, ch 215, §256  
Former §515.130 repealed by 2007 Acts, ch 152, §84; see §507B.4  
Section transferred from §515.82 in Code Supplement 2007 pursuant to directive in 2007 Acts, ch 152, §14  
Section amended

#### 515.131 Policy restored.

At any time before cancellation of the policy for nonpayment of any premium, assessment, or installment provided for therein, or in any note or contract for the payment thereof, or after action commenced or judgment rendered thereon, the insured may pay to the insurer the full amount due, including court costs if any, and from the date of such payment, or the collection of the judgment, the policy shall revive and be in full force and effect, provided such payment is made during the term of the policy and before a loss occurs.

2007 Acts, ch 152, §15  
Former §515.131 transferred to §515.140; 2007 Acts, ch 152, §38  
Section transferred from §515.83 in Code Supplement 2007 pursuant to directive in 2007 Acts, ch 152, §15

#### 515.132 Right of insured to cancel.

No provision, stipulation, or agreement to the contrary in or independent of the policy or contract of insurance shall avoid or defeat the right of any insured to pay short rates and costs of action, if any, and have the policy and all contracts connected therewith, including judgments rendered thereon, canceled.

2007 Acts, ch 152, §16  
Section transferred from §515.84 in Code Supplement 2007 pursuant to directive in 2007 Acts, ch 152, §16

#### 515.133 Copy of application — duty to provide.

All insurance companies or associations shall, upon the issue or renewal of any policy, provide to the insured, a true copy of any application or representation of the insured which, by the terms of such policy, is made a part of the policy, or of the contract of insurance, or referred to in the contract of insurance, or which may in any manner affect the validity of such policy.

2007 Acts, ch 152, §20  
Similar provision, §511.33  
Former §515.133 transferred to §515.141; 2007 Acts, ch 152, §39  
Section transferred from §515.94 in Code Supplement 2007 pursuant to directive in 2007 Acts, ch 152, §20

#### 515.134 Failure to attach — effect.

The omission so to do shall not render the policy invalid, but if any company or association neglects to comply with the requirements of section 515.133 it shall forever be precluded from pleading, alleging, or proving any such application or representations, or any part thereof, or falsity thereof, or any parts thereof, in any action upon such policy, and the plaintiff in any such action shall not be required, in order to recover against such company or association, either to plead or prove such application or representation, but may do so at the plaintiff's option.

2007 Acts, ch 152, §21, 62  
Similar provision, §511.34  
Former §515.134 transferred to §515.145; 2007 Acts, ch 152, §40  
Section transferred from §515.95 in Code Supplement 2007 pursuant to directive in 2007 Acts, ch 152, §21  
Section amended

#### 515.135 Presumption as to value.

In any action brought in any court in this state on any policy of insurance for the loss of any building so insured, the amount stated in the policy shall be received as prima facie evidence of the insurable value of the property at the date of the policy.

2007 Acts, ch 152, §22  
Similar provision, §518A.23  
Former §515.135 transferred to §515.152; 2007 Acts, ch 152, §41  
Section transferred from §515.96 in Code Supplement 2007 pursuant to directive in 2007 Acts, ch 152, §22

#### 515.136 Value of building — liability.

The insurance company or association issuing such policy may show the actual value of said property at date of policy, and any depreciation in the value thereof before the loss occurred; but the said insurance company or association shall be liable

for the actual value of the property insured at the date of the loss, unless such value exceeds the amount stated in the policy.

2007 Acts, ch 152, §23  
 Similar provision, §518A.24  
 Former §515.136 transferred to §515.153; 2007 Acts, ch 152, §42  
 Section transferred from §515.97 in Code Supplement 2007 pursuant to directive in 2007 Acts, ch 152, §23

**515.137 Prima facie right of recovery.**

In an action on such policy it shall only be necessary for the insured to prove the loss of the building insured, and that the insured has given the company or association notice in writing of such loss, accompanied by an affidavit stating the facts as to how the loss occurred, so far as they are within the insured's knowledge, and the extent of the loss.

2007 Acts, ch 152, §24, 63  
 Similar provisions, §511.35, 514A.3, 518A.19  
 Former §515.137 transferred to §515.108; 2007 Acts, ch 152, §43  
 Section transferred from §515.98 in Code Supplement 2007 pursuant to directive in 2007 Acts, ch 152, §24  
 Section amended

**515.138 Notice of loss of personal property by hail.**

In case of loss to growing crops by hail, notice of such loss must be given to the company by the insured by mailing a certified mail letter within ten days from the time such loss or damage occurs.

2007 Acts, ch 152, §26  
 Former §515.138 transferred to §515.109; 2007 Acts, ch 152, §44  
 Section transferred from §515.100 in Code Supplement 2007 pursuant to directive in 2007 Acts, ch 152, §26

**515.139 Demolition reserve on fire and casualty claims on property.**

1. An insurer shall reserve ten thousand dollars or ten percent, whichever amount is greater, of the payment for damages to the property excluding personal property on which the insurer has issued a fire and casualty insurance policy as demolition cost reserve if the following are applicable:

- a. The property is located within the corporate limits of a city.
- b. The damage to the property renders it uninhabitable or unfit for the purpose for which it was intended, without repair.
- c. Proof of loss has been submitted by the policyholder for a sum in excess of seventy-five percent of the face value of the policy covering the building or other insured structure.

2. An insurer which has received a proof of loss in excess of seventy-five percent of the face value of the policy covering a building or other insured structure, shall notify the city council of the city within which the property is located. The notice shall be made by certified mail within five working days after receipt of the proof of loss.

3. The city shall release all interest in the demolition cost reserve within one hundred eighty days after receiving notice of the existence of the

demolition cost reserve unless the city has instituted legal proceedings for the demolition of the building or other insured structure, and has notified the insurer in writing of the institution of the legal proceedings. Failure of the city to notify the insurer of the legal proceedings terminates the city's claim to any proceeds from the reserve.

4. A reserve for demolition costs is no longer required if either of the following is true:

- a. The insurer has received notice from both the insured and the city council that the insured has completed repairs to the property or has completed demolition of the property in compliance with all applicable statutes and local ordinances.
- b. The city has failed to notify the insurer as provided under subsection 3.

5. If the city has instituted legal proceedings, undertaken emergency action, or is required to demolish the damaged property at city expense, the city shall present to the insurer costs incurred, since the date of the fire or other occurrence, including but not limited to legal costs, engineering costs, and demolition costs related directly to the enforcement of any local ordinance, and the insurer shall compensate the city for the incurred costs up to the amount in the demolition cost reserve. Any amount left from the demolition cost reserve after the cost of demolition of the property is paid to the city shall be paid to the insured if the insured is entitled to the remaining proceeds under the policy.

6. The insurer is not liable for any amount in excess of the limits of liability set out by the policy.

7. Insurers complying with this section or attempting in good faith to comply with this section shall be immune from civil and criminal liability.

2007 Acts, ch 152, §50  
 Former §515.139 transferred to §515.111; 2007 Acts, ch 152, §45  
 Section transferred from §515.150 in Code Supplement 2007 pursuant to directive in 2007 Acts, ch 152, §50

VIOLATIONS — INVESTIGATIONS  
 — FEES — PENALTIES

**515.140 Unlawful combinations — exceptions.**

It shall be unlawful for two or more insurance companies doing business in this state, or for the officers, agents, or employees of such companies, to make or enter into any combination or agreement relating to the rates to be charged for insurance, the amount of commissions to be allowed agents for procuring the same, or the manner of transacting the insurance business within this state, but any number of insurance companies may appoint the same person or persons, who shall be residents of the state of Iowa, as their common agent or agents for the purpose of filing, in the manner prescribed by the insurance commissioner of Iowa, the forms of policies and of all permits and riders used generally throughout the state, as required by the laws of this state to be examined

and approved by the said commissioner.

2007 Acts, ch 152, §38  
Former §515.140 transferred to §515.112; 2007 Acts, ch 152, §46  
Section transferred from §515.131 in Code Supplement 2007 pursuant to directive in 2007 Acts, ch 152, §38

**515.141 Examination of officers and employees.**

1. The commissioner of insurance is authorized to issue a subpoena for examination under oath, any officer, agent, or employee of any company suspected of violating any of the provisions of section 515.140.

2. Upon the filing of a written, verified complaint with the commissioner by two or more residents of this state alleging that a company has violated section 515.140, the commissioner shall issue a subpoena for examination under oath to any officer, agent, or employee of the company.

2007 Acts, ch 152, §39, 69  
Former §515.141 transferred to §515.113; 2007 Acts, ch 152, §47  
Section transferred from §515.133 in Code Supplement 2007 pursuant to directive in 2007 Acts, ch 152, §39  
Section amended

**515.142 Transfers pending investigation.**

Any transfer of the stock of any company organized under this chapter, made pending any investigation above required, shall not release the party making the transfer from any liability for losses which may have accrued previous to such transfer.

2007 Acts, ch 152, §17  
Former §515.142 repealed by 2007 Acts, ch 152, §84; see §515.114  
Section transferred from §515.88 in Code Supplement 2007 pursuant to directive in 2007 Acts, ch 152, §17

**515.143 Revocation of certificate of foreign company.**

The commissioner of insurance may examine the condition and affairs of any insurance company, as provided for in this chapter, doing business in this state, not organized under its laws, or cause such examination to be made by a person appointed by the commissioner having no interest in any insurance company; and if it appears to the commissioner's satisfaction that the affairs of a company are in an unsound condition or that a company has failed to maintain the capital and surplus required by section 515.69, the commissioner shall revoke or suspend the certificates granted in its behalf.

2007 Acts, ch 152, §18  
Section transferred from §515.89 in Code Supplement 2007 pursuant to directive in 2007 Acts, ch 152, §18

**515.144 Suspension and summary suspension.**

The commissioner may do one or more of the following:

1. For a violation of Title XIII, subtitle 1, after a hearing provided pursuant to chapter 17A, order the suspension of the license or authority to transact the business of insurance within the state.

2. Upon three days' notice, if the commissioner

has reason to believe that there is imminent substantial risk to an insurer's solvency, order the insurer to appear before the commissioner and show cause why its license or authority to do insurance business within the state should not be suspended. At the hearing to show cause, the commissioner may summarily suspend the license or authority of the insurer to do business within the state.

3. Summarily order an insurer to cease and desist from a violation, anticipated violation, or suspected violation of chapter 507B, 510, or 513A, if a hearing is provided pursuant to chapter 17A within thirty days of the summary cease and desist order.

2007 Acts, ch 152, §19  
Section transferred from §515.90 in Code Supplement 2007 pursuant to directive in 2007 Acts, ch 152, §19

**515.145 Revocation of authority.**

If upon examination, and that of any other witness produced and examined, the commissioner determines that a company has violated section 515.140, or if any officer, agent, or employee fails to appear or submit to examination after receiving a subpoena, the commissioner shall promptly issue an order revoking the authority of the company to transact business within this state, and the company shall not be permitted to do the business of insurance in this state for one year.

2007 Acts, ch 152, §40, 70  
Section transferred from §515.134 in Code Supplement 2007 pursuant to directive in 2007 Acts, ch 152, §40  
Section amended

**515.146 Certificate refused — administrative penalty.**

The commissioner of insurance shall withhold the commissioner's certificate or permission of authority to do business from a company neglecting or failing to comply with this chapter. In addition, a company organized or authorized under this chapter which fails to file the annual statement referred to in section 515.63 in the time required shall pay and forfeit an administrative penalty in an amount of five hundred dollars to be collected in the name of the state for deposit in the general fund of the state as provided in section 505.7. The company's right to transact further new business in this state shall immediately cease until the company has fully complied with this chapter. The commissioner may give notice to a company which has failed to file within the time required that the company is in violation of this section and if the company fails to file the evidence of investment and statement within ten days of the date of the notice the company shall forfeit and pay the additional sum of one hundred dollars for each day the failure continues, to be paid to the treasurer of state for deposit in the general fund of the state as provided in section 505.7.

2007 Acts, ch 152, §3  
Former §515.146 repealed by 2007 Acts, ch 152, §84; see §515.114  
Section transferred from §515.65 in Code Supplement 2007 pursuant to directive in 2007 Acts, ch 152, §3

**515.147 Fees.**

Fees shall be paid to the commissioner of insurance as follows:

1. For filing an application to do business, including all documents submitted in connection with the application, by a foreign or domestic company, or for filing an application for renewed authority, fifty dollars.

2. For issuing to a foreign or domestic company a certificate of authority to do business or a renewed certificate of authority, fifty dollars.

3. For filing amended articles of incorporation, fifty dollars.

4. For issuing an amended certificate of authority, twenty-five dollars.

5. For affixing the official seal to any paper filed with the division, ten dollars.

2007 Acts, ch 152, §36

Deposit of fees, §12.10

Former §515.147 transferred to §515.120; 2007 Acts, ch 152, §48

Section transferred from §515.128 in Code Supplement 2007 pursuant to directive in 2007 Acts, ch 152, §36

**515.147A Administrative penalty.** Transferred to § 515.121; 2007 Acts, ch 152, § 49.

**515.148 Expenses of examination.**

The necessary expenses of any examination of any insurance company made or ordered to be made by the commissioner of insurance under this chapter shall be certified to by the commissioner, and paid on the commissioner's requisition by the company so examined; and in case of failure of the company to make such payment, the commissioner shall suspend such company from doing business in this state until such expenses are paid. If such expenses are not paid by the company, they shall be audited by the director of the department of administrative services and paid out of the state treasury.

2007 Acts, ch 152, §37

Former §515.148 repealed by 2007 Acts, ch 152, §84; see §515.122

Section transferred from §515.129 in Code Supplement 2007 pursuant to directive in 2007 Acts, ch 152, §37

**515.149 Compliance with law.**

An insurance company organized under this chapter, or doing business in this state, or any foreign or alien company doing business in this state, shall conform to the provisions of this chapter and all other laws of this state applicable to the insurance company.

2007 Acts, ch 152, §30

Former §515.149 repealed by 2007 Acts, ch 152, §84; see §515.122

Section transferred from §515.119 in Code Supplement 2007 pursuant to directive in 2007 Acts, ch 152, §30

**515.150 Violations.**

It shall be unlawful for any officer, manager, or agent of any insurance company or association who, with knowledge that it is doing business in an unlawful manner, or is insolvent, to solicit or receive applications for insurance with the company or association, or to do any other act or thing toward procuring or receiving any new business for such company or association.

2007 Acts, ch 152, §31

Former §515.150 transferred to §515.139; 2007 Acts, ch 152, §50

Section transferred from §515.120 in Code Supplement 2007 pursuant to directive in 2007 Acts, ch 152, §31

**515.151 Officers punished.**

It shall be unlawful for any of the following to fail to comply with or to violate any of the requirements of this chapter:

1. The president, secretary, or other officer of any company organized under the laws of this state.

2. Any officer or person doing or attempting to do business in this state for any insurance company organized either within or without this state.

2007 Acts, ch 152, §32

Section transferred from §515.121 in Code Supplement 2007 pursuant to directive in 2007 Acts, ch 152, §32

**515.152 Judicial review.**

Judicial review of the actions of the commissioner of insurance may be sought in accordance with the terms of the Iowa administrative procedure Act, chapter 17A, upon filing with the clerk of court a good and sufficient bond for the payment of all costs adjudged against the petitioner. Notwithstanding the terms of chapter 17A, petitions for judicial review may be filed in the district court of the county where the decision of the commissioner, pursuant to section 515.145, was made.

2007 Acts, ch 152, §41, 71

Presumption of approval of bonds, §636.10

Section transferred from §515.135 in Code Supplement 2007 pursuant to directive in 2007 Acts, ch 152, §41

Section amended

**515.153 Incrimination.**

The statements and declarations made or testimony given by any such officer, agent, or employee in the investigation before the commissioner of insurance, or upon the hearing on the petition for judicial review, as provided in sections 515.141, 515.145, and 515.152, shall not be used against the person making the same in any criminal prosecution against the person.

2007 Acts, ch 152, §42, 72

Section transferred from §515.136 in Code Supplement 2007 pursuant to directive in 2007 Acts, ch 152, §42

Section amended



## CHAPTER 515A

### WORKERS' COMPENSATION LIABILITY INSURANCE

#### 515A.6 Rating organizations.

1. *a.* A corporation, an unincorporated association, a partnership, or an individual, whether located within or outside this state, may make application to the commissioner for a license as a rating organization for such kinds of insurance, or subdivision or class of risk or a part or combination thereof as are specified in its application and shall file with the application all of the following:

(1) A copy of its constitution, its articles of agreement or association or its certificate of incorporation, and of its bylaws, rules and regulations governing the conduct of its business.

(2) A list of its members and subscribers.

(3) The name and address of a resident of this state upon whom notices or orders of the commissioner or process affecting such rating organization may be served.

(4) A statement of its qualifications as a rating organization.

*b.* If the commissioner finds that the applicant is competent, trustworthy, and otherwise qualified to act as a rating organization and that its constitution, articles of agreement or association or certificate of incorporation, and its bylaws, rules and regulations governing the conduct of its business conform to the requirements of law, the commissioner shall issue a license specifying the kinds of insurance, or subdivisions or classes of risks or parts or combinations thereof for which the applicant is authorized to act as a rating organization. Every such application shall be granted or denied in whole or in part by the commissioner within sixty days of the date of its filing with the commissioner.

*c.* Licenses issued pursuant to this section shall remain in effect for three years unless sooner suspended or revoked by the commissioner. The fee for said license shall be twenty-five dollars.

*d.* Licenses issued pursuant to this section may be suspended or revoked by the commissioner, after hearing upon notice, in the event the rating organization ceases to meet the requirements of this subsection.

*e.* Every rating organization shall notify the commissioner promptly of every change in any of the following:

(1) Its constitution, its articles of agreement or association, or its certificate of incorporation, and its bylaws, rules and regulations governing the conduct of its business.

(2) Its list of members and subscribers.

(3) The name and address of the resident of this state designated by it upon whom notices or orders of the commissioner or process affecting such rating organization may be served.

2. Subject to rules and regulations which have

been approved by the commissioner as reasonable, each rating organization shall permit any insurer, not a member, to be a subscriber to its rating services for any kind of insurance, subdivision, or class of risk or a part or combination thereof for which it is authorized to act as a rating organization. Notice of proposed changes in such rules and regulations shall be given to subscribers. Each rating organization shall furnish its rating services without discrimination to its members and subscribers. The reasonableness of any rule or regulation in its application to subscribers, or the refusal of any rating organization to admit an insurer as a subscriber, shall, at the request of any subscriber or any such insurer, be reviewed by the commissioner at a hearing held upon at least ten days' written notice to such rating organization and to such subscriber or insurer. If the commissioner finds that such rule or regulation is unreasonable in its application to subscribers, the commissioner shall order that such rule or regulation shall not be applicable to subscribers. If the rating organization fails to grant or reject an insurer's application for subscribership within thirty days after it was made, the insurer may request a review by the commissioner as if the application had been rejected. If the commissioner finds that the insurer has been refused admittance to the rating organization as a subscriber without justification, the commissioner shall order the rating organization to admit the insurer as a subscriber. If the commissioner finds that the action of the rating organization was justified the commissioner shall make an order affirming its action.

3. No rating organization shall adopt any rule the effect of which would be to prohibit or regulate the payment of dividends, savings or unabsorbed premium deposits allowed or returned by insurers to their policyholders, members or subscribers.

4. Cooperation among rating organizations or among rating organizations and insurers in rate making or in other matters within the scope of this chapter is hereby authorized, provided the filings resulting from such cooperation are subject to all the provisions of this chapter which are applicable to filings generally. The commissioner may review such cooperative activities and practices and if, after a hearing, the commissioner finds that any such activity or practices is unfair or unreasonable or otherwise inconsistent with the provisions of this chapter, the commissioner may issue a written order specifying in what respects such activity or practice is unfair or unreasonable or otherwise inconsistent with the provisions of this chapter, and requiring the discontinuance of such activity or practice.

5. Any rating organization may provide for the

examination of policies, daily reports, binders, renewal certificates, endorsements or other evidences of insurance, or the cancellation thereof, and may make reasonable rules governing their submission. Such rules shall contain a provision that in the event any insurer does not within sixty days furnish satisfactory evidence to the rating organization of the correction of any error or omission previously called to its attention by the rating organization, it shall be the duty of the rating organization to notify the commissioner thereof. All information so submitted for examination shall be confidential.

6. Any rating organization may subscribe for or purchase actuarial, technical or other services, and such services shall be available to all members and subscribers without discrimination.

7. Notwithstanding any other provision of the Code, the commissioner of insurance shall provide for a hearing in a proceeding involving a workers' compensation insurance rate filing by a licensed rating organization in accordance with the provisions of this subsection and rules promulgated by the commissioner of insurance pursuant to chapter 17A. Except as otherwise provided herein, the provisions of this subsection shall not be subject to the requirements of chapter 17A. The procedures for such hearing shall be as follows:

*a.* The commissioner shall provide notice of the filing of the proposed rates at least thirty days before the effective date of the proposed rates by publishing a notice in the Iowa administrative bulletin.

*b.* A public hearing shall be held on the proposed rates by the commissioner of insurance if within fifteen days of the date of publication a workers' compensation policyholder or an established organization with one or more workers' compensation policyholders among its members files a written demand with the commissioner of insurance for a hearing on the proposed rates.

*c.* The commissioner of insurance shall hold the hearing within twenty days after receipt of the written demand for a hearing and shall give not less than ten days written notice of the time and place of the hearing to the person or association filing the demand, to the rating organization, and to any other person requesting such notice.

*d.* At any such hearing, the rating organization shall bear the burden of proof to support the proposed rates by a preponderance of the evidence. The person or association requesting the hearing, and any other person admitted as a party to the proceeding, shall be given the opportunity to respond and introduce evidence and arguments on all the issues involved.

*e.* Within fifteen days after the start of the hearing, the commissioner of insurance will approve or disapprove the proposed rates and specify the reasons therefor. The commissioner of insurance may suspend or postpone the effective date of the proposed rates pending the hearing and written decision thereon.

*f.* Judicial review of the decision of the commissioner of insurance on such rates may be sought in accordance with the provisions of chapter 17A.

2007 Acts, ch 22, §89

Subsection 1, paragraph a, unnumbered paragraph 1 amended

#### **515A.9 Information to be furnished insureds — hearings and appeals of insureds.**

Every rating organization and every insurer which makes its own rate shall, within a reasonable time after receiving written request therefor and upon payment of such reasonable charge as it may make, furnish to any insured affected by a rate made by it, or to the authorized representative of such insured, all pertinent information as to such rate. Every rating organization and every insurer which makes its own rates shall provide within this state reasonable means whereby any person aggrieved by the application of its rating system may be heard, in person or by the person's authorized representative, on the person's written request to review the manner in which such rating system has been applied in connection with the insurance afforded the person. Such review of the manner in which a rating system has been applied is not a contested case under chapter 17A. If the rating organization or insurer fails to grant or reject such request within thirty days after it is made, the applicant may proceed in the same manner as if the application had been rejected. Any party affected by the action of such rating organization or such insurer on such request may, within thirty days after written notice of such action, appeal to the commissioner, who, after a hearing held upon not less than ten days' written notice to the appellant and to such rating organization or insurer, may affirm or reverse such action. Such appeal to the commissioner of the manner in which a rating system has been applied is not a contested case under chapter 17A.

2007 Acts, ch 22, §90

Section amended

#### **515A.19 Laws affected.**

Compliance with this chapter shall not be deemed to be a violation of section 515.140.

2007 Acts, ch 152, §78

Section amended

## CHAPTER 515D

### AUTOMOBILE INSURANCE CANCELLATION CONTROL

#### 515D.5 Delivery of notice.

1. Notwithstanding the provisions of sections 515.125 through 515.127, a notice of cancellation of a policy shall not be effective unless mailed or delivered by the insurer to the named insured at least thirty days prior to the effective date of cancellation, or, where the cancellation is for nonpayment of premium notwithstanding the provisions of sections 515.125 and 515.127, at least ten days prior to the date of cancellation. A post office department certificate of mailing to the named insured at the address shown in the policy shall be proof of receipt of such mailing. Unless the reason accompanies the notice of cancellation, the notice shall state that upon written request of the named insured, mailed or delivered to the insurer not less than fifteen days prior to the date of cancellation, the insurer will state the reason for cancellation together with notification of the right to a hearing before the commissioner within fifteen days as provided in this chapter.

When the reason does not accompany the notice of cancellation, the insurer shall, upon receipt of a timely request by the named insured, state in writing the reason for cancellation. A statement of reason shall be mailed or delivered to the named insured within five days after receipt of a request.

2. A notice of exclusion of a person under a policy pursuant to section 515D.4, is not effective unless written notice is mailed or delivered to the named insured at least twenty days prior to the effective date of the exclusion. The written notice shall state the reason for the exclusion, together with notification of the right to a hearing before the commissioner pursuant to section 515D.10 within fifteen days of receipt or delivery of a statement of reason as provided in this section.

2007 Acts, ch 152, §79

Subsection 1, unnumbered paragraph 1 amended

#### 515D.7 Notice of intent.

1. Notwithstanding the provisions of sections 515.125 through 515.128, an insurer shall not fail to renew a policy except by notice to the insured as provided in this chapter. A notice of intention not to renew shall not be effective unless mailed or delivered by the insurer to the named insured at least thirty days prior to the expiration date of the policy. A post office department certificate of mailing to the named insured at the address shown in the policy shall be proof of receipt of such mailing. Unless the reason accompanies the notice of intent not to renew, the notice shall state that, upon written request of the named insured, mailed or delivered to the insurer not less than thirty days prior to the expiration date of the policy, the insurer will state the reason for nonrenewal.

2. When the reason does not accompany the notice of intent not to renew, the insurer shall, upon receipt of a timely request by the named insured, state in writing the reason for nonrenewal, together with notification of the right to a hearing before the commissioner within fifteen days as provided herein. A statement of reason shall be mailed or delivered to the named insured within ten days after receipt of a request.

3. This section shall not apply:

a. If the insurer has manifested its willingness to renew.

b. If the insured fails to pay any premium due or any advance premium required by the insurer for renewal.

c. If the insured is transferred from an insurer to an affiliate for future coverage as a result of a merger, acquisition, or company restructuring and if the transfer results in the same or broader coverage.

2007 Acts, ch 152, §80

Subsection 1 amended

## CHAPTER 515E

### RISK RETENTION GROUPS AND PURCHASING GROUPS

#### 515E.9 Purchasing group restrictions.

A purchasing group shall not purchase insurance from an insurer not admitted in this state unless the purchase is effected through a duly li-

censed agent or broker acting pursuant to sections 515.120 through 515.122.

2007 Acts, ch 152, §81

Section amended

## CHAPTER 515G

### MUTUAL INSURANCE COMPANY CONVERSIONS

#### **515G.14 Limitation of actions — security for attorney fees.**

An action challenging the validity of a conversion plan, or any part of a conversion plan, shall not be commenced more than thirty days following the date of approval by the commissioner, unless an application for rehearing is filed pursuant to section 17A.16, subsection 2. If an application for rehearing is filed, then such action must be filed within thirty days after that application is denied or deemed denied or, if the application is granted, within thirty days after the issuance of the com-

missioner's final decision on rehearing.

The successor stock company or any defendant may require the plaintiff in such an action to give security for the reasonable attorney fees which may be incurred by any party to the action. The amount of the security may be increased or decreased in the discretion of the court having jurisdiction if a showing is made that the security provided is or may become inadequate or excessive.

[Unnumbered paragraph 2 was inadvertently omitted from Code 2001 through Code 2007]

Section not amended; section text restored and section history updated

## CHAPTER 515H

### PROPERTY AND CASUALTY ACTUARIAL OPINIONS

#### **515H.1 Short title.**

This chapter shall be known and may be cited as the “*Property and Casualty Actuarial Opinions Act*”.

2007 Acts, ch 137, §13  
NEW section

#### **515H.2 Actuarial opinion of reserves — supporting documentation.**

1. *Statement of actuarial opinion.* Every property and casualty insurance company doing business in this state, unless otherwise exempted from this requirement by the commissioner, shall annually submit the opinion of an appointed actuary entitled “statement of actuarial opinion” with the company’s annual statement in accordance with the provisions of section 515.63 and with the requirements of the national association of insurance commissioners’ property and casualty annual statement instructions.

2. *Actuarial opinion summary.*

a. Every property and casualty insurance company domiciled in this state that is required to submit a statement of actuarial opinion shall annually submit an actuarial opinion summary, prepared and signed by the company’s appointed actuary. The actuarial opinion summary shall be filed in accordance with the requirements of the national association of insurance commissioners’ property and casualty company annual statement instructions and shall be considered a document in support of the statement of actuarial opinion required under subsection 1.

b. A property and casualty insurance company that is licensed but not domiciled in this state shall provide an actuarial opinion summary upon request of the commissioner.

3. *Actuarial report and work papers.*

a. An actuarial report and supporting work papers shall be prepared to support each statement of actuarial opinion in accordance with the requirements of the national association of insurance commissioners’ property and casualty company annual statement instructions.

b. If an insurance company fails to provide a supporting actuarial report and work papers as requested by the commissioner or the commissioner determines that the actuarial report or work papers provided are unacceptable, the commissioner may engage a qualified actuary at the company’s expense to review the statement of actuarial opinion and the basis for the opinion and to prepare a supporting actuarial report or work papers.

4. An appointed actuary shall not be liable for damages to any person, except the company and the insurance commissioner, for any act, error, omission, decision, or misconduct of the appointed actuary in conducting the actuary’s duties pursuant to this section except in cases of fraud or willful misconduct on the part of the appointed actuary.

2007 Acts, ch 137, §14  
NEW section

#### **515H.3 Confidentiality.**

1. A statement of actuarial opinion filed pursuant to section 515H.2, subsection 1, is a public record subject to examination and copying.

2. Documents in the possession or control of the insurance division that are provided to the division in support of a statement of actuarial opinion, that are considered an actuarial report, work papers, an actuarial opinion summary, or any other material provided by the company in connection with the actuarial report, work papers, or actuari-

al opinion summary are confidential records under section 507.14 and shall not be subject to subpoena or discovery or be admissible in evidence in any private civil action.

3. Disclosure of any documents, materials, or information to the division in compliance with the

requirements of this chapter shall not be considered a waiver of any applicable privilege or claim of confidentiality.

2007 Acts, ch 137, §15  
NEW section

## CHAPTER 516E

### MOTOR VEHICLE SERVICE CONTRACTS

#### 516E.3 Filing and fee requirements.

##### 1. *Service companies.*

*a.* A service contract shall not be issued, sold, or offered for sale in this state unless a true and correct copy of the service contract, and the service company's reimbursement insurance policy, if applicable, have been filed with the commissioner by the service company.

*b.* A service company shall file a consent to service of process on the commissioner, and such other information as the commissioner requires, annually with the commissioner no later than the first day of August. If the first day of August falls on a weekend or a holiday, the date for filing shall be the next business day. In addition to the annual filing, the service company shall promptly file copies of any amended documents if material amendments have been made in the materials on file with the commissioner. If an annual filing is made after the first of August and sales have occurred during the period when the service company was in noncompliance with this section, the commissioner shall assess an additional filing fee that is two times the amount normally required for an annual filing. A fee shall not be charged for interim filings made to keep the materials filed with the division current and accurate. The annual filing shall be accompanied by a filing fee determined by the commissioner which shall be sufficient to defray the costs of administering this chapter.

*c.* A service company shall promptly file the following information with the commissioner:

- (1) A change in the name or ownership of the service company.
- (2) The termination of the service company's

business.

The service company is not required to submit a fee as part of this filing.

##### 2. *Providers.*

*a.* A provider shall file a consent to service of process on the commissioner, a notice with the name and ownership of the provider, and such other information as the commissioner requires, annually with the commissioner no later than August 1. If August 1 falls on a weekend or a holiday, the date for filing shall be the next business day. In addition to the annual filing, the provider shall promptly file copies of any amended documents if material amendments have been made in the materials on file with the commissioner. If an annual filing is made after August 1 and sales have occurred during the period when the provider was in noncompliance with this section, the commissioner shall assess an additional filing fee that is two times the amount normally required for an annual filing. A fee shall not be charged for interim filings made to keep the materials filed with the division current and accurate. The annual filing shall be accompanied by a filing fee in the amount of one hundred dollars.

*b.* A provider shall promptly file the following information with the commissioner:

(1) A change in the name or ownership of the provider.

(2) The termination of the provider's business.

A provider is not required to submit a fee as part of this filing.

2007 Acts, ch 137, §16  
Subsection 2, paragraph a stricken and former paragraphs b and c redesignated as a and b

## CHAPTER 518

### COUNTY MUTUAL INSURANCE ASSOCIATIONS

#### 518.14 Investments.

1. *General considerations.* The following considerations apply in the interpretation of this section:

*a.* This section applies to the investments of county mutual insurance associations.

*b.* The purpose of this section is to protect and further the interests of policyholders, claimants, creditors, and the public by providing standards for the development and administration of programs for the investment of the assets of associations organized under this chapter. These stan-

dards, and the investment programs developed by associations, shall take into account the safety of the association's principal, investment yield and growth, stability in the value of the investment, and liquidity necessary to meet the association's expected business needs, and investment diversification.

All investments made pursuant to this section shall have investment qualities and characteristics such that the speculative elements of the investments are not predominant.

c. Financial terms relating to county mutual insurance associations have the meanings assigned to them under statutory accounting methods. Financial terms relating to companies or associations other than county mutual insurance associations have the meanings assigned to them under generally accepted accounting principles.

d. Investments shall be valued in accordance with the valuation procedures established by the national association of insurance commissioners, unless the commissioner requires or finds another method of valuation reasonable under the circumstances.

e. If an investment qualifies under more than one subsection, an association may elect to hold the investment under the subsection of its choice. This section does not prevent an association from electing to hold an investment under a subsection different from the one under which it previously held the investment.

2. *Definitions.* For purposes of this section:

a. "*Admitted assets*", for purposes of computing percentage limitations on particular types of investments, means the assets which are authorized to be shown on the commissioner's annual statement blank as admitted assets as of the December 31 immediately preceding the date the association acquires the investment.

b. "*Clearing corporation*" means as defined in section 554.8102.

c. "*Custodian bank*" means as defined in section 515.35.

d. "*Issuer*" means as defined in section 554.8201.

e. "*Member bank*" means a national bank, state bank, or trust company which is a member of the United States federal reserve system.

f. "*National securities exchange*" means an exchange registered under section 6 of the federal Securities Exchange Act of 1934 or an exchange regulated under the laws of Canada.

g. "*Obligations*" includes bonds, notes, debentures, transportation equipment certificates, domestic repurchase agreements, and obligations for the payment of money not in default as to payments of principal and interest on the date of investment, which constitute general obligations of the issuer or payable only out of certain revenues or certain funds pledged or otherwise dedicated

for payment of principal and interest on the obligations. A lease is an obligation if the lease is assigned to the insurer and is nonterminable by the lessee upon foreclosure of any lien upon the leased property, and if rental payments are sufficient to amortize the investment over the primary lease term.

h. "*Surplus*", for purposes of computing percentage limitations on particular types of investments, means the surplus that is authorized to be shown on the commissioner's annual statement blank as surplus as of the December 31 immediately preceding the date the association acquires the investment.

3. *Investments in name of association or nominee and prohibitions.*

a. An association's investments shall be held in its own name or the name of its nominee, except as follows:

(1) Investments may be held in the name of a clearing corporation or of a custodian bank or in the name of the nominee of either on the following conditions:

(a) The clearing corporation, custodian bank, or nominee must be legally authorized to hold the particular investment for the account of others.

(b) When the investment is evidenced by a certificate and held in the name of a custodian bank or the nominee of a custodian bank, a written agreement shall provide that certificates so deposited shall at all times be kept separate and apart from other deposits with the depository, so that at all times they may be identified as belonging solely to the association making the deposit.

(c) If a clearing corporation is to act as depository, the investment may be merged or held in bulk in the name of the clearing corporation or its nominee with other investments deposited with the clearing corporation by any other person, if a written agreement between the clearing corporation and the association provides that adequate evidence of the deposit is to be obtained and retained by the association or a custodian bank.

(2) An association may loan stocks or obligations held by it under this chapter to a broker-dealer registered under the federal Securities Exchange Act of 1934 or to a member bank. The loan must be evidenced by a written agreement which provides all of the following:

(a) That the loan will be fully collateralized by cash or obligations issued or guaranteed by the United States or an agency or an instrumentality of the United States, and that the collateral will be adjusted as necessary each business day during the term of the loan to maintain the required collateralization in the event of market value changes in the loaned securities or collateral.

(b) That the loan may be terminated by the association at any time, and that the borrower will return the loaned stocks or obligations within five

business days after termination.

(c) That the association has the right to retain the collateral or use the collateral to purchase investments equivalent to the loaned securities if the borrower defaults under the terms of the agreement, and that the borrower remains liable for any losses and expenses incurred by the association due to default that are not covered by the collateral.

(3) An association may participate through a member bank in the United States federal reserve book entry system, and the records of the member bank shall at all times show that the investments are held for the association or for specific accounts of the association.

(4) An investment may consist of an individual interest in a pool of obligations or a fractional interest in a single obligation if the certificate of participation or interest or the confirmation of participation or interest in the investment is issued in the name of the association, the name of the custodian bank, or the nominee of either, and, if the interest as evidenced by the certificate or confirmation is, if held by a custodian bank, kept separate and apart from the investments of others so that at all times the participation may be identified as belonging solely to the association making the investment.

(5) Transfers of ownership of investments held as described in paragraph "a", subparagraph (1), subparagraph subdivision (c), and subparagraphs (3) and (4), may be evidenced by bookkeeping entry on the books of the issuer of the investment, its transfer or recording agent, or the clearing corporation without physical delivery of a certificate evidencing the association's investment.

b. Except as provided in paragraph "a", subparagraph (5), if an investment is not evidenced by a certificate, adequate evidence of the association's investment shall be obtained from the issuer or its transfer or recording agent and retained by the association, a custodian bank, or clearing corporation. Adequate evidence, for purposes of this paragraph, means a written receipt or other verification issued by the depository or issuer or a custodian bank which shows that the investment is held for the association.

4. *Investments.* Except as otherwise permitted by this section, an association organized under this chapter shall only invest in the following:

a. *United States government obligations.* Bonds or other evidences of indebtedness issued, assumed, or guaranteed by the United States of America, or by any agency or instrumentality of the United States of America, including investments in an open-end management investment company registered with the federal securities and exchange commission under the federal Investment Company Act of 1940, 15 U.S.C. § 80(a) and operated in accordance with 17 C.F.R. § 270.2a-7, the portfolio of which is limited to the

United States obligations described in this paragraph, and which are included in the national association of insurance commissioners' securities valuation office's United States direct obligation - full faith and credit list.

b. *Certain development bank obligations.* Obligations issued or guaranteed by the international bank for reconstruction and development, the Asian development bank, the inter-American development bank, the export-import bank, the world bank, or any United States government-sponsored organization of which the United States is a member, if the principal and interest is payable in United States dollars. An association shall not invest more than five percent of its total admitted assets in the obligations of any one of these banks or organizations, and shall not invest more than a total of ten percent of its total admitted assets in the obligations authorized by this paragraph.

c. *State obligations.* Obligations issued or guaranteed by a state, a political subdivision of a state, or an instrumentality of a state.

d. *Canadian government obligations.* Obligations issued or guaranteed by Canada, by an agency or province of Canada, by a political subdivision of such province, or by an instrumentality of any of those provinces or political subdivisions.

e. *Corporate and business trust obligations.* Obligations issued, assumed, or guaranteed by a corporation or business trust organized under the laws of the United States or a state, or the laws of Canada or a province of Canada, provided that an association shall not invest more than five percent of its admitted assets in the obligations of any one corporation or business trust. Investments shall be made only in investment grade bonds.

f. *Stocks.* Common stocks, common stock equivalents, mutual fund shares, securities convertible into common stocks or common stock equivalents, or preferred stocks issued or guaranteed by a corporation incorporated under the laws of the United States or a state, or the laws of Canada or a province of Canada. Aggregate investments in nondividend paying stocks shall not exceed five percent of surplus.

(1) Stocks purchased under this lettered paragraph shall not exceed fifty percent of surplus. With the approval of the commissioner, an association may invest any amount in common stocks, preferred stocks, or other securities of one or more subsidiaries provided that after such investments the association's surplus as regards policyholders will be reasonable in relation to the association's outstanding liabilities and adequate to its financial needs.

(2) An association shall not invest more than ten percent of its surplus in the stocks of any one corporation.

g. *Home office real estate.* Funds may be invested in a home office building, at the direction of

the board of directors and with the prior approval of the commissioner of insurance. An association shall not invest more than twenty-five percent of its total admitted assets in such real estate. With the prior approval of the commissioner, an associa-

tion may exceed the real estate investment limitation to effectuate a merger with, or the acquisition of, another association.

2007 Acts, ch 137, §17  
Subsection 2, NEW paragraph h

## CHAPTER 518A

### STATE MUTUAL INSURANCE ASSOCIATIONS

#### 518A.1 Organization — purpose and powers.

1. Any number of persons may, by incorporating under chapter 491, enter into contracts with each other for the following kinds of insurance from loss or damage by:

*a.* Any peril or perils resulting in physical loss of or damage to property.

*b.* Theft of personal property.

*c.* Injury, sickness, or death of animals and the furnishing of veterinary service.

*d.* Any vehicle, excluding automobile or aircraft, including loss and expense resulting from the ownership, maintenance, or use thereof, but shall not include insurance against bodily injury to the person.

2. For the purpose of this protection these contracts of insurance shall be subject only to such provisions as are contained in this chapter and shall consist of:

*a.* An application on blanks furnished by the association and signed by the insured or the insured's representative, which may contain in addition to other provisions: the value of the property, the proper description thereof, the amount of other insurance and the encumbrance thereon, and agreement to be governed by the articles of incorporation and bylaws in force at the time the policy is issued, a representation that the foregoing statements are true as far as the same are known to the insured or material to the risk, and that the insurance shall take effect when approved by the secretary.

*b.* A policy issued by the association in accordance with its rules, and approved by the commissioner of insurance.

3. Such associations may insure risks of their members or may reinsure risks of other associations or companies.

4. The words "*persons*" and "*members*" as used in this chapter shall be construed to mean trustees, administrators, and all other individuals, public or private corporations or associations.

5. Insurance on the property of one or more minors may be granted on application of an adult parent, friend, or guardian who consents to be-

come a member as representing such minor.

2007 Acts, ch 137, §18  
Subsection 1, paragraph d amended

#### 518A.12 Investments.

1. *General considerations.* The following considerations apply in the interpretation of this section:

*a.* This section applies to the investments of state mutual insurance associations.

*b.* The purpose of this section is to protect and further the interests of policyholders, claimants, creditors, and the public by providing standards for the development and administration of programs for the investment of the assets of associations organized under this chapter. These standards, and the investment programs developed by companies, shall take into account the safety of the association's principal, investment yield and growth, stability in the value of the investment, and liquidity necessary to meet the association's expected business needs, and investment diversification.

All investments made pursuant to this section shall have investment qualities and characteristics such that the speculative elements of the investments are not predominant.

*c.* Financial terms relating to state mutual insurance associations have the meanings assigned to them under statutory accounting methods. Financial terms relating to companies other than state mutual insurance associations have the meanings assigned to them under generally accepted accounting principles.

*d.* Investments shall be valued in accordance with the valuation procedures established by the national association of insurance commissioners, unless the commissioner requires or finds another method of valuation reasonable under the circumstances.

*e.* If an investment qualifies under more than one subsection, an association may elect to hold the investment under the subsection of its choice. This section does not prevent an association from electing to hold an investment under a subsection different from the one under which it previously



held the investment.

2. *Definitions.* For purposes of this section:

a. *“Admitted assets”*, for purposes of computing percentage limitations on particular types of investments, means the assets which are authorized to be shown on the national association of insurance commissioner’s annual statement blank as admitted assets as of the December 31 immediately preceding the date the association acquires the investment.

b. *“Clearing corporation”* means as defined in section 554.8102.

c. *“Custodian bank”* means as defined in section 515.35.

d. *“Issuer”* means as defined in section 554.8201.

e. *“Member bank”* means a national bank, state bank, or trust company which is a member of the United States federal reserve system.

f. *“National securities exchange”* means an exchange registered under section 6 of the federal Securities Exchange Act of 1934 or an exchange regulated under the laws of Canada.

g. *“Obligations”* includes bonds, notes, debentures, transportation equipment certificates, domestic repurchase agreements, and obligations for the payment of money not in default as to payments of principal and interest on the date of investment, which constitute general obligations of the issuer or payable only out of certain revenues or certain funds pledged or otherwise dedicated for payment of principal and interest on the obligations. A lease is an obligation if the lease is assigned to the insurer and is nonterminable by the lessee upon foreclosure of any lien upon the leased property, and if rental payments are sufficient to amortize the investment over the primary lease term.

h. *“Surplus”*, for purposes of computing percentage limitations on particular types of investments, means the surplus that is authorized to be shown on the commissioner’s annual statement blank as surplus as of the December 31 immediately preceding the date the association acquires the investment.

3. *Investments in name of association or nominee and prohibitions.*

a. An association’s investments shall be held in its own name or the name of its nominee, except as follows:

(1) Investments may be held in the name of a clearing corporation or of a custodian bank or in the name of the nominee of either on the following conditions:

(a) The clearing corporation, custodian bank, or nominee must be legally authorized to hold the particular investment for the account of others.

(b) When the investment is evidenced by a certificate and held in the name of a custodian bank or the nominee of a custodian bank, a written agreement shall provide that certificates so deposited shall at all times be kept separate and apart

from other deposits with the depository, so that at all times they may be identified as belonging solely to the association making the deposit.

(c) If a clearing corporation is to act as depository, the investment may be merged or held in bulk in the name of the clearing corporation or its nominee with other investments deposited with the clearing corporation by any other person, if a written agreement between the clearing corporation and the association provides that adequate evidence of the deposit is to be obtained and retained by the association or a custodian bank.

(2) An association may loan stocks or obligations held by it under this chapter to a broker-dealer registered under the federal Securities Exchange Act of 1934 or to a member bank. The loan must be evidenced by a written agreement which provides all of the following:

(a) That the loan will be fully collateralized by cash or obligations issued or guaranteed by the United States or an agency or an instrumentality of the United States, and that the collateral will be adjusted as necessary each business day during the term of the loan to maintain the required collateralization in the event of market value changes in the loaned securities or collateral.

(b) That the loan may be terminated by the association at any time, and that the borrower will return the loaned stocks or obligations within five business days after termination.

(c) That the association has the right to retain the collateral or use the collateral to purchase investments equivalent to the loaned securities if the borrower defaults under the terms of the agreement, and that the borrower remains liable for any losses and expenses incurred by the association due to default that are not covered by the collateral.

(3) An association may participate through a member bank in the United States federal reserve book entry system, and the records of the member bank shall at all times show that the investments are held for the association or for specific accounts of the association.

(4) An investment may consist of an individual interest in a pool of obligations or a fractional interest in a single obligation if the certificate of participation or interest or the confirmation of participation or interest in the investment is issued in the name of the association, the name of the custodian bank, or the nominee of either, and, if the interest as evidenced by the certificate or confirmation is, if held by a custodian bank, kept separate and apart from the investments of others so that at all times the participation may be identified as belonging solely to the association making the investment.

(5) Transfers of ownership of investments held as described in paragraph “a”, subparagraph (1), subparagraph subdivision (c), and subparagraphs (3) and (4), may be evidenced by bookkeeping entry on the books of the issuer of the investment,

its transfer or recording agent, or the clearing corporation without physical delivery of a certificate evidencing the association's investment.

b. Except as provided in paragraph "a", subparagraph (5), if an investment is not evidenced by a certificate, adequate evidence of the association's investment shall be obtained from the issuer or its transfer or recording agent and retained by the association, a custodian bank, or clearing corporation. Adequate evidence, for purposes of this paragraph, means a written receipt or other verification issued by the depository or issuer or a custodian bank which shows that the investment is held for the association.

4. *Investments.* Except as otherwise permitted by this section, an association organized under this chapter shall only invest in the following:

a. *United States government obligations.* Bonds or other evidences of indebtedness issued, assumed, or guaranteed by the United States of America, or by any agency or instrumentality of the United States of America, including investments in an open-end management investment company registered with the federal securities and exchange commission under the federal Investment Company Act of 1940, 15 U.S.C. § 80(a) and operated in accordance with 17 C.F.R. § 270.2a-7, the portfolio of which is limited to the United States obligations described in this paragraph, and which are included in the national association of insurance commissioners' securities valuation office's United States direct obligation – full faith and credit list.

b. *Certain development bank obligations.* Obligations issued or guaranteed by the international bank for reconstruction and development, the Asian development bank, the inter-American development bank, the export-import bank, the world bank, or any United States government-sponsored organization of which the United States is a member, if the principal and interest is payable in United States dollars. An association shall not invest more than five percent of its total admitted assets in the obligations of any one of these banks or organizations, and shall not invest more than a total of ten percent of its total admitted assets in the obligations authorized by this paragraph.

c. *State obligations.* Obligations issued or guaranteed by a state, a political subdivision of a state, or an instrumentality of a state.

d. *Canadian government obligations.* Obligations issued or guaranteed by Canada, by an agency or province of Canada, by a political subdivision of such province, or by an instrumentality of any of those provinces or political subdivisions.

e. *Corporate and business trust obligations.* Obligations issued, assumed, or guaranteed by a corporation or business trust organized under the laws of the United States or a state, or the laws of Canada or a province of Canada, provided that an

association shall not invest more than five percent of its admitted assets in the obligations of any one corporation or business trust. Investments shall be made only in investment grade bonds.

f. *Stocks.* Common stocks, common stock equivalents, mutual fund shares, securities convertible into common stocks or common stock equivalents, or preferred stocks issued or guaranteed by a corporation incorporated under the laws of the United States or a state, or the laws of Canada or a province of Canada. Aggregate investments in nondividend paying stocks shall not exceed five percent of surplus.

(1) Stocks purchased under this lettered paragraph shall not exceed fifty percent of surplus. With the approval of the commissioner, an association may invest any amount in common stocks, preferred stocks, or other securities of one or more subsidiaries provided that after such investments the association's surplus as regards policyholders will be reasonable in relation to the association's outstanding liabilities and adequate to its financial needs.

(2) An association shall not invest more than ten percent of its surplus in the stocks of any one corporation.

g. *Home office real estate.* Funds may be invested in a home office building, at the direction of the board of directors and with the prior approval of the commissioner of insurance. An association shall not invest more than twenty-five percent of its total admitted assets in such real estate. With the prior approval of the commissioner, an association may exceed the real estate investment limitation to effectuate a merger with, or the acquisition of, another association.

2007 Acts, ch 137, §19  
Subsection 2, NEW paragraph h

#### **518A.19 Proof of loss — sixty-day limit.**

In furnishing proofs of loss under any contract of insurance under this chapter for loss or damage it shall be necessary for the insured within sixty days from the time loss or damage occurs, to give notice in writing to the association issuing such contracts of insurance accompanied by an affidavit stating the facts as to how the loss occurred so far as the same are within the knowledge of the insured, the property destroyed or damaged, and the extent of the loss.

Similar provisions, §511.35, 514A.3, 515.137, 518A.22  
Section not amended; footnote revised

#### **518A.23 Presumption as to value.**

In any action brought in any court in this state on any policy of insurance for the loss of any building so insured, the amount stated in the policy shall be received as prima facie evidence of the insurable value of the building at the date of the policy.

Similar provision, §515.135  
Section not amended; footnote revised

**518A.24 Value of building — liability.**

The association issuing such policy may show the actual value of said property at date of policy, and any depreciation in the value thereof before the loss occurred; but the said association shall be

liable for the actual value of the property insured at the date of the loss, unless such value exceeds the amount of insurance stated in the policy.

Similar provision, §515.136

Section not amended; footnote revised

## CHAPTER 520

### RECIPROCAL OR INTERINSURANCE CONTRACTS

**520.9 Standard of solvency.**

1. There shall at all times be maintained as assets a sum in cash, or in securities of the kind designated by the laws of the state where the principal office is located for the investment of funds of insurance companies, equal to one hundred percent of the net unearned premiums or deposits collected and credited to the account of subscribers, or assets equal to fifty percent of the net annual deposits collected and credited to the account of subscribers on policies having one year or less to run and pro rata on those for longer periods; in addition to which there shall be maintained in cash, or in such securities, assets sufficient to discharge all liabilities on all outstanding losses arising under policies issued, the same to be calculated in accordance with the laws of the state relating to similar reserves for companies insuring similar risks; provided that where the assets on hand available for the payment of losses other than determined losses, do not equal five million dollars, all liability for each determined loss or claim deferred for more than one year, shall be provided for by a special deposit in a trust company or bank having fiduciary powers of the state in which

the principal office is located, to be used in payment of compensation benefits for disability; such deposit to be a trust fund and applicable only to the purposes stated, or such liability may be reinsured in authorized companies with a surplus of at least five million dollars. For the purpose of such reserves, net deposits shall be construed to mean the advance payments of subscribers after deducting the amount specifically provided in the subscribers' agreements for expenses. If at any time the assets so held in cash or such securities shall be less than required above, or less than five million dollars, the subscribers or their attorney for them shall make up the deficiency within thirty days after notice from the commissioner of insurance to do so. In computing the assets required by this section, the amount specified in section 520.4, subsection 7, shall be included.

2. Notwithstanding subsection 1, a person issuing reciprocal contracts and authorized to transact business under this chapter shall comply with the minimum surplus requirements of this section or chapter 521E, whichever is greater.

2007 Acts, ch 137, §20

Subsection 1 amended

## CHAPTER 521

### CONSOLIDATION, MERGER, AND REINSURANCE

**521.1 Definitions.**

For the purposes of this chapter:

1. "Affected company" or "affected mutual company" means the company being merged with and into the surviving company.
2. "Commission" means the commission created in section 521.5.
3. "Commissioner" means the commissioner of insurance.
4. "Company" means a company or association organized under chapter 508, 511, 515, 518, 518A, or 520, and includes a mutual insurance holding

company organized pursuant to section 521A.14.

2007 Acts, ch 22, §91

Subsection 4 amended

**521.2 Consolidation, merger, and reinsurance.**

1. One or more domestic mutual insurance companies organized under chapter 491 may merge or consolidate with a domestic or foreign mutual insurance company as provided in this chapter. Sections 491.101 through 491.105 shall not be applicable to a merger or consolidation of a

domestic mutual insurance company pursuant to this chapter.

2. One or more domestic insurance companies organized under chapter 490 may merge with a domestic or foreign insurance company as provided in chapter 490 with the approval of the commission pursuant to this chapter.

3. The provisions of this chapter shall not be applicable to the merger or consolidation of a domestic mutual company with a stock company pursuant to chapter 508B or chapter 515G.

4. A domestic insurance company shall not assume or reinsure the whole or any part of the risks of any other company, except as provided in this chapter. However, this chapter shall not be con-

strued to prevent any company, as defined in section 521.1, from reinsuring a fractional part of any risk.

2007 Acts, ch 137, §21  
Subsection 4 amended

#### **521.6 Examination.**

The commission may examine the affairs and condition of any company as it deems proper. The commission shall have the power to summon and compel the attendance and testimony of witnesses. The commission shall have the power to compel the production of books and papers before the commission, and may administer oaths.

2007 Acts, ch 22, §92  
Section amended

## CHAPTER 521G

### PROTECTED CELL COMPANIES

#### **521G.6 Use and operation of protected cells.**

1. The protected cell assets of a protected cell shall not be charged with liabilities arising out of any other business the protected cell company may conduct. A contract or other documentation reflecting protected cell liabilities shall clearly indicate that only the protected cell assets of a protected cell are available for the satisfaction of the protected cell liabilities attributed to that same protected cell.

2. The income, gains, and losses, realized or unrealized, from protected cell assets and protected cell liabilities shall be credited to or charged against the protected cell without regard to other income, gains, or losses of the protected cell company, including income, gains, or losses of another protected cell. An amount attributed to a protected cell and accumulations on the attributed amount may be invested and reinvested without regard to the requirements and limitations of section 511.8 or 515.35, and the investments in a protected cell shall not be taken into account in applying the investment limitations otherwise applicable to the investments of the protected cell company.

3. Assets and liabilities attributed to a protected cell shall be valued at their fair value on the date of valuation.

4. *a.* A protected cell company, with respect to its protected cells, shall engage in fully funded indemnity triggered insurance securitization to support in full the protected cell exposures attributable to that protected cell. A protected cell company insurance securitization that is nonindemnity triggered qualifies as an insurance securitization under this chapter only after the commissioner adopts rules providing for all of the following:

- (1) The methods of funding of the portion of the risk that is not indemnity based.
- (2) Accounting requirements.
- (3) Disclosure requirements.
- (4) Risk-based capital treatment.
- (5) Assessment of risks associated with such securitizations.

*b.* A protected cell company insurance securitization that is not fully funded, whether indemnity triggered or nonindemnity triggered, is prohibited. Protected cell assets may be used to pay interest or other consideration on an outstanding debt or other obligation attributable to that protected cell. This subsection shall not be construed or interpreted to prevent a protected cell company from entering into a swap agreement or other transaction for the account of the protected cell that has the effect of guaranteeing interest or other consideration.

5. In a protected cell company insurance securitization, a contract or other documentation affecting the transaction shall contain provisions identifying the protected cell to which the transaction is attributed. In addition, the contract or other documentation shall clearly disclose that the assets of the protected cell, and only those assets, are available to pay the obligations of that protected cell. Notwithstanding this subsection, the failure to include such language in a contract or other documentation shall not be used as the sole basis by a creditor, reinsurer, or other claimant to circumvent this chapter.

6. A protected cell company shall only attribute to a protected cell account the insurance obligations relating to the protected cell company's general account. A protected cell shall not issue an insurance or reinsurance contract directly to a policyholder or reinsured, and shall not have an obli-

gation to a policyholder or reinsured of the protected cell company's general account.

7. At the cessation of business of a protected cell pursuant to the plan approved by the commis-

sioner, the protected cell company shall close the protected cell account.

2007 Acts, ch 137, §22  
Subsection 6 amended

## CHAPTER 522B

### LICENSING OF INSURANCE PRODUCERS

#### 522B.6 License.

1. A person who meets the requirements of sections 522B.4 and 522B.5, unless otherwise denied licensure pursuant to section 522B.11, shall be issued an insurance producer license. An insurance producer license is valid for three years.

2. An insurance producer may qualify for a license in one or more of the following lines of authority:

*a.* Life insurance providing coverage on human lives, including benefits of endowment and annuities, and may include benefits in the event of death or dismemberment by accident and benefits for disability income.

*b.* Accident and health or sickness insurance providing coverage for sickness, bodily injury, or accidental death, and may include benefits for disability income.

*c.* Property insurance providing coverage for the direct or consequential loss or damage to property of any kind.

*d.* Casualty insurance providing coverage against legal liability, including that for death, injury, or disability, or damage to real or personal property.

*e.* Variable life and variable annuity products insurance coverage provided under variable life insurance contracts and variable annuities.

*f.* Personal lines property and casualty insurance sold to individuals and families primarily for noncommercial purposes.

*g.* Excess and surplus lines insurance provided by certain nonadmitted insurers pursuant to section 515.120.

*h.* Credit insurance, including credit life, credit disability, credit property, credit unemployment, involuntary unemployment, mortgage life, mortgage guaranty, mortgage disability, guaranteed automobile protection insurance, and any other form of insurance offered in connection with an extension of credit that is limited to partially or wholly extinguishing a credit obligation and that the commissioner determines should be designated a form of credit insurance.

*i.* Any other line of insurance permitted under state law or by rule.

3. An insurance producer license remains in effect unless revoked or suspended as long as all required fees are paid and continuing education requirements for resident individual insurance

producers are met by any applicable due date. Resident individual insurance producers are required to complete continuing education requirements in order to be eligible for license renewal unless exempted from such requirements under this chapter or by rule.

4. An individual insurance producer who allows the producer's license to lapse, within twelve months from the due date of the renewal fee, may have the same license reinstated without the necessity of passing a written examination upon the payment of a reinstatement fee as specified by rule of the commissioner. Such reinstatement fee shall be in addition to the required renewal fee.

5. A licensed insurance producer who is unable to comply with license renewal procedures due to military service or some other extenuating circumstance may request a waiver of those procedures. Such insurance producer may also request a waiver of any examination requirement or any other penalty or sanction imposed for failure to comply with renewal procedures.

6. The license shall contain the licensee's name, address, personal identification number, and the date of issuance, the lines of authority, the expiration date, and any other information the commissioner deems necessary.

7. A licensee shall inform the commissioner by any means acceptable to the commissioner of a change of legal name or address within thirty days of the change. Failure to timely inform the commissioner of a change in legal name or address may result in a penalty as specified in section 522B.17.

8. In order to assist with the commissioner's duties, the commissioner may contract with a non-governmental entity, including the national association of insurance commissioners or any affiliate or subsidiary the national association of insurance commissioners oversees, to perform any ministerial functions, including the collection of fees, related to producer licensing that the commissioner deems appropriate.

2007 Acts, ch 137, §23; 2007 Acts, ch 152, §82  
Subsection 2, paragraph g amended  
Subsection 3 amended

#### 522B.12 Commissions.

1. An insurer or insurance producer shall not pay a commission, service fee, brokerage, or other valuable consideration to a person for selling, so-

liciting, or negotiating insurance in this state if that person is required to be licensed under this chapter and is not so licensed.

2. A person shall not accept a commission, service fee, brokerage, or other valuable consideration for selling, soliciting, or negotiating insurance in this state if that person is required to be licensed under this chapter and is not so licensed.

3. Renewal or other deferred commissions may be paid to a person for selling, soliciting, or negotiating insurance in this state if the person

was required to be licensed under this chapter at the time of the sale, solicitation, or negotiation and was so licensed at that time.

4. An insurer or insurance producer may pay or assign a commission, service fee, brokerage, or other valuable consideration to an insurance agency or to a person who does not sell, solicit, or negotiate insurance in this state, unless the payment would violate chapter 507B.

2007 Acts, ch 152, §83  
Subsection 4 amended

## CHAPTER 522C

### LICENSING OF PUBLIC ADJUSTERS

#### 522C.1 Purpose.

The purpose of this chapter is to govern the qualifications and procedures for licensing public adjusters in this state, and to specify the duties of and restrictions on public adjusters, including limitation of such licensure to assisting insureds only with first-party claims.

2007 Acts, ch 137, §24  
NEW section

#### 522C.2 Definitions.

As used in this chapter, unless the context otherwise requires:

1. *“Business entity”* means a corporation, association, partnership, limited liability company, limited liability partnership, or any other legal entity.

2. *“Commissioner”* means the commissioner of insurance.

3. *“Fingerprints”* means an impression of the lines on a human finger taken for the purposes of identification. The impression may be electronic or in ink converted to an electronic format.

4. *“First-party claim”* means a claim filed by a person insured under the insurance policy against which the claim is made.

5. *“Individual”* means a natural person.

6. *“Person”* means an individual or a business entity.

7. *“Public adjuster”* means any person who for compensation or any other thing of value acts on behalf of an insured by doing any of the following:

a. Acting for or aiding an insured in negotiating for or effecting the settlement of a first-party claim for loss or damage to real or personal property of the insured.

b. Advertising for employment as a public adjuster of first-party insurance claims or otherwise soliciting business or representing to the public that the person is a public adjuster of first-party insurance claims for loss or damage to real or personal property of an insured.

c. Directly or indirectly soliciting business investigating or adjusting losses, or advising an insured about first-party claims for loss or damage to real or personal property of the insured.

8. *“Uniform business entity application”* means the current version of the national association of insurance commissioners’ uniform business entity application for resident and nonresident business entities.

9. *“Uniform individual application”* means the current version of the national association of insurance commissioners’ uniform individual application for resident and nonresident individuals.

2007 Acts, ch 137, §25  
NEW section

#### 522C.3 Authority of the commissioner.

1. The commissioner shall adopt rules pursuant to chapter 17A as necessary to administer and enforce this chapter.

2. The commissioner shall adopt rules including but not limited to all of the following:

a. Advertising standards.

b. Continuing education requirements for licensees.

c. Contracts between public adjusters and insureds.

d. Required disclosures by licensees.

e. Examinations for licensure.

f. Exemptions.

g. License bonds and errors and omissions insurance requirements.

h. License requirements and exclusions.

i. Prohibited practices.

j. Record retention requirements.

k. Reporting requirements.

l. Requirements and limitations on fees charged by public adjusters.

m. Standards for reasonableness of payment.

n. Standards of conduct.

o. Penalties.

2007 Acts, ch 137, §26  
NEW section

**522C.4 License required.**

A person shall not operate as or represent that the person is a public adjuster in this state unless the person is licensed by the commissioner in accordance with this chapter.

2007 Acts, ch 137, §27  
NEW section

**522C.5 Application for license.**

1. A person applying for a public adjuster license shall make application on a uniform individual application or uniform business entity application as prescribed by the commissioner pursuant to rules adopted under chapter 17A.

2. In determining eligibility for licensure under this chapter, the commissioner shall require each individual applying for a public adjuster license to submit a full set of fingerprints with the application. The commissioner shall also require each business entity applying for licensure under this chapter to submit a full set of fingerprints for each individual who will be acting as a public adjuster on behalf of the business entity. The commissioner shall conduct a state and national criminal history record check on each applicant. The commissioner is authorized to submit fingerprints and any required fees to the state department of public safety, the state attorney general, and the federal bureau of investigation for the performance of such criminal record checks.

*a.* The commissioner may contract for the collection, transmission, and resubmission of fingerprints required under this section and may contract for a reasonable fingerprinting fee to be charged by the contractor for these services. Any fees for the collection, transmission, and retention of fingerprints submitted pursuant to this subsection shall be paid directly to the contractor by the

applicant.

*b.* The commissioner may waive submission of fingerprints by any person who has previously furnished fingerprints if those fingerprints are on file with the central repository of the national association of insurance commissioners, its affiliates, or subsidiaries.

*c.* The commissioner may receive criminal history record information concerning an applicant that was requested by the state department of justice directly from the federal bureau of investigation.

*d.* The commissioner may submit electronic fingerprint records and necessary identifying information to the national association of insurance commissioners, its affiliates, or subsidiaries for permanent retention in a centralized repository whose purpose is to provide state insurance commissioners with access to fingerprint records in order to perform criminal history record checks.

2007 Acts, ch 137, §28  
NEW section

**522C.6 Penalties.**

1. The commissioner may place on probation, suspend, revoke, or refuse to issue or renew a public adjuster's license or may levy a civil penalty as provided in section 505.7A if a licensed public adjuster is found after hearing to be in violation of the requirements of this chapter or rules adopted or orders issued pursuant to this chapter.

2. A person acting as a public adjuster without proper licensure or a public adjuster who willfully violates any provision of this chapter or any rule adopted or order issued under this chapter is guilty of a serious misdemeanor.

2007 Acts, ch 137, §29  
NEW section

**CHAPTER 523****ELECTIONS AND INSIDER TRADING**

**523.5 Proportionate representation.**  
Repealed by 2007 Acts, ch 137, § 30.

**523.6 Amendment of articles.** Repealed  
by 2007 Acts, ch 137, § 30.

**CHAPTER 523A****CEMETERY AND FUNERAL MERCHANDISE  
AND FUNERAL SERVICES****523A.102 Definitions.**

For purposes of this chapter, unless the context otherwise requires:

1. "Authorized to do business within this state" means a person licensed, registered, or subject to regulation by an agency of the state of Iowa or who

has filed a consent to service of process with the commissioner for purposes of this chapter.

2. "Beneficiary" means any natural person specified or included in a purchase agreement, upon whose future death cemetery merchandise, funeral merchandise, funeral services, or a com-

bination thereof are to be provided under the purchase agreement.

3. “*Burial account*” means an account established by a person with a financial institution for the purpose of funding the future purchase of cemetery merchandise, funeral merchandise, funeral services, or a combination thereof without any related trust agreement.

4. “*Burial trust fund*” means an irrevocable burial trust fund established by a person with a financial institution for the purpose of funding the future purchase of cemetery merchandise, funeral merchandise, funeral services, or a combination thereof upon the death of the person named in the burial trust fund’s records or a related purchase agreement. “*Burial trust fund*” does not include or imply the existence of any oral or written purchase agreement for cemetery merchandise, funeral merchandise, funeral services, or a combination thereof between the person and a seller.

5. “*Cemetery merchandise*” means foundations, grave markers, tombstones, ornamental merchandise, memorials, and monuments sold under a purchase agreement that does not require installation within twelve months of the purchase.

6. “*Commissioner*” means the commissioner of insurance or the commissioner’s designee.

7. “*Common business enterprise*” means a group of two or more business entities that share common ownership in excess of fifty percent.

8. “*Credit sale*” means a sale of goods, services, or an interest in land in which all of the following are applicable:

a. Credit is granted either under a seller credit card or by a seller who regularly engages as a seller in credit transactions of the same kind.

b. The buyer is a person other than an organization.

c. The goods, services, or interest in land are purchased primarily for a personal, family, or household purpose.

d. Either the debt is payable in installments or a finance charge is made.

e. For goods and services, the amount financed does not exceed twenty-five thousand dollars.

9. “*Delivery*” occurs when:

a. The cemetery merchandise, funeral merchandise, or the title document establishing an easement for burial rights is physically delivered to the purchaser or installed, except that burial of any item at the site of its ultimate use shall not constitute delivery for purposes of this chapter.

b. If authorized by a purchaser under a purchase agreement, cemetery merchandise has been permanently identified with the name of the purchaser or the beneficiary and delivered to a bonded warehouse or storage facility approved by the commissioner and both title to the merchandise and a warehouse receipt have been delivered to the purchaser or beneficiary and a copy of the warehouse receipt has been delivered to the seller for retention in its files.

c. If authorized by a purchaser under a purchase agreement, a polystyrene or polypropylene outer burial container has been permanently identified with the name of the purchaser or the beneficiary and delivered to a bonded warehouse or storage facility approved by the commissioner and both title to the merchandise and a warehouse receipt have been delivered to the purchaser or beneficiary and a copy of the warehouse receipt has been delivered to the seller for retention in its files.

10. “*Doing business in this state*” means issuing or performing wholly or in part any term of a purchase agreement executed within the state of Iowa.

11. “*Financial institution*” means a state or federally insured bank, savings and loan association, credit union, trust department thereof, or a trust company authorized to do business within this state and which has been granted trust powers under the laws of this state or the United States, which holds funds under a trust agreement. “*Financial institution*” does not include:

a. A seller.

b. Anyone employed by or directly involved with the seller in the seller’s cemetery merchandise, funeral merchandise, or funeral services business.

12. “*Funeral merchandise*” means personal property used for the final disposition of a dead human body, including but not limited to clothing, caskets, vaults, urns, and interment receptacles. “*Funeral merchandise*” does not include easements for burial rights in a completed space or cemetery merchandise.

13. “*Funeral services*” means services provided for the final disposition of a dead human body, including but not limited to services necessarily or customarily provided for a funeral, or for the interment, entombment, or cremation of a dead human body, or any combination thereof. “*Funeral services*” does not include perpetual care or maintenance.

14. “*Inner burial container*” means a container in which human remains are placed for burial or entombment. Where only one container is used for burial or entombment, “*inner burial container*” includes a container serving as a burial vault, urn vault, grave box, grave liner, or lawn crypt.

15. “*Insolvent*” means the inability to pay debts as they become due in the usual course of business.

16. “*Interest or income*” means unrealized net appreciation or loss in the fair value of cemetery merchandise, funeral merchandise, and funeral services trust assets for which a market value may be determined with reasonable certainty, plus the return in money or property derived from the use of trust principal or income, net of investment losses, taxes, and expenses incurred in the sale of trust assets, any cost of the operation of the trust, and any annual audit fee. “*Interest or income*” includes but is not limited to:



a. Rent of real or personal property, including sums received for cancellation or renewal of a lease and any royalties.

b. Interest on money lent, including sums received as consideration for prepayment of principal.

c. Cash dividends paid on corporate stock.

d. Interest paid on deposit funds or debt obligations.

e. Gain realized from the sale of trust assets.

17. “*Next of kin*” means the surviving spouse and heirs at law of the deceased.

18. “*Nonguaranteed*” means that the price of the merchandise and services selected has not been fixed or guaranteed and will be determined by existing prices at the time the merchandise and services are delivered or provided.

19. “*Outer burial container*” means a container used for the burial of human remains that is used exclusively to surround or enclose an inner burial container and to support the earth above the container, commonly known as a burial vault, urn vault, grave box, or grave liner, but not including a lawn crypt.

20. “*Parent company*” means a corporation that has a controlling interest in a seller.

21. “*Personal representative*” means a personal representative as defined in section 633.3.

22. “*Provider*” means a person that provides funeral services, funeral merchandise, or cemetery merchandise purchased in a purchase agreement.

23. “*Purchase agreement*” means an agreement to furnish cemetery merchandise, funeral merchandise, funeral services, or a combination thereof when performance or delivery may be more than one hundred twenty days following the initial payment on the account.

24. “*Purchase price*” means the negotiated price for the item of merchandise or service, if itemized in the purchase agreement, or the price of the item listed in the seller’s general price list at the time the purchase agreement is signed.

25. “*Purchaser*” means a person who purchases cemetery merchandise, funeral merchandise, funeral services, or a combination thereof. The purchaser need not be a beneficiary of the agreement.

26. “*Sales agent*” means a person, including an employee, who is authorized by a seller to sell cemetery merchandise, funeral merchandise, funeral services, or a combination thereof, on behalf of the seller.

27. “*Seller*” or “*preneed seller*” means a person doing business within this state, including a person doing business within this state who sells insurance, who advertises, sells, promotes, or offers to furnish cemetery merchandise, funeral merchandise, funeral services, or a combination thereof when performance or delivery may be more than one hundred twenty days following the initial payment on the account whether the transaction is

completed or offered in person, through the mail, over the telephone, by the internet, or through any other means of commerce. “*Seller*” or “*preneed seller*” includes any person performing any term of a purchase agreement executed within this state, and any person identified under a burial account as the provider of cemetery merchandise, funeral merchandise, funeral services, or a combination thereof.

28. “*Total purchase price*” means the aggregate amount the purchaser is obligated to pay for merchandise or services pursuant to the purchase agreement, excluding any taxes, administrative charges, or financing charges.

2007 Acts, ch 175, §2 – 5, 51, 52

Subsection 6 amended

Subsection 9, paragraphs b and c amended

Subsection 11 stricken and former subsections 12 – 26 renumbered as 11

– 25

Subsection 20 amended

NEW subsection 26

Subsection 27 amended

### 523A.201 Establishment of trust funds.

Unless proceeding under section 523A.401, 523A.402, or 523A.403, a seller must establish a trust fund prior to advertising, selling, promoting, or offering cemetery merchandise, funeral merchandise, funeral services, or a combination thereof in this state as follows:

1. The trust fund must be established at a financial institution.

2. If a seller agrees to furnish cemetery merchandise, funeral merchandise, funeral services, or a combination thereof and performance or delivery may be more than one hundred twenty days following the initial payment on the account, a minimum of eighty percent of all payments made under the purchase agreement shall be placed and remain in trust until the person for whose benefit the funds were paid dies.

3. If a purchase agreement for cemetery merchandise, funeral merchandise, funeral services, or a combination thereof provides that payments are to be made in installments, the seller shall deposit eighty percent of each payment in the trust fund until the full amount required to be placed in trust has been deposited. If the purchase agreement is financed with or sold to a financial institution, the purchase agreement shall be considered paid in full and the trust requirements shall be satisfied within fifteen days after the seller receives funds from the financial institution.

4. A seller shall not invade the trust principal for any purpose.

5. Unless a seller deposits all of each payment in a trust fund that meets the requirements of this section and section 523A.202, the seller shall have a fidelity bond or similar insurance in an amount of not less than fifty thousand dollars to protect against the loss of purchaser payments not placed in trust within the time period required by this section and section 523A.202. The commissioner may require a greater amount as the commission-

er determines is necessary. If the seller changes ownership, the fidelity bond or similar insurance shall continue in force for at least one year after the transfer of ownership.

6. Payments otherwise subject to this section are not exempt merely because they are held in certificates of deposit.

7. Commingling of trust funds with other funds of the seller is prohibited.

8. Interest or income earned on amounts deposited in trust shall remain in trust under the same terms and conditions as payments made under the purchase agreement, except that a limited liability corporation that was formed in 2002 for the purpose of purchasing a cemetery from a foreign entity reorganizing under bankruptcy and such corporation is comprised of six establishments all located within the same county may withdraw so much of the interest or income as represents the difference between the amount needed to adjust the trust funds for inflation as set by the commissioner based on the consumer price index and the interest or income earned during the preceding year not to exceed fifty percent of the total interest or income on a calendar-year basis. The early withdrawal of interest or income under this provision does not affect the purchaser's right to a credit of such interest or income in the event of a nonguaranteed price agreement, cancellation, or nonperformance by such limited liability corporation.

9. The commissioner may require amendments to a trust agreement not in accord with the provisions of this chapter.

10. If a seller voluntarily or involuntarily ceases doing business and the seller's obligation to provide merchandise or services has not been assumed by another seller holding a current preneed seller's license, all trust funds, including accrued interest or income, shall be repaid to the purchaser within thirty days following the seller's cessation of business. A seller may petition the commissioner, upon a showing of good cause, for a longer period of time for repayment. A seller shall notify the commissioner at least thirty days prior to ceasing business.

2007 Acts, ch 175, §6 – 8  
Subsection 3 amended  
Subsection 5 stricken and rewritten  
Subsections 8 and 10 amended

#### **523A.202 Trust fund deposit requirements.**

1. All funds held in trust pursuant to section 523A.201 shall be deposited in a financial institution within fifteen days after the close of the month a seller receives the funds. The financial institution shall hold the funds for the designated beneficiary until released.

2. All funds required to be deposited by the purchaser or the seller for a purpose described in section 523A.201 shall be deposited consistent

with one of the following methods:

a. The payments shall be deposited directly into an interest-bearing burial account in the purchaser's name.

b. The purchaser or the seller shall deposit payments directly into a separate trust account in the purchaser's name. The account may be made payable to the seller upon the death of the purchaser or the designated beneficiary, provided that, until death, the purchaser retains the exclusive power to hold, manage, pledge, and invest the trust account funds and may revoke the trust and withdraw the funds, in whole or in part, at any time during the term of the agreement.

c. The purchaser or the seller shall deposit payments directly into a separate trust account in the name of the purchaser, as trustee, for the named beneficiary, to be held, invested, and administered as a trust account for the benefit and protection of the beneficiary. The depositor shall notify the financial institution of the existence and terms of the trust, including at a minimum, the name of each party to the agreement, the name and address of the trustee, and the name and address of the beneficiary. The account may be made payable to the seller upon the beneficiary's death.

d. The payments shall be deposited in the name of the trustee, as trustee, under the terms of a master trust agreement and the trustee may invest, reinvest, exchange, retain, sell, and otherwise manage the trust fund for the benefit and protection of the named beneficiary.

3. The commissioner may by rule authorize other methods of deposit upon a finding that such methods provide equivalent safety of the principal and interest or income and the seller lacks access to the proceeds prior to performance.

4. This section does not prohibit moving trust funds from one financial institution to another if the commissioner is notified of the change within thirty days of the transfer of the trust funds.

2007 Acts, ch 175, §9  
Subsection 4 amended

#### **523A.203 Financial institution trustees — qualification and investment requirements.**

1. A financial institution may serve as a trustee if granted those powers under the laws of this state or of the United States. A financial institution acting as a trustee of trust funds under this chapter shall invest the funds in accordance with applicable law.

2. A financial institution acting as a trustee of trust funds under this chapter has a fiduciary duty to make reasonable investment decisions and to properly oversee and manage the funds entrusted to it. The trustee shall use the judgment and care under the circumstances then prevailing that persons of prudence, discretion, and intelligence exercise in the management of their own affairs, not in regard to speculation but in regard to the perma-

ment disposition of their funds, considering the probable income as well as the probable safety of their capital. The commissioner may take enforcement action against a financial institution in its capacity as trustee for a breach of fiduciary duty proven under this chapter.

3. Moneys deposited under a master trust agreement may be commingled by the financial institution for investment purposes if each deposit includes a detailed listing of the amount deposited in trust for each beneficiary and maintenance of a separate accounting of each purchaser's principal, interest, and income.

4. Subject to a master trust agreement, the seller may appoint an independent investment adviser to advise the financial institution about investment of the trust funds.

5. Subject to agreement between the parties, the financial institution may receive a reasonable fee from the trust funds for services rendered as trustee. The trust shall pay the trust operation costs and any annual audit fees.

6. The seller or any officer, director, agent, employee, or affiliate of the seller shall not serve as trustee. A financial institution holding trust funds shall not do any of the following:

a. Be owned, under the control of, or affiliated with a seller.

b. Use any funds required to be held in trust under this chapter to purchase an interest in any contract or agreement to which a seller is a party.

c. Otherwise invest, directly or indirectly, in a seller's business operations.

7. Unless proceeding under section 523A.403, investment and management decisions for all trust funds shall be made in accordance with the provisions of section 633A.4302.

2007 Acts, ch 175, §10  
NEW subsection 7

#### **523A.204 Preneed seller annual reporting requirements — penalty.**

1. A preneed seller shall file with the commissioner not later than April 1 of each year an annual report on a form prescribed by the commissioner.

2. A preneed seller filing an annual report shall pay a filing fee of ten dollars per purchase agreement sold during the year covered by the report. Duplicate fees are not required for the same purchase agreement. If a purchase agreement has multiple sellers, the fee shall be paid by the preneed seller actually providing the merchandise and services.

3. All records maintained by the commissioner under this section shall be confidential pursuant to section 22.7, subsection 58, and shall not be made available for inspection or copying except upon the approval of the commissioner or the attorney general.

4. The commissioner shall levy an administrative penalty in the amount of five hundred dollars against a preneed seller that fails to file the annu-

al report when due, payable to the state for deposit in the general fund of the state.

5. A preneed seller that fails to file the annual report when due shall immediately cease soliciting or executing purchase agreements until the annual report is filed and any administrative penalty assessed has been paid.

2007 Acts, ch 175, §11  
See also §523A.814  
Section stricken and rewritten

#### **523A.205 Financial institution annual reporting requirements.**

1. A financial institution shall file with the commissioner not later than March 1 of each year an annual report on a form prescribed by the commissioner showing all funds deposited by a seller under a trust agreement during the previous year. Each report shall contain all information requested.

2. Forms may be obtained from the commissioner upon request. The commissioner may accept annual reports submitted in an electronic format, including but not limited to computer diskettes.

3. Notwithstanding chapter 22, all records maintained by the commissioner under this section shall be confidential and shall not be made available for inspection or copying except upon approval of the commissioner or the attorney general.

2007 Acts, ch 175, §53  
Subsection 1 amended

#### **523A.206 Examinations — authority and scope.**

1. The commissioner may conduct an examination under this chapter of any seller as often as the commissioner deems appropriate. If a seller has a trust arrangement, the commissioner shall conduct an examination of such seller doing business in this state not less than once every three years unless the seller has provided to the commissioner, on an annual basis, a certified copy of an audit conducted by an independent certified public accountant verifying compliance with this chapter. The commissioner may require an audit of a seller, or other person by a certified public accountant to verify compliance with the requirements of this chapter, including rules adopted and orders issued pursuant to this chapter.

2. A seller shall reimburse the division for the expense of conducting the examination, including an audit conducted by a certified public accountant, unless the commissioner waives this requirement, or the seller has previously provided to the commissioner a certified copy of an audit conducted by an independent certified public accountant verifying compliance with this chapter for each year in question and the examination conducted by the commissioner does not disclose that the seller has not complied with this chapter for the years in question. The expense of an examination

involving multiple sellers or other persons shall be prorated among them upon any reasonable basis as determined by the commissioner.

3. For purposes of completing an examination under this chapter, the commissioner may examine or investigate any person, or the business of any person, if the examination or investigation is, in the sole discretion of the commissioner, necessary or material to the examination of the seller.

4. Upon determining that an examination should be conducted, the commissioner may appoint one or more examiners to perform the examination and instruct those examiners as to the scope of the examination.

5. A seller, or other person from whom information is sought, and its officers, directors, employees, and agents shall provide to the examiners appointed under subsection 4, timely, convenient, and free access at their offices, at all reasonable hours, to all books, records, accounts, papers, documents, and all electronic or other recordings related to the property, assets, business, and affairs of the seller being examined and shall facilitate the examination as much as possible.

*a.* The refusal of a seller, by its officers, directors, employees, or agents, to submit to an examination or to comply with a reasonable written request of an examiner shall constitute grounds for the suspension, revocation, or nonrenewal of any license held by the seller to engage in business subject to the commissioner's jurisdiction.

*b.* If a seller declines or refuses to submit to an examination as provided in this chapter, the commissioner shall immediately suspend, revoke, or nonrenew any license held by the seller or business to engage in business subject to the commissioner's jurisdiction, and shall report the commissioner's action to the attorney general, who shall immediately apply to the district court for the appointment of a receiver to administer the final affairs of the seller.

6. The commissioner shall not make information obtained in the course of an examination public, except when a duty under this chapter requires the commissioner to take action against a seller or to cooperate with another law enforcement agency, or when the commissioner is called as a witness in a civil or criminal proceeding.

7. This section shall not be construed to limit the commissioner's authority to terminate or suspend any examination in order to pursue other legal or regulatory actions pursuant to this chapter. Findings of fact and conclusions made pursuant to an examination are deemed to be prima facie evidence in any legal or regulatory action.

2007 Acts, ch 175, §12  
Section stricken and rewritten

### **523A.207 Audits by certified public accountants.**

A purchase agreement shall not be sold or trans-

ferred, as part of the sale of a business or the assets of a business, until an audit has been performed by a certified public accountant and filed with the commissioner that expresses the auditor's opinion of the adequacy of funding related to the purchase agreements to be sold or transferred.

2007 Acts, ch 175, §13  
NEW section

### **523A.401 Purchase agreements funded by insurance proceeds.**

1. A purchase agreement may be funded by insurance proceeds derived from a new or existing insurance policy issued by an insurance company authorized to do business and doing business within this state.

2. Such funding may be in lieu of the trusting requirements of this chapter when the purchaser assigns the proceeds of an existing insurance policy.

3. Such funding may be in lieu of the trusting requirements of this chapter when a new insurance policy is purchased to fund the purchase agreement, with a face amount equal to or greater than the current retail price of the cemetery merchandise, funeral merchandise, and funeral services to be delivered under the purchase agreement or, if less, a face amount equal to the total of all payments to be submitted by the purchaser pursuant to the purchase agreement.

4. The premiums of any new insurance policy shall be fully paid within thirty days after execution of the purchase agreement or, with respect to a purchase agreement that provides for periodic payments, the premiums shall be paid directly by the purchaser to the insurance company issuing the policy.

5. Any new insurance policy shall satisfy the following conditions:

*a.* Except as necessary and appropriate to satisfy the requirements regarding burial trust funds under Title XIX of the federal Social Security Act, the policy shall not be owned by the seller, the policy shall not be irrevocably assigned to the seller, and the assignment of proceeds from the insurance policy to the seller shall be limited to the seller's interests as they appear in the purchase agreement, and conditioned on the seller's delivery of cemetery merchandise, funeral merchandise, and funeral services pursuant to a purchase agreement.

*b.* The policy shall provide that any assignment of benefits is contingent upon the seller's delivery of cemetery merchandise, funeral merchandise, and funeral services pursuant to a purchase agreement.

*c.* The policy shall have an increasing death benefit or similar feature that provides some means for increasing the funding as the cost of cemetery merchandise, funeral merchandise, and funeral services increases.

6. With the written consent of the purchaser, an existing prepaid purchase agreement with trust-funded benefits may be converted to a prepaid purchase agreement with insurance-funded benefits provided the seller and the insurance benefits comply with the following provisions:

*a.* The transfer of the trust funds to the insurance company must be at least equal to the full sum required to be deposited as trust principal under the trust-funded prepaid purchase agreement plus all net earnings accumulated with respect thereto, as of the transfer date. Commissions, allowances, surrender charges or other forms of compensation or expense loads, premium expense, administrative charges or expenses, or policy fees shall not be deducted from the trust funds transferred pursuant to the conversion.

*b.* The face amount of any insurance policy issued on an individual must be no less than the amount of principal and interest transferred for that individual to the insurance company, and any supplemental insurance policy issued to cover the unfunded portion of the purchase agreement must have a face amount that is at least as great as the unfunded principal balance. The face amount of the insurance purchased shall not, under any circumstances, be less than the total of all payments made by the purchaser pursuant to the agreement plus all net earnings accumulated with respect thereto, as of the transfer date.

*c.* The insurance policy shall not be contestable, or limit death benefits in the case of suicide, with respect to that portion of the face amount of the policy that is required by paragraph "b". The policy shall not refer to physical examination, or otherwise operate as an exclusion, limitation, or condition other than requiring submission of proof of death or surrender of policy at the time the prepaid purchase agreement is funded, matures, or is canceled, as the case may be.

*d.* The seller shall maintain a copy of any prepaid trust-funded purchase agreement that was converted to a prepaid insurance-funded purchase agreement and retain the payment history records for each converted purchase agreement prior to conversion until the cemetery merchandise, funeral merchandise, and funeral services have been delivered.

7. The seller of a purchase agreement subject to this chapter which is to be funded by insurance proceeds shall obtain all permits required to be obtained and comply with all reporting requirements under this chapter.

8. An insurance company issuing policies funding purchase agreements subject to this chapter shall file an annual report with the commissioner on a form prescribed by the commissioner. The report shall list the applicable insurance policies outstanding for each seller. Computer printouts may be submitted so long as each legibly pro-

vides the same information required in the prescribed form.

2007 Acts, ch 175, §54 – 57  
 Subsection 5, paragraphs a and b amended  
 Subsection 6, unnumbered paragraph 1 amended  
 Subsection 6, paragraph d amended  
 Subsection 8 amended

#### **523A.402 Purchase agreements funded by annuity proceeds.**

1. A purchase agreement may be funded by proceeds derived from a new or existing annuity issued by an insurance company authorized to do business and doing business within this state.

2. Such funding may be in lieu of the trust requirements of this chapter when the purchaser assigns the proceeds of an existing annuity.

3. Such funding may be in lieu of the trust requirements of this chapter when a new annuity is purchased to fund the purchase agreement, with a face amount equal to or greater than the current retail price of the cemetery merchandise, funeral merchandise, and funeral services to be delivered under the purchase agreement or, if less, a face amount equal to the total of all payments to be submitted by the purchaser pursuant to the purchase agreement.

4. The premiums of any new annuity shall be fully paid within thirty days after execution of the purchase agreement or, with respect to a purchase agreement that provides for periodic payments, the premiums shall be paid directly by the purchaser to the insurance company issuing the annuity.

5. The annuity shall satisfy the following conditions:

*a.* Except as necessary and appropriate to satisfy the requirements regarding burial trust funds under Title XIX of the federal Social Security Act, the annuity shall not be owned by the seller or irrevocably assigned to the seller and any designation of the seller as a beneficiary shall not be made irrevocable.

*b.* The annuity shall provide that any assignment of benefits is contingent upon the seller's delivery of cemetery merchandise, funeral merchandise, and funeral services pursuant to a purchase agreement.

*c.* The annuity shall have an increasing death benefit or similar feature that provides some means for increasing the funding as the cost of cemetery merchandise, funeral merchandise, and funeral services increases.

6. With the written consent of the purchaser, an existing prepaid purchase agreement with trust-funded benefits may be converted to a prepaid purchase agreement with annuity-funded benefits provided the seller and the annuity benefits comply with the following provisions:

*a.* The transfer of the trust funds to the insurance company must be at least equal to the full

sum required to be deposited as trust principal under the trust-funded prepaid purchase agreement plus all net earnings accumulated with respect thereto, as of the transfer date. Commissions, allowances, surrender charges or other forms of compensation or expense loads, premium expense, administrative charges or expenses, or fees shall not be deducted from the trust funds transferred pursuant to the conversion.

*b.* The face amount of any annuity issued on an individual must be no less than the amount of principal and interest transferred for that individual to the insurance company, and any supplemental annuity issued to cover the unfunded portion of the purchase agreement must have a face amount that is at least as great as the unfunded principal balance. The face amount of the annuity purchased shall not, under any circumstances, be less than the total of all payments made by the purchaser pursuant to the agreement plus all net earnings accumulated with respect thereto, as of the transfer date.

*c.* The annuity shall not be contestable, or limit death benefits in the case of suicide, with respect to that portion of the face amount of the annuity which is required by paragraph “*b*”. The annuity shall not refer to physical examination, or otherwise operate as an exclusion, limitation, or condition other than requiring submission of proof of death or surrender of the annuity at the time the prepaid purchase agreement is funded, matures, or is canceled, as the case may be.

*d.* The seller shall maintain a copy of any prepaid trust-funded purchase agreement that was converted to a prepaid annuity-funded purchase agreement and retain the payment history records for each converted purchase agreement prior to conversion until the cemetery merchandise, funeral merchandise, and funeral services have been delivered.

7. The seller of a purchase agreement subject to this chapter which is to be funded by annuity proceeds shall obtain all permits required to be obtained and comply with all reporting requirements under this chapter.

8. An insurance company issuing annuities funding purchase agreements subject to this chapter shall file an annual report with the commissioner on a form prescribed by the commissioner. The report shall list the applicable annuities outstanding for each seller. Computer printouts may be submitted so long as each legibly provides the same information required in the prescribed form.

2007 Acts, ch 175, §58 – 61  
 Subsection 5, paragraphs a and b amended  
 Subsection 6, unnumbered paragraph 1 amended  
 Subsection 6, paragraph d amended  
 Subsection 8 amended

#### **523A.404 Merchandise delivered to the purchaser or warehoused.**

1. Trust requirements do not apply to payments made pursuant to a purchase agreement

executed prior to July 1, 2007, for outer burial containers made of either polystyrene or polypropylene or cemetery merchandise delivered to the purchaser or stored in an independent third-party storage facility not owned or controlled by the seller when approved by the commissioner. The seller or the storage facility must demonstrate that they will do all of the following:

*a.* Issue a receipt of ownership in the name of the purchaser and deliver it to the purchaser.

*b.* Insure the merchandise against loss.

*c.* Protect the merchandise against damage.

*d.* Transfer title to the purchaser.

*e.* Appropriately identify and describe the merchandise in a manner that it can be distinguished from other similar items.

*f.* Use a method of storage that allows for visual examinations of the merchandise.

*g.* Have adequate, computerized recordkeeping systems in place to identify, describe, and count each item in storage, including the ownership of each item, and provide an aggregate listing with numerical totals.

*h.* File a consent to be examined and inspected by the commissioner.

*i.* Provide reports to the commissioner, annually, by an independent certified public accountant, which shall include a physical count of merchandise held in storage and a review of information, including the seller’s revenue and sales records, as necessary to verify the adequacy of the number of items held at the storage facility.

*j.* Satisfy the annual reporting requirements of section 523A.204.

2. Lawn crypts may be delivered in lieu of trusting. For this purpose, delivery means installation in a grave owned by the purchaser. The seller shall do all of the following:

*a.* Notify the administrator before the lawn crypts are installed.

*b.* Identify the intended location of the lawn crypts within the cemetery.

*c.* Provide documentation adequately demonstrating delivery has occurred. Adequate documentation includes but is not limited to photographs and third-party certifications.

3. Cemetery merchandise and funeral merchandise shall not be deemed delivered to the purchaser or warehoused if the merchandise is subject to a lien or security interest by any party other than the seller.

4. A seller is prohibited from requiring delivery as a condition of the sale.

5. A seller shall provide services necessary for the installation or burial of outer burial containers sold by the seller. This subsection shall not require the seller to provide for the opening or closing of the interment or entombment space, unless the purchase agreement provides otherwise.

2007 Acts, ch 175, §14, 15, 62  
 Subsection 1, unnumbered paragraph 1 amended  
 Subsection 1, paragraphs f and h amended  
 Subsection 4 amended

**523A.405 Bond in lieu of trust fund.**

1. In lieu of trust requirements, a seller may file with the commissioner a surety bond issued by a surety company authorized to do business and doing business within this state. The bond must be conditioned upon the seller's faithful performance of purchase agreements subject to this chapter. The surety's liability extends to each such agreement executed while the bond is in force and until performance or rescission of the purchase agreement. The aggregate liability of the surety for any and all breaches of the conditions of the bond shall not exceed the penal sum of the bond. To the extent expressly agreed to in writing by the surety, the surety's liability extends to each agreement subject to this chapter executed prior to the time the bond was in force and until performance or rescission of the agreement. A purchaser aggrieved by a breach of a condition of the bond covering the purchaser's agreement may maintain an action against the bond. If, at the time of the breach, the purchaser is aware of the purchaser's rights under the bond and how to file a claim against the bond, the surety shall not be liable for any breach of condition unless the surety receives notice of a claim within sixty days following discovery of the acts, omissions, or conditions constituting the breach of condition, except as otherwise provided in this section. A surety bond shall not be canceled by a surety except upon a written notice of cancellation given by the surety to the commissioner by restricted certified mail, and not prior to the expiration of sixty days after receipt of the notice by the commissioner. The surety's liability shall extend to each purchase agreement subject to this chapter executed prior to cancellation of the surety bond until the seller has complied with subsection 3.

2. If a seller becomes insolvent or otherwise ceases to engage in business prior to or within sixty days after cancellation of a bond, the seller shall be deemed to have breached the bond conditions for outstanding agreements under this chapter as of the day prior to cancellation of the bond. The commissioner shall mail written notice by restricted certified mail to the purchaser under each outstanding purchase agreement of the seller that a claim against the bond must be filed with the surety company within sixty days after the mailing date of the notice. The surety shall cease to be liable for all purchase agreements except those for which claims are filed with the surety company within sixty days after the date the commissioner mails the notices.

3. If a surety bond is canceled by a surety under any conditions other than those specified in subsection 2, the seller shall comply with all of the following:

*a.* The seller shall comply with the trust requirements of section 523A.201 for all purchase

agreements subject to this chapter executed on or after the effective date of cancellation of the surety bond. In the alternative, the seller may submit a substitute surety bond meeting the requirements of subsection 1, but the seller must comply with section 523A.201 for any purchase agreements executed on or after the effective cancellation date of the earlier surety bond and prior to the effective date of the later surety bond.

*b.* Within sixty days after the effective cancellation date of the surety bond, the seller shall submit to the commissioner an undertaking by another surety company that a substitute surety bond meeting the requirements of subsection 1 is in effect and that the liability of the substitute surety bond extends to all outstanding purchase agreements of the seller that were executed but not performed or extinguished prior to the effective date of the substitute surety bond, or the seller shall submit to the commissioner a financial statement accompanied by an unqualified opinion based upon an audit performed by a certified public accountant licensed in this state certifying the total amount of outstanding liabilities of the seller on purchase agreements subject to this chapter and proof of deposit by the seller in trust under section 523A.201 of either the amount specified in section 523A.201, including interest as set by the commissioner based on the interest which would have been earned had the funds been maintained in trust, with respect to all of those outstanding purchase agreements or, where applicable, that delivery of merchandise has been made in compliance with section 523A.404. The surety may require such security as is necessary to comply with this section. Upon compliance by the seller with this paragraph, the surety company canceling the surety bond shall cease to be liable with respect to any outstanding purchase agreements of the seller except those purchase agreements with respect to which a breach of condition occurred prior to cancellation and for which timely claims were filed.

4. Section 523A.202 and, to the extent it is applicable, section 523A.206, apply to sellers whose purchase agreements are covered by a surety bond maintained under this section, and section 523A.202 continues to apply to any purchase agreements of those sellers that are not covered by a surety bond maintained under this section.

5. Upon receiving a notice of cancellation of a surety bond, the commissioner shall notify the seller of the requirements of this chapter resulting from cancellation of the bond. The notice may be in the form of a copy of this section and sections 523A.201 and 523A.202.

6. Upon receiving a notice of cancellation, unless the seller has complied with the requirements of this section, the attorney general shall seek an injunction to prohibit the seller from making fur-

ther purchase agreements subject to this chapter. The attorney general shall commence an action to attach and levy execution upon property of the seller when the seller fails to perform a purchase agreement subject to this chapter, to the extent necessary to secure compliance with this chapter. The county attorney may bring criminal charges under subchapter VII.

7. The surety under this section shall not be owned, under the control of, or affiliated with the seller.

8. The amount of the surety bond shall equal eighty percent of the payments received pursuant to purchase agreements, or the applicable portion thereof, for cemetery merchandise, funeral merchandise, funeral services, or a combination thereof and the amount needed to adjust the amount of the surety bond for inflation as set by the commissioner based on the consumer price index. The seller shall review the amount of the surety bond no less than annually and shall increase the bond as necessary to reflect additional payments. The amount needed to adjust for inflation shall be added annually to the surety bond during the first quarter of the establishment's\* fiscal year.

9. With the consent of the purchaser, an existing prepaid purchase agreement with trust-funded benefits may be converted to a prepaid purchase agreement funded by a surety bond provided the seller and the surety bond comply with the following provisions:

*a.* The amount of the trust funds transferred to the surety company must be at least equal to the full sum required to be deposited as trust principal under the trust-funded prepaid purchase agreement plus all net earnings accumulated with respect thereto, as of the transfer date. Commissions, allowances, surrender charges or other forms of compensation or expense loads, premium expense, administrative charges or expenses, or fees shall not be deducted from the trust funds transferred pursuant to the conversion.

*b.* The face amount of the surety bond issued on an individual must be no less than the amount of principal and interest transferred for that individual to the surety company, and any supplemental surety bond issued to cover the unfunded portion of the purchase agreement must have a face amount that is at least as great as the unfunded principal balance. The face amount of the surety bond purchased shall not, under the circumstances, be less than the total of all payments made by the purchaser pursuant to the agreement plus all net earnings accumulated with respect thereto, as of the transfer date.

*c.* The seller shall maintain a copy of any prepaid trust-funded agreement that was converted to a prepaid purchase agreement funded by a surety bond and retain the payment history records for each converted purchase agreement prior to conversion until the cemetery merchandise, funeral

merchandise, and funeral services have been delivered.

2007 Acts, ch 175, §63, 64

\*The phrase "seller's fiscal year" probably intended; corrective legislation is pending

Subsection 9, unnumbered paragraph 1 amended

Subsection 9, paragraph c amended

## SUBCHAPTER V

### PRENEED SELLER AND SALES LICENSES

#### **523A.501 Preneed sellers — licenses.**

1. A person shall not advertise, sell, promote, or offer to furnish cemetery merchandise, funeral merchandise, funeral services, or a combination thereof when performance or delivery may be more than one hundred twenty days following the initial payment on the account without a preneed seller's license.

2. An application for a preneed seller's license shall be filed on a form prescribed by the commissioner and be accompanied by a fifty dollar filing fee.

3. *a.* The commissioner shall request and obtain, notwithstanding section 692.2, subsection 5, criminal history data for any applicant for an initial license issued pursuant to this section, any applicant for reinstatement of a license issued pursuant to this section, or any licensee who is being monitored as a result of a commission order\* or agreement resolving an administrative disciplinary action, for the purpose of evaluating the applicant's or licensee's eligibility for licensure or suitability for continued practice as a preneed seller. The commissioner shall adopt rules pursuant to chapter 17A to implement this section. The commissioner shall inform the applicant or licensee of the criminal history requirement and obtain a signed waiver from the applicant or licensee prior to submitting a criminal history data request.

*b.* A request for criminal history data shall be submitted to the department of public safety, division of criminal investigation, pursuant to section 692.2, subsection 1. The commissioner may also require such applicants or licensees to provide a full set of fingerprints, in a form and manner prescribed by the commission.\*\* Such fingerprints may be submitted to the federal bureau of investigation through the state criminal history repository for a national criminal history check. The commissioner may authorize alternate methods or sources for obtaining criminal history record information. The commissioner may, in addition to any other fees, charge and collect such amounts as may be incurred by the commissioner, the department of public safety, or the federal bureau of investigation in obtaining criminal history information. Amounts collected shall be considered repayment receipts as defined in section 8.2.

*c.* Criminal history information relating to an



applicant or licensee obtained by the commissioner pursuant to this section is confidential. The commissioner may, however, use such information in a license denial proceeding.

4. The commissioner shall request and obtain a financial history for any applicant for an initial license issued pursuant to this section, any applicant for reinstatement of a license issued pursuant to this section, or any licensee who is being monitored as a result of a commission order\* or agreement resolving an administrative disciplinary action, for the purpose of evaluating the applicant's or licensee's eligibility for licensure or suitability for continued practice as a preneed seller. "Financial history" means the record of a person's current loans, the date of a person's loans, the amount of the loans, the person's payment record on the loans, current liens against the person's property, and the person's most recent financial statement setting forth the assets, liabilities, and the net worth of the person.

5. A preneed seller's license is not assignable or transferable. A licensee selling all or part of a business entity that has a preneed seller's license shall cancel the license, and the purchaser shall apply for a new license in the purchaser's name within thirty days of the sale.

6. If no denial order is in effect and no proceeding is pending under section 523A.503, the application becomes effective at noon of the thirtieth day after a completed application or an amendment completing the application is filed, unless waived by the applicant. The commissioner may specify an earlier effective date. Automatic effectiveness under this subsection shall not be deemed approval of the application. If the commissioner does not grant the license, the commissioner shall notify the person in writing of the reasons for the denial.

7. A preneed seller's license shall be renewed every four years by filing the form prescribed by the commissioner under subsection 2, accompanied by a renewal fee in an amount set by the commissioner by rule.

8. The commissioner may by rule create or accept a multijurisdiction preneed seller's license. If the preneed seller's license is issued by another jurisdiction, the rules shall require the filing of an application or notice form and payment of the applicable filing fee of fifty dollars for an application. The application or notice form utilized and the effective dates and terms of the license may vary from the provisions set forth in this section.

2007 Acts, ch 175, §16

\*"An order of the commissioner" probably intended; corrective legislation is pending

\*\*"Commissioner" probably intended; corrective legislation is pending  
Section amended

#### **523A.502 Sales agents — licenses.**

1. A person shall not advertise, sell, promote, or offer to furnish cemetery merchandise, funeral merchandise, funeral services, or a combination

thereof when performance or delivery may be more than one hundred twenty days following initial payment on the account unless the person has a sales license and is a sales agent of a person holding a preneed seller's license. The preneed seller licensee is liable for the acts of its sales agents performed in advertising, selling, promoting, or offering to furnish, upon the future death of a person named or implied in a purchase agreement, cemetery merchandise, funeral merchandise, funeral services, or a combination thereof.

2. This chapter does not permit a person to practice mortuary science without a license. A person holding a current sales license may advertise, sell, promote, or offer to furnish a funeral director's services as an employee or agent of a funeral establishment furnishing the funeral services under chapter 156.

3. An application for a sales license shall be filed on a form prescribed by the commissioner and be accompanied by a filing fee in an amount set by the commissioner by rule.

4. *a.* The commissioner shall request and obtain, notwithstanding section 692.2, subsection 5, criminal history data for any applicant for an initial license issued pursuant to this section, any applicant for reinstatement of a license issued pursuant to this section, or any licensee who is being monitored as a result of a commission order\* or agreement resolving an administrative disciplinary action, for the purpose of evaluating the applicant's or licensee's eligibility for licensure or suitability for continued practice as a sales agent. The commissioner shall adopt rules pursuant to chapter 17A to implement this section. The commissioner shall inform the applicant or licensee of the criminal history requirement and obtain a signed waiver from the applicant or licensee prior to submitting a criminal history data request.

*b.* A request for criminal history data shall be submitted to the department of public safety, division of criminal investigation, pursuant to section 692.2, subsection 1. The commissioner may also require such applicants or licensees, to provide a full set of fingerprints, in a form and manner prescribed by the commission.\*\* Such fingerprints may be submitted to the federal bureau of investigation through the state criminal history repository for a national criminal history check. The commissioner may authorize alternate methods or sources for obtaining criminal history record information. The commissioner may, in addition to any other fees, charge and collect such amounts as may be incurred by the commissioner, the department of public safety, or the federal bureau of investigation in obtaining criminal history information. Amounts collected shall be considered repayment receipts as defined in section 8.2.

*c.* Criminal history information relating to an applicant or licensee obtained by the commissioner pursuant to this section is confidential. The commissioner may, however, use such information

in a license denial proceeding.

5. The sales license shall be renewed every four years by filing the form prescribed by the commissioner under subsection 3, accompanied by a renewal fee in an amount set by the commissioner by rule.

6. A sales agent licensed pursuant to this section shall satisfactorily fulfill continuing education requirements for the license as prescribed by the commissioner by rule.

7. A sales licensee shall inform the commissioner of changes in the information required to be provided in the application within thirty days of the change.

8. A sales license is not assignable or transferable.

9. If no denial order is in effect and no proceeding is pending under section 523A.503, the application becomes effective at noon of the thirtieth day after a completed application or an amendment completing the application is filed, unless waived by the applicant. The commissioner may specify an earlier effective date. Automatic effectiveness under this subsection shall not be deemed approval of the application. If the commissioner does not grant the license, the commissioner shall notify the applicant in writing of the reasons for the denial.

10. The commissioner may by rule create or accept a multijurisdiction sales license. If the sales license is issued by another jurisdiction, the rules shall require the filing of an application or notice form and payment of the applicable filing fee. The application or notice form utilized and the effective dates and terms of the license may vary from the provisions set forth in subsections 3 and 5.

2007 Acts, ch 175, §17

\*\*An order of the commissioner" probably intended; corrective legislation is pending

\*\*\*Commissioner" probably intended; corrective legislation is pending  
Section amended

**523A.502A Sales agent annual reporting requirements — penalty.**

1. A sales agent shall file with the commissioner not later than April 1 of each year an annual report on a form prescribed by the commissioner describing each purchase agreement sold by the sales agent during the year.

2. All records maintained by the commissioner under this section shall be confidential pursuant to section 22.7, subsection 58, and shall not be made available for inspection or copying except upon the approval of the commissioner or the attorney general.

3. The commissioner shall levy an administrative penalty in the amount of five hundred dollars against a sales agent who fails to file an annual report when due, payable to the state for deposit in the general fund.

4. A sales agent who fails to file the annual report when due shall immediately cease soliciting or executing purchase agreements until the annual report is filed and any administrative penalty assessed has been paid.

2007 Acts, ch 175, §18  
NEW section

**523A.503 Denial, suspension, revocation, and surrender of licenses.**

1. The commissioner may, pursuant to chapter 17A, deny any license application, or immediately suspend, revoke, or otherwise impose disciplinary action related to any license issued under section 523A.501 or 523A.502 for several reasons, including but not limited to:

a. Committing a fraudulent act, engaging in a fraudulent practice, or violating any provision of this chapter or any implementing rule or order issued under this chapter.

b. Violating any other state or federal law applicable to the conduct of the applicant's or licensee's business.

c. Insolvency or financial condition.

d. The licensee, for the purpose of avoiding the trust requirement for funeral services, attributes amounts paid under the purchase agreement to cemetery merchandise or funeral merchandise that is delivered under section 523A.404 rather than to funeral services sold to the purchaser. The sale of funeral services at a lower price when the sale is made in conjunction with the sale of cemetery merchandise or funeral merchandise to be delivered under section 523A.404 than the services are regularly and customarily sold for when not sold in conjunction with cemetery merchandise or funeral merchandise is evidence that the licensee is acting with the purpose of avoiding the trust requirement for funeral services under section 523A.201.

e. Engaging in a deceptive act or practice or deliberately misrepresenting or omitting a material fact regarding the sale of cemetery merchandise, funeral merchandise, funeral services, or a combination thereof under this chapter.

f. Conviction of a criminal offense involving dishonesty or a false statement including but not limited to fraud, theft, misappropriation of funds, falsification of documents, deceptive acts or practices, or other related offenses.

g. Inability to provide the cemetery merchandise, funeral merchandise, funeral services, or a combination thereof which the applicant or licensee purports to sell.

h. The applicant or licensee sells the business without filing a prior notice of sale with the commissioner. The license shall be revoked thirty days following such sale.

i. Selling by a person who is not a licensed sales agent.

*j.* The applicant or licensee is named in an order issued pursuant to section 523A.807, subsection 3, paragraph “b”.

2. The commissioner may, for good cause shown, suspend any license for a period not exceeding thirty days, pending investigation.

3. Except as provided in subsection 2, a license shall not be revoked, suspended, or otherwise be the subject of disciplinary action except after notice and hearing under chapter 17A.

4. Any licensee may surrender a license by delivering to the commissioner written notice that the licensee surrenders the license, but the surrender shall not affect the licensee’s civil or criminal liability for acts committed before the surrender.

5. Denial, revocation, suspension, or surrender of a license does not impair or affect the obligation of any preexisting lawful agreement between the licensee and any person.

2007 Acts, ch 175, §19  
Section amended

**523A.504 Appointment of sales agents — fee.**

1. A person shall not sell or offer to furnish cemetery merchandise, funeral merchandise, funeral services, or a combination thereof when performance or delivery may be more than one hundred twenty days following initial payment on the account except through a sales agent who holds a sales license issued pursuant to section 523A.502. If a person holding a preneed seller’s license appoints a sales agent to act on behalf of the preneed seller, the person shall file a notice of such appointment with the commissioner within thirty days of the appointment, in a format approved by the commissioner, and annually thereafter.

2. A preneed seller shall pay an annual fee of five dollars for each sales agent appointed by the preneed seller, which fee shall be submitted with the annual report.

2007 Acts, ch 175, §20  
NEW section

**523A.601 Disclosures.**

1. A purchase agreement for cemetery merchandise, funeral merchandise, funeral services, or a combination thereof shall be written in clear, understandable language, and shall be printed or typed in an easy-to-read font, size, and style, and shall:

*a.* Identify the preneed seller by name and license number, the sales agent by name and license number, the purchaser, and the person for whom the cemetery merchandise, funeral merchandise, funeral services, or a combination thereof is purchased, if other than the purchaser.

*b.* Specify the cemetery merchandise, funeral merchandise, funeral services, or a combination thereof to be provided, and the cost of each merchandise item or service.

*c.* State clearly the conditions upon which substitution will be allowed.

*d.* State the total purchase price and the terms under which it is to be paid.

*e.* State clearly whether the purchase agreement is a guaranteed price agreement or a nonguaranteed price agreement. A nonguaranteed price agreement shall contain in twelve point bold-face type an explanation of the consequences of such agreement in substantially the following language:

**THE PRICES OF MERCHANDISE AND SERVICES UNDER THIS AGREEMENT ARE SUBJECT TO CHANGE IN THE FUTURE. ANY FUNDS PAID UNDER THIS AGREEMENT ARE ONLY A DEPOSIT TO BE APPLIED, TOGETHER WITH ACCRUED INCOME, TOWARD THE FINAL COSTS OF THE MERCHANDISE OR SERVICES AGREED UPON. ADDITIONAL CHARGES MAY BE INCURRED WHEN ADDITIONAL MERCHANDISE OR SERVICES OR BOTH ARE PROVIDED OR WHEN PRICES HAVE INCREASED MORE THAN ACCRUED INCOME.**

*f.* State that the purchase of the cemetery merchandise, funeral merchandise, and funeral services is revocable and specify the damages for cancellation, if any.

*g.* State clearly who has the authority to cancel, amend, or revoke the purchase agreement to purchase cemetery merchandise, funeral merchandise, and funeral services.

*h.* State clearly that the purchaser is entitled to rescind the purchase agreement under terms and conditions specified by section 523A.602.

*i.* Include an explanation of regulatory oversight by the insurance division in twelve point bold-face type, in substantially the following language:

**THIS AGREEMENT IS SUBJECT TO RULES ADMINISTERED BY THE IOWA INSURANCE DIVISION. YOU MAY CALL THE INSURANCE DIVISION AT (515)281-4441. WRITTEN INQUIRIES OR COMPLAINTS SHOULD BE MAILED TO THE IOWA SECURITIES AND REGULATED INDUSTRIES BUREAU, 330 MAPLE STREET, DES MOINES, IOWA 50319.**

2. A purchase agreement that is funded by a trust shall also:

*a.* State the percentage of money to be placed in trust.

*b.* Explain the disposition of the income generated from investments and include a statement of the purchaser’s responsibility for income taxes owed on the income if applicable.

*c.* State that if, after all payments are made

under the conditions and terms of the purchase agreement for cemetery merchandise, funeral merchandise, funeral services, or a combination thereof, any funds remain in the nonguaranteed irrevocable burial trust fund, the seller shall disburse the remaining funds according to law.

*d.* State clearly the terms of the funeral and burial trust agreement and whether it is revocable or irrevocable.

*e.* State clearly that the purchaser is entitled to transfer the trust funding, insurance funding, or other trust assets or select another seller to receive the trust funding, insurance funding, or any other trust assets.

*f.* State clearly who has the authority to amend or revoke the trust agreement, if revocable, and who has the authority to appoint successor trustees if the purchase agreement is canceled.

3. The commissioner may adopt rules establishing disclosure and format requirements to promote consumer understanding of the merchandise and services purchased and the available funding mechanisms for a purchase agreement under this chapter.

4. A purchase agreement shall be signed by the purchaser, the seller, and if the agreement is for mortuary science services as mortuary science is defined in section 156.1, a person licensed to deliver funeral services.

5. The seller shall disclose the following information prior to accepting the initial payment under a purchase agreement:

*a.* The specific method or methods (trust deposits, certificates of deposit, life insurance or an annuity, a surety bond, or warehousing) that will be used to fund the purchase agreement.

*b.* The relationship between the soliciting agent or agents, the provider of the cemetery merchandise, funeral merchandise, or funeral services, or combination thereof, the commissioner, and any other person.

*c.* The relationship of the life insurance policy or other trust assets to the funding of the purchase agreement and the nature and existence of any guarantees regarding the purchase agreement.

*d.* The impact on the purchase agreement of the following:

(1) Changes in the funding, including but not limited to changes in the assignment, beneficiary designation, trustee, or use of proceeds.

(2) Any penalties to be incurred by the purchaser as a result of the failure to make any additional payments required.

(3) Penalties to be incurred upon cancellation.

*e.* A list of cemetery merchandise, funeral merchandise, and funeral services which are agreed upon under the purchase agreement and all relevant information concerning the price of the cemetery merchandise, funeral merchandise, funeral services, or a combination thereof, including a statement that the purchase price is either

guaranteed at the time of purchase or to be determined at the time of need.

*f.* All relevant information concerning what occurs and whether any entitlements or obligations arise if there is a difference between the funding and the amount actually needed to fund the purchase agreement.

*g.* Any penalties or restrictions, including but not limited to geographic restrictions or the inability of the provider to perform, upon delivery of cemetery merchandise, funeral merchandise, or funeral services, or the purchase agreement guarantee.

*h.* If the funding is being transferred from another seller, any material facts related to the revocation of the prior purchase agreement and the transfer of the existing trust funds.

6. *a.* A purchase agreement that is funded by a trust shall include a conspicuous statement in language substantially similar to the following language:

“For your prearranged funeral agreement, we will deposit not less than eighty percent of your payments in trust at (name of financial institution), (street address), (city), (state) (zip code) within fifteen days following receipt of the funds. For your protection, you have the right to contact the financial institution directly to confirm that the deposit of these funds occurred as required by law. If you are unable to confirm the deposit of these funds in trust, you may contact the Iowa insurance division for assistance by calling the insurance division at (telephone number) or by mail at (street address), (city), Iowa (zip code).”

*b.* A purchase agreement that is funded with an insurance policy or an annuity shall include a conspicuous statement in language substantially similar to the following language:

“An (insurance policy or annuity) will be purchased from (name of issuer of the policy or annuity), (street address), (city), (state) (zip code). You should receive confirmation of the purchase of an insurance policy or certificate or an annuity within sixty days of making payment. Delivery of the actual insurance policy or certificate or annuity shall also constitute confirmation. For your protection, you have the right to confirm that the insurance policy or annuity is issued as required by law. If you do not receive confirmation that an insurance policy or certificate or an annuity has been purchased or receive the insurance policy or certificate or the annuity, you should report this fact to the Iowa insurance division by calling the insurance division at (telephone number). Written reports should be mailed to the Iowa insurance division at (street address), (city), Iowa (zip code).”

*c.* A purchase agreement that is funded with a

surety bond shall include a conspicuous statement in language substantially similar to the following language:

“Coverage under a surety bond in the amount of \$(amount) will be purchased from (name of issuer of surety bond), (street address), (city), (state) (zip code) to fund your purchase. If you pay pursuant to your purchase agreement with a single payment, you should receive confirmation of the purchase of a surety bond within sixty days of making the payment. If you pay pursuant to your purchase agreement with multiple, periodic payments, you should receive confirmation of the purchase of a surety bond within sixty days of making the first payment and within sixty days of making the last payment pursuant to the agreement. For your protection, you have the right to confirm that the surety bond is issued as required by law. If you do not receive confirmation of coverage under a surety bond within sixty days of making the first payment and within sixty days of making the last payment, you should report this fact to the Iowa insurance division by calling the insurance division at (telephone number). Written reports should be mailed to the Iowa insurance division at (street address), (city), Iowa (zip code).”

2007 Acts, ch 175, §21, 22, 65, 66  
 Subsection 1, paragraph a amended  
 Subsection 2, paragraph e amended  
 Subsection 5, paragraph h amended  
 NEW subsection 6

**523A.602 Consumer recision, cancellation, and refund rights — purchase agreement compliance with other laws.**

1. A seller shall furnish the purchaser with a completed copy of a purchase agreement pertaining to the sale at the time the purchase agreement is signed. The seller shall comply with the following terms:

*a.* The same language shall be used in both the oral sales representation and the written purchase agreement.

*b.* The seller shall give notice in the purchase agreement of the purchaser's right to rescind after signing the purchase agreement. The recision period must be, but may be greater than, three business days after the date of the purchase agreement. The notice must:

- (1) Be located close to the signature line.
- (2) Be printed in twelve point boldface type.
- (3) State that **“YOU, THE PURCHASER, HAVE THE RIGHT TO RESCIND THIS AGREEMENT AT ANY TIME PRIOR TO MIDNIGHT OF THE (INSERT RELEVANT NUMBER, NOT LESS THAN THREE) BUSINESS DAY AFTER THE DATE OF THIS AGREEMENT.”**

*c.* All moneys shall be refunded without penalty within ten days after recision.

2. *Cancellation refund.*

*a.* A purchase agreement must include a statement that the purchaser has the right to cancel the agreement for the purchase of cemetery merchandise, funeral merchandise, and funeral services upon written demand and designate or appoint a trustee to hold, manage, invest, and distribute the trust assets.

*b.* (1) If a purchase agreement is canceled, a purchaser requests a transfer of the trust assets upon cancellation of a purchase agreement, or another seller provides merchandise or services designated in a purchase agreement, the seller shall refund or transfer within thirty days of receiving a written demand no less than the purchase price of the applicable cemetery merchandise, funeral merchandise, and funeral services adjusted for inflation, using the consumer price index amounts announced by the commissioner annually, less any actual expenses incurred by the seller pursuant to the purchase agreement as set forth in the purchase agreement under section 523A.601, subsection 1, paragraph “*f*”. The amount of the actual expenses deducted by the seller shall not exceed ten percent of the purchase price of the applicable cemetery merchandise, funeral merchandise, and funeral services. The seller may also deduct the value of the cemetery merchandise, funeral merchandise, and funeral services already received by, delivered to, or warehoused for the purchaser.

(2) If a purchase agreement is canceled before the purchase price is paid in full, a purchaser requests a transfer of the trust assets upon cancellation of a purchase agreement before the purchase price is paid in full, or another seller provides cemetery merchandise, funeral merchandise, funeral services, or a combination thereof, designated in a purchase agreement before the purchase price is paid in full, the seller shall refund or transfer within thirty days of receiving a written demand no less than the amount paid by the purchaser, less any actual expenses incurred by the seller pursuant to the purchase agreement as set forth in the purchase agreement under section 523A.601, subsection 1, paragraph “*f*”. The amount of the actual expenses deducted by the seller shall not exceed ten percent of the total original purchase price of the applicable cemetery merchandise, funeral merchandise, funeral services, or a combination thereof. The seller may also deduct the value of the cemetery merchandise, funeral merchandise, and funeral services already received by, delivered to, or warehoused for the purchaser.

(3) For the purposes of this paragraph “*b*”, “*actual expenses*” means all reasonable business expenses of a seller that are associated with the sale of cemetery merchandise, funeral merchandise, funeral services, or a combination thereof. “*Actual expenses*” includes but is not limited to the following:

- (a) Marketing and promotional expenses.
- (b) Investment management fees.

- (c) Annual reporting fees related to accounting and regulatory requirements.
- (d) Licensing fees of the seller.
- (e) Administration, regulatory reporting, and custody expenses related to purchase agreements.
- (f) Computer and software expenses.
- (g) Expenses related to employees of the seller such as licensing fees, continuing education, and salaries and commissions.
- (h) Miscellaneous office expenses.

c. A purchase agreement must include a statement that the purchaser is entitled to a refund of the purchase price of the applicable funeral merchandise adjusted for inflation, using the consumer price index amounts announced by the commissioner annually for any item of funeral merchandise that cannot be delivered to the location specified in the purchase agreement within forty-eight hours of notice of the individual's death, unless the delay is caused by weather conditions or a natural disaster. The seller must return such refund to the purchaser within thirty days of receiving the written demand.

3. This section does not prohibit a purchaser who is or may become eligible for benefits under Title XIX of the federal Social Security Act from making a guaranteed price purchase agreement irrevocable to the extent that federal law or regulations require that such an agreement be irrevocable for purposes of a purchaser's eligibility for benefits under Title XIX of the federal Social Security Act, as permitted under federal law. The seller of credit sale agreements shall comply with the requirements of chapter 537, the Iowa consumer credit code, and is subject to the remedies and penalties provided in that chapter for noncompliance.

2007 Acts, ch 175, §67 – 69  
 Subsection 2, paragraph b, subparagraphs (1) and (2) amended  
 Subsection 2, paragraph b, subparagraph (3), unnumbered paragraph 1 amended  
 Subsection 2, paragraph b, subparagraph (3), subparagraph subdivisions (d) and (g) amended

**523A.603 Security and notice requirements.**

1. If a purchase agreement is funded with an insurance policy or an annuity, the purchaser shall receive a notice thereof from the insurance company within sixty days of making payment. The notice shall include the name and address of the insurance company, the policy number of the insurance policy that secures the agreement, the name of the insured under the insurance policy or annuity, and the amount of the accumulated death benefit. Delivery of the insurance policy or certificate or annuity shall satisfy this notice requirement.

2. If a purchase agreement is funded by a surety bond, the purchaser shall receive a notice from the surety company that evidences coverage under the bond, the name of the purchaser or beneficiary, and the amount of coverage. If the purchase

agreement is paid with a single payment, the purchaser shall receive notice of the surety bond within sixty days of making the payment. If the purchase agreement is being paid with multiple, periodic payments, the purchaser shall receive notice of the surety bond within sixty days of making the last payment. Compliance with this notice requirement does not require a seller to purchase individual surety bonds for each purchaser and beneficiary. A seller may file a single bond with the commissioner.

2007 Acts, ch 175, §23  
 NEW section

**523A.604 Purchase agreements — numbering.**

Purchase agreements for cemetery merchandise, funeral merchandise, funeral services, or a combination thereof shall be sequentially numbered by each seller in compliance with procedures specified by the commissioner by rules adopted under chapter 17A.

2007 Acts, ch 175, §24  
 NEW section

SUBCHAPTER VII

FRAUDULENT PRACTICES  
 AND OTHER VIOLATIONS

**523A.703 Fraudulent practices.**

Except as otherwise provided in section 523A.704, a person who willfully commits any of the following acts commits a fraudulent practice and is punishable as provided in chapter 714:

1. Fails to comply with any requirement of this chapter, or any rule adopted or order issued under this chapter.

2. Makes, causes to be made, or subscribes to a false statement or representation in a report or other document required under this chapter, implementing rules, or orders, or renders such a report or document misleading through the deliberate omission of information properly belonging in the report or document.

3. In connection with the sale of cemetery merchandise, funeral merchandise, funeral services, or a combination thereof, directly or indirectly makes an untrue statement of a material fact or omits to state a material fact that is necessary to make the statements made, in light of the circumstances under which they were made, not misleading.

4. Unless the purchase agreement expressly provides otherwise, excludes in the sale of cemetery merchandise, funeral merchandise, or a combination thereof, funeral services that are necessary for the delivery, use, or installation of the cemetery merchandise or funeral merchandise at the time of the burial or funeral.

2007 Acts, ch 175, §25  
 Section amended

**523A.704 Violations.**

A person who willfully violates section 523A.501, subsection 1, or section 523A.502, subsection 1, is guilty of a class “D” felony.

2007 Acts, ch 175, §26  
NEW section

**523A.801 Administration.**

1. This chapter shall be administered by the commissioner. The commissioner may employ officers, attorneys, accountants, and other employees as needed for administering this chapter.

2. It is unlawful for the commissioner or any administrative staff to use for personal benefit any information which is filed with or obtained by the commissioner and which is not made public. This chapter does not authorize the commissioner or any such staff member to disclose any such information except among themselves or to other cemetery and funeral administrators, regulatory authorities, or governmental agencies, or when necessary and appropriate in a proceeding or investigation under this chapter or as required by chapter 22. This chapter neither creates nor derogates any privileges that exist at common law or otherwise when documentary or other evidence is sought under a subpoena directed to the commissioner or any administrative staff.

3. The commissioner shall submit an annual report to the legislative oversight committee by October 1 of each year reporting on the administration of this chapter. The report shall set forth any recommendations for changes in the law that the commissioner deems necessary or desirable to prevent abuses or evasions of this chapter or rules implementing this chapter or to rectify undesirable conditions in connection with the administration of this chapter or rules implementing this chapter.

2007 Acts, ch 175, §27, 28  
Subsection 1 amended  
NEW subsection 3

**523A.802 Scope.**

1. This chapter applies to any advertisement, sale, promotion, or offer made by a person to furnish, upon the future death of a person named or implied in a purchase agreement, cemetery merchandise, funeral merchandise, funeral services, or a combination thereof. Burial accounts and insurance policies are included if the account records or related documents identify the seller that will provide the cemetery merchandise, funeral merchandise, funeral services, or a combination thereof.

2. This chapter applies when a purchase agreement is executed within this state or an advertisement, promotion, or offer to furnish is made or accepted within this state. An offer to furnish is made within this state, whether or not either party is then present in this state, when the offer originates from this state or is directed by the of-

feror to this state and received by the offeree in this state through the mail, over the telephone, by the internet, or through any other means of commerce.

3. If a foreign person does not have a registered agent or agents in the state of Iowa, doing business within this state shall constitute the person's appointment of the secretary of state of the state of Iowa to be its true and lawful attorney upon whom may be served all lawful process of original notice in actions or proceedings arising or growing out of any contract or tort.

2007 Acts, ch 175, §70  
Subsection 1 amended

**523A.803 Investigations and subpoenas.**

1. The commissioner may, for the purpose of discovering violations of this chapter, implementing rules, or orders issued under this chapter:

a. Make such public or private investigations within or outside of this state as the commissioner deems necessary to determine whether any person has violated or is about to violate this chapter, implementing rules, or orders issued under this chapter, or to aid in enforcement of this chapter or in the prescribing of rules and forms under this chapter.

b. Require or permit any person to file a statement in writing, under oath or otherwise as the commissioner or attorney general determines, as to all the facts and circumstances concerning the matter to be investigated.

c. Notwithstanding chapter 22, keep confidential the information obtained in the course of an investigation. However, if the commissioner determines that it is necessary or appropriate in the public interest or for the protection of the public, the commissioner may share information with other administrators, regulatory authorities, or governmental agencies, or may publish information concerning a violation of this chapter, implementing rules, or orders issued under this chapter.

d. Investigate the seller and examine the books, accounts, papers, correspondence, memoranda, purchase agreements, files, or other documents or records used by every applicant and licensee under this chapter.

e. Administer oaths and affirmations, subpoena witnesses, compel their attendance, take evidence, and require the production of any books, accounts, papers, correspondence, memoranda, purchase agreements, files, or other documents or records which the commissioner deems relevant or material to any investigation or proceeding under this chapter and implementing rules, all of which may be enforced under chapter 17A.

f. Apply to the district court for an order requiring a person's appearance before the commissioner or attorney general, or a designee of either or both, in cases where the person has refused to obey a subpoena issued by the commissioner or attorney general. The person may also be required

to produce documentary evidence germane to the subject of the investigation. Failure to obey a court order under this subsection constitutes contempt of court.

2. The commissioner may issue and bring an action in district court to enforce subpoenas within this state at the request of an agency or administrator of another state, if the activity constituting an alleged violation for which the information is sought would be a violation of this chapter had the activity occurred in this state.

2007 Acts, ch 175, §71  
Subsection 1, paragraph d amended

#### **523A.804 Mediation.**

1. The commissioner may order a seller to participate in mediation in any dispute regarding a purchase agreement. Mediation performed under this section shall be conducted by a mediator appointed by the commissioner and shall comply with the provisions of chapter 679C.

2. Mediation of these disputes shall include attendance at a mediation session with the mediator and the parties to the dispute, listening to the mediator's explanation of the mediation process, presentation of one party's view of the dispute, and listening to the response of the other party. Participation in mediation does not require that the parties reach a mediation agreement.

3. Parties to the mediation shall have the right to advice and presence of counsel at all times. The parties to the mediation shall present any mediation agreement reached through the mediation to the commissioner. If a mediation agreement is not reached, the mediator shall file a report with the commissioner. The costs of the mediation shall be approved by the commissioner and shall be borne by the insurance division's regulatory fund.

2007 Acts, ch 175, §72  
Unnumbered paragraph 1 amended and editorially designated as subsection 1  
Unnumbered paragraphs 2 and 3 editorially designated as subsections 2 and 3

#### **523A.806 Court action for failure to cooperate.**

1. If a person fails or refuses to file any statement or report or to produce any books, accounts, papers, correspondence, memoranda, purchase agreements, files, or other documents or records, or to obey any subpoena issued by the commissioner, the commissioner may refer the matter to the attorney general, who may apply to a district court to enforce compliance. The court may order any or all of the following:

*a.* Injunctive relief, restricting or prohibiting the offer or sale of cemetery merchandise, funeral merchandise, funeral services, or a combination thereof.

*b.* Revocation or suspension of any license issued under this chapter.

*c.* Production of documents or records including but not limited to books, accounts, papers, cor-

respondence, memoranda, purchase agreements, files, or other documents or records.

*d.* Such other relief as may be required.

2. Such an order shall be effective until the person files the statement or report or produces the documents requested, or obeys the subpoena.

2007 Acts, ch 175, §73  
Unnumbered paragraph 1 editorially designated as subsection 1, unnumbered paragraph 1 and former subsections 1 – 4 redesignated as paragraphs a – d

Subsection 1, paragraph b amended  
Unnumbered paragraph 2 designated as subsection 2

#### **523A.807 Prosecution for violations of law.**

1. A violation of this chapter or rules adopted or orders issued under this chapter is a violation of section 714.16, subsection 2, paragraph "a". The remedies and penalties provided by section 714.16, including but not limited to injunctive relief and penalties, apply to violations of this chapter.

2. If the commissioner believes that grounds exist for the criminal prosecution of persons subject to this chapter for violations of this chapter or any other law of this state, the commissioner may forward to the attorney general or the county attorney the grounds for the belief, including all evidence in the commissioner's possession, so that the attorney general or the county attorney may proceed with the matter as deemed appropriate.

3. If the commissioner finds that a person has violated section 523A.201, 523A.202, 523A.401, 523A.402, 523A.403, 523A.404, 523A.405, 523A.501, or 523A.502 or any rule adopted pursuant thereto, the commissioner may order any or all of the following:

*a.* Payment of a civil penalty of not more than one thousand dollars for each violation, but not exceeding an aggregate of ten thousand dollars during any six-month period, except that if the commissioner finds that the person knew or reasonably should have known that the person was in violation of such provisions or rules adopted thereto, the penalty shall be not more than five thousand dollars for each violation, but not exceeding an aggregate of fifty thousand dollars during any six-month period. The commissioner shall assess the penalty on the employer of an individual and not on the individual, if the commissioner finds that the violations committed by the individual were directed, encouraged, condoned, ignored, or ratified by the individual's employer.

*b.* Issuance of an order prohibiting the person committing a violation from selling funeral merchandise, cemetery merchandise, funeral services, or a combination thereof, and from managing, operating, or otherwise exercising control over any business entity that is subject to regulation under this chapter or chapter 523I. A person who has been named in such an order may contest the order by filing a request for a contested case proceeding as provided in chapter 17A and in accor-



dance with rules adopted by the commissioner. The commissioner may, pursuant to chapter 17A, deny any application filed under section 523A.501 or 523A.502 if the applicant, or an officer, director, or owner of the applicant, is named in a final order issued pursuant to this subsection.

4. The commissioner shall post on the website of the division of insurance of the department of commerce a list of all persons licensed under this chapter and an index of orders issued by the commissioner pertaining to such persons.

2007 Acts, ch 175, §29  
NEW subsections 3 and 4

#### **523A.811 Receiverships.**

1. The commissioner shall notify the attorney general of the potential need for establishment of a receivership if the commissioner finds that a seller subject to this chapter meets one or more of the following conditions:

a. Is insolvent.

b. Has utilized trust funds for personal or business purposes in a manner inconsistent with this chapter.

c. The amount of funds currently held in trust for cemetery merchandise, funeral merchandise, and funeral services is less than eighty percent of all payments made under the purchase agreements referred to in section 523A.201.

d. Has refused to pay any just claim or demand based on a purchase agreement referred to in section 523A.201.

e. The commissioner finds upon investigation that a seller is unable to pay any claim or demand based on a purchase agreement which has been legally determined to be just and outstanding.

f. A receivership has been established for a cemetery subject to chapter 523I that is owned or operated by a seller who is subject to this chapter.

2. The commissioner or attorney general may apply to the district court in any county of the state for the establishment of a receivership. Upon proof of any of the grounds for a receivership described in this section, the court may grant a receivership.

3. If a seller who is subject to this chapter owns or operates a cemetery subject to chapter 523I, for which a receivership has been established, the receivership provisions of section 523I.212 shall apply to any receivership established under this section.

2007 Acts, ch 175, §30, 31  
Subsection 1, NEW paragraph f  
NEW subsection 3

#### **523A.812 Insurance division regulatory fund.**

The insurance division may authorize the creation of a special revenue fund in the state treasury, to be known as the insurance division regulatory fund. The commissioner shall allocate annually from the fees paid pursuant to section 523A.204,

two dollars for each purchase agreement reported on a preneed seller's annual report filed pursuant to section 523A.204 for deposit to the regulatory fund. The remainder of the fees collected pursuant to section 523A.204 shall be deposited into the general fund of the state. The commissioner shall also allocate annually the examination fees paid pursuant to section 523A.814 and any examination expense reimbursement for deposit to the regulatory fund. The moneys in the regulatory fund shall be retained in the fund. The moneys are appropriated and, subject to authorization by the commissioner, may be used to pay examiners, examination expenses, investigative expenses, the expenses of mediation ordered by the commissioner, consumer education expenses, the expenses of a toll-free telephone line to receive consumer complaints, and the expenses of receiverships established under section 523A.811. If the commissioner determines that funding is not otherwise available to reimburse the expenses of a person who receives title to a cemetery subject to chapter 523I, pursuant to such a receivership, the commissioner shall use moneys in the regulatory fund as necessary to preserve, protect, restore, and maintain the physical integrity of that cemetery and to satisfy claims or demands for cemetery merchandise, funeral merchandise, and funeral services based on purchase agreements which the commissioner determines are just and outstanding. An annual allocation to the regulatory fund shall not be imposed if the current balance of the fund exceeds five hundred thousand dollars.

2007 Acts, ch 175, §32  
Section amended

#### **523A.813 License revocation — recommendation by commissioner to board of mortuary science.**

Upon a determination by the commissioner that grounds exist for an administrative license revocation or suspension action by the board of mortuary science under chapter 156, the commissioner may forward to the board the grounds for the determination, including all evidence in the possession of the commissioner, so that the board may proceed with the matter as deemed appropriate.

2007 Acts, ch 10, §178  
Section amended

#### **523A.814 Examination fee.**

In addition to the filing fee paid pursuant to section 523A.204, subsection 2, a seller filing an annual report shall pay an examination fee in the amount of five dollars for each purchase agreement subject to a filing fee that is sold between July 1, 2005, and December 31, 2007, and in the amount of ten dollars for each purchase agreement subject to a filing fee that is sold after December 31, 2007.

2007 Acts, ch 175, §33  
Section amended

**523A.901 Liquidation.**

1. *Grounds for liquidation.* The commissioner may petition the district court for an order directing the commissioner to liquidate the business of a seller on either of the following grounds:

a. The seller did not deposit funds pursuant to section 523A.201 or withdrew funds in a manner inconsistent with this chapter and is insolvent.

b. The seller did not deposit funds pursuant to section 523A.201 or withdrew funds in a manner inconsistent with this chapter and the condition of the seller is such that further transaction of business would be hazardous, financially or otherwise, to purchasers or the public.

2. *Liquidation order.*

a. An order to liquidate the business of a seller shall appoint the commissioner as liquidator and shall direct the liquidator to immediately take possession of the assets of the seller and to administer them under the general supervision of the court. The liquidator is vested with the title to the property, contracts, and rights of action and the books and records of the seller ordered liquidated, wherever located, as of the entry of the final order of liquidation. The filing or recording of the order with the clerk of court and the recorder of deeds of the county in which its principal office or place of business is located, or in the case of real estate, with the recorder of deeds of the county where the property is located, is notice as a deed, bill of sale, or other evidence of title duly filed or recorded with the recorder of deeds.

b. Upon issuance of an order, the rights and liabilities of a seller and of the seller's creditors, purchasers, owners, and other persons interested in the seller's estate shall become fixed as of the date of the entry of the order of liquidation, except as provided in subsection 14.

c. At the time of petitioning for an order of liquidation, or at any time after the time of petitioning, the commissioner, after making appropriate findings of a seller's insolvency, may petition the court for a declaration of insolvency. After providing notice and hearing as it deems proper, the court may make the declaration.

d. An order issued under this section shall require accounting to the court by the liquidator. Accountings, at a minimum, must include all funds received or disbursed by the liquidator during the current period. An accounting shall be filed within one year of the liquidation order and at such other times as the court may require.

e. Within five days after the initiation of an appeal of an order of liquidation, which order has not been stayed, the commissioner shall present for the court's approval a plan for the continued performance of the seller's obligations during the pendency of an appeal. The plan shall provide for the continued performance of purchase agreements in the normal course of events, notwithstanding the grounds alleged in support of the order of liquida-

tion including the ground of insolvency. If the defendant seller's financial condition, in the judgment of the commissioner, will not support the full performance of all obligations during the appeal pendency period, the plan may prefer the claims of certain purchasers and claimants over creditors and interested parties as well as other purchasers and claimants, as the commissioner finds to be fair and equitable considering the relative circumstances of such purchasers and claimants. The court shall examine the plan submitted by the commissioner and if it finds the plan to be in the best interests of the parties, the court shall approve the plan. An action shall not lie against the commissioner or any of the commissioner's deputies, agents, clerks, assistants, or attorneys by any party based on preference in an appeal pendency plan approved by the court.

3. *Powers of liquidator.*

a. The liquidator may do any of the following:

(1) Appoint a special deputy to act for the liquidator under this chapter and determine the special deputy's reasonable compensation. The special deputy shall have all the powers of the liquidator granted by this section. The special deputy shall serve at the pleasure of the liquidator.

(2) Hire employees and agents, legal counsel, accountants, appraisers, consultants, and other personnel as the commissioner may deem necessary to assist in the liquidation.

(3) With the approval of the court, fix reasonable compensation of employees and agents, legal counsel, accountants, appraisers, and consultants.

(4) Pay reasonable compensation to persons appointed and defray from the funds or assets of the seller all expenses of taking possession of, conserving, conducting, liquidating, disposing of, or otherwise dealing with the business and property of the seller. If the property of the seller does not contain sufficient cash or liquid assets to defray the costs incurred, the commissioner may advance the costs so incurred out of the insurance division regulatory fund. Amounts so advanced for expenses of administration shall be repaid to the insurance division regulatory fund for the use of the division out of the first available moneys of the seller.

(5) Hold hearings, subpoena witnesses and compel their attendance, administer oaths, examine a person under oath, and compel a person to subscribe to the person's testimony after it has been correctly reduced to writing, and in connection to the proceedings require the production of books, accounts, papers, correspondence, memoranda, purchase agreements, files, or other documents or records which the liquidator deems relevant to the inquiry.

(6) Collect debts and moneys due and claims belonging to the seller, wherever located. Pursuant to this subparagraph, the liquidator may do

any of the following:

(a) Institute timely action in other jurisdictions to forestall garnishment and attachment proceedings against debts.

(b) Perform acts as are necessary or expedient to collect, conserve, or protect its assets or property, including the power to sell, compound, compromise, or assign debts for purposes of collection upon terms and conditions as the liquidator deems best.

(c) Pursue any creditor's remedies available to enforce claims.

(7) Conduct public and private sales of the property of the seller.

(8) Use assets of the seller under a liquidation order to transfer obligations of purchase agreements to a solvent seller, if the transfer can be accomplished without prejudice to the applicable priorities under subsection 18.

(9) Acquire, hypothecate, encumber, lease, improve, sell, transfer, abandon, or otherwise dispose of or deal with property of the seller at its market value or upon terms and conditions as are fair and reasonable. The liquidator shall also have power to execute, acknowledge, and deliver deeds, assignments, releases, and other instruments necessary to effectuate a sale of property or other transaction in connection with the liquidation.

(10) Borrow money on the security of the seller's assets or without security and execute and deliver documents necessary to that transaction for the purpose of facilitating the liquidation. Money borrowed pursuant to this subparagraph shall be repaid as an administrative expense and shall have priority over any other class 1 claims under the priority of distribution established in subsection 18.

(11) Enter into contracts as necessary to carry out the order to liquidate and affirm or disavow contracts to which the seller is a party.

(12) Continue to prosecute and to institute in the name of the seller or in the liquidator's own name any and all suits and other legal proceedings, in this state or elsewhere, and to abandon the prosecution of claims the liquidator deems unprofitable to pursue further.

(13) Prosecute an action on behalf of the creditors, purchasers, or owners against an officer of the seller or any other person.

(14) Remove records and property of the seller to the offices of the commissioner or to other places as may be convenient for the purposes of efficient and orderly execution of the liquidation.

(15) Deposit in one or more banks in this state sums as are required for meeting current administration expenses and distributions.

(16) Unless the court orders otherwise, invest funds not currently needed.

(17) File necessary documents for recording in the office of the recorder of deeds or record office in this state or elsewhere where property of the seller is located.

(18) Assert defenses available to the seller against third persons including statutes of limitations, statutes of fraud, and the defense of usury. A waiver of a defense by the seller after a petition in liquidation has been filed shall not bind the liquidator.

(19) Exercise and enforce the rights, remedies, and powers of a creditor, purchaser, or owner, including the power to avoid transfer or lien that may be given by the general law and that is not included within subsections 7 through 9.

(20) Intervene in a proceeding wherever instituted that might lead to the appointment of a receiver or trustee, and act as the receiver or trustee whenever the appointment is offered.

(21) Exercise powers now held or later conferred upon receivers by the laws of this state which are not inconsistent with this chapter.

b. This subsection does not limit the liquidator or exclude the liquidator from exercising a power not listed in paragraph "a" that may be necessary or appropriate to accomplish the purposes of this chapter.

4. *Notice to creditors and others.*

a. Unless the court otherwise directs, the liquidator shall give notice of the liquidation order as soon as possible by doing both of the following:

(1) Mailing notice, by first-class mail, to all persons known or reasonably expected to have claims against the seller, including purchasers, at their last known address as indicated by the records of the seller.

(2) Publication of notice in a newspaper of general circulation in the county in which the seller has its principal place of business and in other locations as the liquidator deems appropriate.

b. Notice to potential claimants under paragraph "a" shall require claimants to file with the liquidator their claims together with proper proofs of the claim under subsection 13 on or before a date the liquidator shall specify in the notice. Claimants shall keep the liquidator informed of their changes of address, if any.

c. If notice is given pursuant to this subsection, the distribution of assets of the seller under this chapter shall be conclusive with respect to claimants, whether or not a claimant actually received notice.

5. *Actions by and against liquidator.*

a. After issuance of an order appointing a liquidator of the business of a seller, an action at law or equity shall not be brought against the seller within this state or elsewhere, and existing actions shall not be maintained or further presented after issuance of the order. Whenever in the liquidator's judgment, protection of the estate of the seller necessitates intervention in an action against the seller that is pending outside this state, the liquidator may intervene in the action. The liquidator may defend, at the expense of the estate of the seller, an action in which the liquidator intervenes under this section.

b. Within two years or such additional time as applicable law may permit, the liquidator, after the issuance of an order for liquidation, may institute an action or proceeding on behalf of the estate of the seller upon any cause of action against which the period of limitation fixed by applicable law has not expired at the time of the filing of the petition upon which the order is entered. If a period of limitation is fixed by agreement for instituting a suit or proceeding upon a claim, or for filing a claim, proof of claim, proof of loss, demand, notice, or the like, or if in a proceeding, judicial or otherwise, a period of limitation is fixed in the proceeding or pursuant to applicable law for taking an action, filing a claim or pleading, or doing an act, and if the period has not expired at the date of the filing of the petition, the liquidator may, for the benefit of the estate, take any action or do any act, required of or permitted to the seller, within a period of one hundred eighty days subsequent to the entry of an order for liquidation, or within a further period as is shown to the satisfaction of the court not to be unfairly prejudicial to the other party.

c. A statute of limitations or defense of laches shall not run with respect to an action against a seller between the filing of a petition for liquidation against the business of a seller and the denial of the petition. An action against the seller that might have been commenced when the petition was filed may be commenced within sixty days after the petition is denied.

6. *Collection and list of assets.*

a. As soon as practicable after the liquidation order but not later than one hundred twenty days after such order, the liquidator shall prepare in duplicate a list of the seller's assets. The list shall be amended or supplemented as the liquidator may determine. One copy shall be filed in the office of the clerk of court, and one copy shall be retained for the liquidator's files. Amendments and supplements shall be similarly filed.

b. The liquidator shall reduce the assets to a degree of liquidity that is consistent with the effective execution of the liquidation.

c. A submission of a proposal to the court for distribution of assets in accordance with subsection 11 fulfills the requirements of paragraph "a".

7. *Fraudulent transfers prior to petition.*

a. A transfer made and an obligation incurred by a seller whose business is within one year prior to the filing of a successful petition for liquidation under this chapter is fraudulent as to then existing and future creditors if made or incurred without fair consideration, or with actual intent to hinder, delay, or defraud either existing or future creditors. A fraudulent transfer made or an obligation incurred by a seller whose business is ordered to be liquidated under this chapter may be avoided by the liquidator, except as to a person who in good faith is a purchaser, lienor, or obligee for a present fair equivalent value. A purchaser,

lienor, or obligee, who in good faith has given a consideration less than present fair equivalent value for such transfer, lien, or obligation, may retain the property, lien, or obligation as security for repayment. The court may, on due notice, order any such transfer, lien, or obligation to be preserved for the benefit of the estate, and in that event, the receiver shall succeed to and may enforce the rights of the purchaser, lienor, or obligee.

b. (1) A transfer of property other than real property is made when it becomes perfected so that a subsequent lien obtainable by legal or equitable proceedings on a simple contract could not become superior to the rights of the transferee under subsection 9, paragraph "c".

(2) A transfer of real property is made when it becomes perfected so that a subsequent bona fide purchaser from the seller could not obtain rights superior to the rights of the transferee.

(3) A transfer which creates an equitable lien is not perfected if there are available means by which a legal lien could be perfected.

(4) A transfer not perfected prior to the filing of a petition for liquidation is deemed to be made immediately before the filing of the successful petition.

(5) This subsection applies whether or not there are or were creditors who might have obtained a lien or persons who might have become bona fide purchasers.

8. *Fraudulent transfer after petition.*

a. After a petition for liquidation has been filed, a transfer of real property of the seller made to a person acting in good faith is valid against the liquidator if made for a present fair equivalent value. If the transfer is not made for a present fair equivalent value, then the transfer is valid to the extent of the present consideration actually paid for which amount the transferee shall have a lien on the property transferred. The commencement of a proceeding in liquidation is constructive notice upon the recording of a copy of the petition for or order of liquidation with the recorder of deeds in the county where any real property in question is located. The exercise by a court of the United States or a state or jurisdiction to authorize a judicial sale of real property of the seller within a county in a state shall not be impaired by the pendency of a proceeding unless the copy is recorded in the county prior to the consummation of the judicial sale.

b. After a petition for liquidation has been filed and before either the liquidator takes possession of the property of the seller or an order of liquidation is granted:

(1) A transfer of the property, other than real property, of the seller made to a person acting in good faith is valid against the liquidator if made for a present fair equivalent value. If the transfer was not made for a present fair equivalent value, then the transfer is valid to the extent of the present consideration actually paid for which amount

the transferee shall have a lien on the property transferred.

(2) If acting in good faith, a person indebted to the seller or holding property of the seller may pay the debt or deliver the property, or any part of the property, to the seller or upon the seller's order as if the petition were not pending.

(3) A person having actual knowledge of the pending liquidation is not acting in good faith.

(4) A person asserting the validity of a transfer under this subsection has the burden of proof. Except as provided in this subsection, a transfer by or on behalf of the seller after the date of the petition for liquidation by any person other than the liquidator is not valid against the liquidator.

c. A person receiving any property from the seller or any benefit of the property of the seller which is a fraudulent transfer under paragraph "a" is personally liable for the property or benefit and shall account to the liquidator.

d. This chapter does not impair the negotiability of currency or negotiable instruments.

9. *Voidable preferences and liens.*

a. (1) A preference is a transfer of the property of a seller to or for the benefit of a creditor for an antecedent debt made or suffered by the seller within one year before the filing of a successful petition for liquidation under this chapter, the effect of which transfer may be to enable the creditor to obtain a greater percentage of this debt than another creditor of the same class would receive. If a liquidation order is entered while the seller is already subject to a receivership, then the transfers are preferences if made or suffered within one year before the filing of the successful petition for the receivership, or within two years before the filing of the successful petition for liquidation, whichever time is shorter.

(2) A preference may be avoided by the liquidator if any of the following exist:

(a) The seller was insolvent at the time of the transfer.

(b) The transfer was made within four months before the filing of the petition.

(c) At the time the transfer was made, the creditor receiving it or to be benefited by the transfer or the creditor's agent acting with reference to the transfer had reasonable cause to believe that the seller was insolvent or was about to become insolvent.

(d) The creditor receiving the transfer was an officer, or an employee, attorney, or other person who was in fact in a position of comparable influence in the seller to an officer whether or not the person held the position of an officer, owner, or other person, firm, corporation, association, or aggregation of persons with whom the seller did not deal at arm's length.

(3) Where the preference is voidable, the liquidator may recover the property. If the property has been converted, the liquidator may recover its value from a person who has received or converted

the property. However, if a bona fide purchaser or lienor has given less than the present fair equivalent value, the purchaser or lienor shall have a lien upon the property to the extent of the consideration actually given. Where a preference by way of lien or security interest is voidable, the court may on due notice order the lien or security interest to be preserved for the benefit of the estate, in which event the lien or title shall pass to the liquidator.

b. (1) A transfer of property other than real property is made when it becomes perfected so that a subsequent lien obtainable by legal or equitable proceedings on a simple contract could not become superior to the rights of the transferee.

(2) A transfer of real property is made when it becomes perfected so that a subsequent bona fide purchaser from the seller could not obtain rights superior to the rights of the transferee.

(3) A transfer which creates an equitable lien is not perfected if there are available means by which a legal lien could be created.

(4) A transfer not perfected prior to the filing of a petition for liquidation is deemed to be made immediately before the filing of the successful petition.

(5) This subsection applies whether or not there are or were creditors who might have obtained liens or persons who might have become bona fide purchasers.

c. (1) A lien obtainable by legal or equitable proceedings upon a simple contract is one arising in the ordinary course of the proceedings upon the entry or docketing of a judgment or decree, or upon attachment, garnishment, execution, or like process, whether before, upon, or after judgment or decree and whether before or upon levy. It does not include liens which under applicable law are given a special priority over other liens which are prior in time.

(2) A lien obtainable by legal or equitable proceedings may become superior to the rights of a transferee, or a purchaser may obtain rights superior to the rights of a transferee within the meaning of paragraph "b", if such consequences follow only from the lien or purchase itself, or from the lien or purchase followed by a step wholly within the control of the respective lienholder or purchaser, with or without the aid of ministerial action by public officials. However, a lien could not become superior and a purchase could not create superior rights for the purpose of paragraph "b" through an act subsequent to the obtaining of a lien or subsequent to a purchase which requires the agreement or concurrence of any third party or which requires further judicial action or ruling.

d. A transfer of property for or on account of a new and contemporaneous consideration, which is under paragraph "b" made or suffered after the transfer because of delay in perfecting it, does not become a transfer for or on account of an antecedent debt if any acts required by the applicable law

to be performed in order to perfect the transfer as against liens or a bona fide purchaser's rights are performed within twenty-one days or any period expressly allowed by the law, whichever is less. A transfer to secure a future loan, if a loan is actually made, or a transfer which becomes security for a future loan, shall have the same effect as a transfer for or on account of a new and contemporaneous consideration.

*e.* If a lien which is voidable under paragraph "a", subparagraph (2), has been dissolved by the furnishing of a bond or other obligation, the surety of which has been indemnified directly or indirectly by the transfer or the creation of a lien upon property of a seller before the filing of a petition under this chapter which results in the liquidation order, the indemnifying transfer or lien is also voidable.

*f.* The property affected by a lien voidable under paragraphs "a" and "e" is discharged from the lien. The property and any of the indemnifying property transferred to or for the benefit of a surety shall pass to the liquidator. However, the court may on due notice order a lien to be preserved for the benefit of the estate and the court may direct that the conveyance be executed to evidence the title of the liquidator.

*g.* The court shall have summary jurisdiction in a proceeding by a liquidator to hear and determine the rights of the parties under this section. Reasonable notice of hearing in the proceeding shall be given to all parties in interest, including the obligee of a releasing bond or other like obligation. Where an order is entered for the recovery of indemnifying property in kind or for the avoidance of an indemnifying lien, upon application of any party in interest, the court shall in the same proceeding ascertain the value of the property or lien. If the value is less than the amount for which the property is indemnified or less than the amount of the lien, the transferee or lienholder may elect to retain the property or lien upon payment of its value, as ascertained by the court, to the liquidator within the time as fixed by the court.

*h.* The liability of a surety under a releasing bond or other like obligation is discharged to the extent of the value of the indemnifying property recovered or the indemnifying lien nullified and avoided by the liquidator. Where the property is retained under paragraph "g", the liability of the surety is discharged to the extent of the amount paid to the liquidator.

*i.* If a creditor has been preferred for property which becomes a part of the seller's estate, and afterward in good faith gives the seller further credit without security of any kind, the amount of the new credit remaining unpaid at the time of the petition may be set off against the preference which would otherwise be recoverable from the creditor.

*j.* If within four months before the filing of a successful petition for liquidation under this chap-

ter, or at any time in contemplation of a proceeding to liquidate, a seller, directly or indirectly, pays money or transfers property to an attorney for services rendered or to be rendered, the transaction may be examined by the court on its own motion or shall be examined by the court on petition of the liquidator. The payment or transfer shall be held valid only to the extent of a reasonable amount to be determined by the court. The excess may be recovered by the liquidator for the benefit of the estate. However, where the attorney is in a position of influence in the business of the seller or an affiliate, payment of any money or the transfer of any property to the attorney for services rendered or to be rendered shall be governed by the provisions of paragraph "a", subparagraph (2), subparagraph subdivision (d).

*k.* (1) An officer, manager, employee, shareholder, subscriber, attorney, or other person acting on behalf of the seller who knowingly participates in giving any preference when the person has reasonable cause to believe the seller is or is about to become insolvent at the time of the preference is personally liable to the liquidator for the amount of the preference. There is an inference that reasonable cause exists if the transfer was made within four months before the date of filing of this successful petition for liquidation.

(2) A person receiving property from the seller or the benefit of the property of the seller as a preference voidable under paragraph "a" is personally liable for the property and shall account to the liquidator.

(3) This subsection shall not prejudice any other claim by the liquidator against any person.

10. *Claims of holder of void or voidable rights.*

*a.* A claim of a creditor who has received or acquired a preference, lien, conveyance, transfer, assignment, or encumbrance, voidable under this chapter, shall not be allowed unless the creditor surrenders the preference, lien, conveyance, transfer, assignment, or encumbrance. If the avoidance is effected by a proceeding in which a final judgment has been entered, the claim shall not be allowed unless the money is paid or the property is delivered to the liquidator within thirty days from the date of the entering of the final judgment. However, the court having jurisdiction over the liquidation may allow further time if there is an appeal or other continuation of the proceeding.

*b.* A claim allowable under paragraph "a" by reason of a voluntary or involuntary avoidance, preference, lien, conveyance, transfer, assignment, or encumbrance may be filed as an excused late filing under subsection 12, if filed within thirty days from the date of the avoidance or within the further time allowed by the court under paragraph "a".

11. *Liquidator's proposal to distribute assets.*

*a.* From time to time as assets become available, the liquidator shall make application to the court for approval of a proposal to disburse assets

out of marshaled assets.

b. The proposal shall at least include provisions for all of the following:

(1) Reserving amounts for the payment of all the following:

- (a) Expenses of administration.
- (b) To the extent of the value of the security held, the payment of claims of secured creditors.
- (c) Claims falling within the priorities established in subsection 18, paragraphs "a" and "b".

(2) Disbursement of the assets marshaled to date and subsequent disbursement of assets as they become available.

c. Action on the application may be taken by the court provided that the liquidator's proposal complies with paragraph "b".

12. *Filing of claims.*

a. Proof of all claims shall be filed with the liquidator in the form required by subsection 13 on or before the last day for filing specified in the notice required under subsection 4.

b. The liquidator may permit a claimant making a late filing to share in distributions, whether past or future, as if the claimant were not late, to the extent that the payment will not prejudice the orderly administration of the liquidation under any of the following circumstances:

(1) The existence of the claim was not known to the claimant and the claimant filed the claim as promptly as reasonably possible after learning of it.

(2) A transfer to a creditor was avoided under subsections 7 through 9, or was voluntarily surrendered under subsection 10, and the filing satisfies the conditions of subsection 10.

(3) The valuation under subsection 17 of security held by a secured creditor shows a deficiency, which is filed within thirty days after the valuation.

c. The liquidator may consider any claim filed late and permit the claimant to receive distributions which are subsequently declared on any claims of the same or lower priority if the payment does not prejudice the orderly administration of the liquidation. The late-filing claimant shall receive at each distribution the same percentage of the amount allowed on the claim as is then being paid to claimants of any lower priority. This shall continue until the claim has been paid in full.

13. *Proof of claim.*

a. Proof of claim shall consist of a statement signed by the claimant that includes all of the following that are applicable:

(1) The particulars of the claim, including the consideration given for it.

(2) The identity and amount of the security on the claim.

(3) The payments, if any, made on the debt.

(4) A statement that the sum claimed is justly owing and that there is no setoff, counterclaim, or defense to the claim.

(5) Any right of priority of payment or other

specific right asserted by the claimant.

(6) A copy of the written instrument which is the foundation of the claim.

(7) The name and address of the claimant and the attorney who represents the claimant, if any.

b. A claim need not be considered or allowed if it does not contain all the information identified in paragraph "a" which is applicable. The liquidator may require that a prescribed form be used and may require that other information and documents be included.

c. At any time the liquidator may request the claimant to present information or evidence supplementary to that required under paragraph "a", and may take testimony under oath, require production of affidavits or depositions, or otherwise obtain additional information or evidence.

d. A judgment or order against a seller entered after the date of filing of a successful petition for liquidation, or a judgment or order against the seller entered at any time by default or by collusion need not be considered as evidence of liability or of the amount of damages. A judgment or order against a seller before the filing of the petition need not be considered as evidence of liability or of the amount of damages.

14. *Special claims.*

a. A claim may be allowed even if contingent, if it is filed pursuant to subsection 12. The claim may be allowed and the claimant may participate in all distributions declared after it is filed to the extent that it does not prejudice the orderly administration of the liquidation.

b. Claims that are due except for the passage of time shall be treated as absolute claims are treated. However, the claims may be discounted at the legal rate of interest.

c. Claims made under employment contracts by directors, principal officers, or persons in fact performing similar functions or having similar powers are limited to payment for services rendered prior to the issuance of an order of liquidation under subsection 2.

15. *Disputed claims.*

a. If a claim is denied in whole or in part by the liquidator, written notice of the determination shall be given to the claimant or the claimant's attorney by first-class mail at the address shown in the proof of claim. Within sixty days from the mailing of the notice, the claimant may file objections with the liquidator. Unless a filing is made, the claimant shall not further object to the determination.

b. If objections are filed with the liquidator and the liquidator does not alter the denial of the claim as a result of the objections, the liquidator shall ask the court for a hearing as soon as practicable and give notice of the hearing by first-class mail to the claimant or the claimant's attorney and to any other persons directly affected. The notice shall be given not less than ten nor more than thirty days before the date of hearing. The matter

shall be heard by the court or by a court-appointed referee. The referee shall submit findings of fact along with a recommendation.

16. *Claims of other person.* If a creditor, whose claim against a seller is secured in whole or in part by the undertaking of another person, fails to prove and file that claim, then the other person may do so in the creditor's name and shall be subrogated to the rights of the creditor, whether the claim has been filed by the creditor or by the other person in the creditor's name to the extent that the other person discharges the undertaking. However, in the absence of an agreement with the creditor to the contrary, the other person is not entitled to any distribution until the amount paid to the creditor on the undertaking plus the distributions paid on the claim from the seller's estate to the creditor equal the amount of the entire claim of the creditor. An excess received by the creditor shall be held by the creditor in trust for the other person.

17. *Secured creditor's claims.*

a. The value of the security held by a secured creditor shall be determined in one of the following ways, as the court may direct:

(1) By converting the security into money according to the terms of the agreement pursuant to which the security was delivered to the creditors.

(2) By agreement, arbitration, compromise, or litigation between the creditor and the liquidator.

b. The determination shall be under the supervision and control of the court with due regard for the recommendation of the liquidator. The amount so determined shall be credited upon the secured claim. A deficiency shall be treated as an unsecured claim. If the claimant surrenders the security to the liquidator, the entire claim shall be allowed as if unsecured.

18. The priority of distribution of claims from the seller's estate shall be in accordance with the order in which each class of claims is set forth. Claims in each class shall be paid in full or adequate funds retained for the payment before the members of the next class receive any payment. Subclasses shall not be established within a class. The order of distribution of claims is as follows:

a. *Class 1.* The costs and expenses of administration, including but not limited to the following:

(1) Actual and necessary costs of preserving or recovering the assets of the seller.

(2) Compensation for all authorized services rendered in the liquidation.

(3) Necessary filing fees.

(4) Fees and mileage payable to witnesses.

(5) Authorized reasonable attorney fees and other professional services rendered in the liquidation.

b. *Class 2.* Reasonable compensation to employees for services performed to the extent that they do not exceed two months of monetary compensation and represent payment for services performed within one year before the filing of the peti-

tion for liquidation. Officers and directors are not entitled to the benefit of this priority. The priority is in lieu of other similar priority which may be authorized by law as to wages or compensation of employees.

c. *Class 3.* Claims under purchase agreements.

d. *Class 4.* Claims of general creditors.

e. *Class 5.* Claims of the federal or of any state or local government. Claims, including those of a governmental body for a penalty or forfeiture, are allowed in this class only to the extent of the pecuniary loss sustained from the act, transaction, or proceeding out of which the penalty or forfeiture arose, with reasonable and actual costs incurred. The remainder of such claims shall be postponed to the class of claims under paragraph "g".

f. *Class 6.* Claims filed late or any other claims other than claims under paragraph "g".

g. *Class 7.* The claims of shareholders or other owners.

19. *Liquidator's recommendations to the court.*

a. The liquidator shall review claims duly filed in the liquidation and shall make further investigation as necessary. The liquidator may compound, compromise, or in any other manner negotiate the amount for which claims will be recommended to the court except where the liquidator is required by law to accept claims as settled by a person or organization. Unresolved disputes shall be determined under subsection 15. As soon as practicable, the liquidator shall present to the court a report of the claims against the seller with the liquidator's recommendations. The report shall include the name and address of each claimant and the amount of the claim finally recommended.

b. The court may approve, disapprove, or modify the report on claims by the liquidator. Reports not modified by the court within sixty days following submission by the liquidator shall be treated by the liquidator as allowed claims, subject to later modification or to rulings made by the court pursuant to subsection 15. A claim under a policy of insurance shall not be allowed for an amount in excess of the applicable policy limits.

20. *Distribution of assets.* Under the direction of the court, the liquidator shall pay distributions in a manner that will ensure the proper recognition of priorities and a reasonable balance between the expeditious completion of the liquidation and the protection of unliquidated and undetermined claims, including third-party claims. Distribution of assets in kind may be made at valuations set by agreement between the liquidator and the creditor and approved by the court.

21. *Unclaimed and withheld funds.*

a. Unclaimed funds subject to distribution remaining in the liquidator's hands when the liquidator is ready to apply to the court for discharge, including the amount distributable to a creditor,



owner, or other person who is unknown or cannot be found, shall be deposited with the treasurer of state, and shall be paid without interest, except as provided in subsection 18, to the person entitled or to the person's legal representative upon proof satisfactory to the treasurer of state of the right to the funds. Any amount on deposit not claimed within six years from the discharge of the liquidator is deemed to have been abandoned and shall become the property of the state without formal escheat proceedings and be transferred to the insurance division regulatory fund.

b. Funds withheld under subsection 14 and not distributed shall upon discharge of the liquidator be deposited with the treasurer of state and paid pursuant to subsection 18. Sums remaining which under subsection 18 would revert to the undistributed assets of the seller shall be transferred to the insurance division regulatory fund and become the property of the state as provided under paragraph "a", unless the commissioner in the commissioner's discretion petitions the court to reopen the liquidation pursuant to subsection 23.

c. Notwithstanding any other provision of this chapter, funds as identified in paragraph "a", with the approval of the court, shall be made available to the commissioner for use in the detection and prevention of future insolvencies. The commissioner shall hold these funds in the insurance division regulatory fund and shall pay without interest, except as provided in subsection 18, to the person entitled to the funds or to the person's legal representative upon proof satisfactory to the commissioner of the person's right to the funds. The funds shall be held by the commissioner for a period of two years at which time the rights and duties to the unclaimed funds shall vest in the commissioner.

#### 22. *Termination of proceedings.*

a. When all assets justifying the expense of collection and distribution have been collected and distributed under this chapter, the liquidator shall apply to the court for discharge. The court may grant the discharge and make any other orders, including an order to transfer remaining funds that are uneconomical to distribute, as appropriate.

b. Any other person may apply to the court at any time for an order under paragraph "a". If the application is denied, the applicant shall pay the costs and expenses of the liquidator in resisting the application, including a reasonable attorney fee.

23. *Reopening liquidation.* At any time after the liquidation proceeding has been terminated and the liquidator discharged, the commissioner or other interested party may petition the court to reopen the proceedings for good cause including the discovery of additional assets. The court shall order the proceeding reopened if it is satisfied that there is justification for the reopening.

24. *Disposition of records during and after termination of liquidation.* If it appears to the commissioner that the records of the business of a seller in the process of liquidation or completely liquidated are no longer useful, the commissioner may recommend to the court and the court shall direct what records shall be retained for future reference and what records shall be destroyed.

25. *External audit of liquidator's books.* The court may order audits to be made of the books of the commissioner relating to a liquidation established under this chapter, and a report of each audit shall be filed with the commissioner and with the court. The books, records, and other documents of the liquidation shall be made available to the auditor at any time without notice. The expense of an audit shall be considered a cost of administration of the liquidation.

2007 Acts, ch 175, §74 – 94  
 Subsection 1 amended  
 Subsection 2, paragraphs a – c and e amended  
 Subsection 3, paragraph a, subparagraphs (4), (6) – (14), (17), and (18) amended  
 Subsection 4, paragraph a, subparagraphs (1) and (2), and paragraph c amended  
 Subsection 5 amended  
 Subsection 6, paragraph a amended  
 Subsection 7, paragraph a and paragraph b, subparagraph (2) amended  
 Subsection 8, paragraphs a – c amended  
 Subsection 9, paragraphs a, b, e, and i – k amended  
 Subsection 13, paragraph d amended  
 Subsection 16 amended  
 Subsection 18, unnumbered paragraph 1 and paragraph a, subparagraph (1) amended  
 Subsection 19, paragraph a amended  
 Subsection 21, paragraph b amended  
 Subsection 24 amended

## CHAPTER 523I

### IOWA CEMETERY ACT

#### 523I.102 Definitions.

For purposes of this chapter, unless the context otherwise requires:

1. "*Authorized to do business within this state*" means a person licensed, registered, or subject to regulation by an agency of the state of Iowa or who has filed a consent to service of process with the

commissioner for purposes of this chapter.

2. "*Burial site*" means any area, except a cemetery, that is used to inter or scatter remains.

3. "*Capital gains*" means appreciation in the value of trust assets for which a market value may be determined with reasonable certainty after deduction of investment losses, taxes, expenses in-

curred in the sale of trust assets, any costs of the operation of the trust, examination expenses, and any audit expenses.

4. “*Care fund*” means funds set aside for the care of a perpetual care cemetery, including all of the following:

a. Money or real or personal property impressed with a trust by the terms of this chapter.

b. Contributions in the form of a gift, grant, or bequest.

c. Any accumulated income that the trustee of the fund or the cemetery allocates to principal.

5. “*Casket*” means a rigid container which is designed for the encasement of human remains and which is usually constructed of wood, metal, fiberglass, plastic, or like material and ornamented and lined with fabric.

6. “*Cemetery*” means any area that is or was open to use by the public in general or any segment thereof and is used or is intended to be used to inter or scatter remains. “*Cemetery*” does not include the following:

a. A private burial site where use is restricted to members of a family, if the interment rights are conveyed without a monetary payment, fee, charge, or other valuable form of compensation or consideration.

b. A private burial site where use is restricted to a narrow segment of the public, if the interment rights are conveyed without a monetary payment, fee, charge, or other valuable form of compensation or consideration.

c. A pioneer cemetery.

7. “*Columbarium*” means a structure, room, or space in a mausoleum or other building containing niches or recesses for disposition of cremated remains.

8. “*Commissioner*” means the commissioner of insurance or the commissioner’s designee authorized in section 523A.801.

9. “*Common business enterprise*” means a group of two or more business entities that share common ownership in excess of fifty percent.

10. “*Disinterment*” means to remove human remains from their place of final disposition.

11. “*Doing business in this state*” means issuing or performing wholly or in part any term of an interment rights agreement executed within the state of Iowa.

12. “*Financial institution*” means a state or federally insured bank, savings and loan association, credit union, trust department thereof, or a trust company that is authorized to do business within this state, that has been granted trust powers under the laws of this state or the United States, and that holds funds under a trust agreement. “*Financial institution*” does not include a cemetery or any person employed by or directly involved with a cemetery.

13. “*Garden*” means an area within a cemetery established by the cemetery as a subdivision for organizational purposes, not for sale purposes.

14. “*Grave space*” means a space of ground in a cemetery that is used or intended to be used for an in-ground burial.

15. “*Gross selling price*” means the aggregate amount a purchaser is obligated to pay for interment rights, exclusive of finance charges.

16. “*Inactive cemetery*” means a cemetery that is not operating on a regular basis, is not offering to sell or provide interments or other services reasonably necessary for interment, and does not provide or permit reasonable ingress or egress for the purposes of visiting interment spaces.

17. “*Income*” means the return in money or property derived from the use of trust principal after deduction of investment losses, taxes, and expenses incurred in the sale of trust assets, any cost of the operation of the trust, examination expenses or fees, and any audit expenses. “*Income*” includes but is not limited to:

a. Rent of real or personal property, including sums received for cancellation or renewal of a lease and any royalties.

b. Interest on money lent, including sums received as consideration for prepayment of principal.

c. Cash dividends paid on corporate stock.

d. Interest paid on deposit funds or debt obligations.

e. Gain realized from the sale of trust assets.

18. “*Insolvent*” means the inability to pay debts as they become due in the usual course of business.

19. “*Interment rights*” means the rights to place remains in a specific location for use as a final resting place or memorial.

20. “*Interment rights agreement*” means an agreement to furnish memorials, memorialization, opening and closing services, or interment rights.

21. “*Interment space*” means a space used or intended to be used for the interment of remains including, but not limited to, a grave space, lawn crypt, mausoleum crypt, and niche.

22. “*Lawn crypt*” means a preplaced enclosed chamber, which is usually constructed of reinforced concrete and poured in place, or a precast unit installed in quantity, either side-by-side or at multiple depths, and covered by earth or sod.

23. “*Lot*” means an area in a cemetery containing more than one interment space which is uniquely identified by an alphabetical, numeric, or alphanumerical identification system.

24. “*Maintenance fund*” means funds set aside for the maintenance of a nonperpetual care cemetery, including all of the following:

a. Money or real or personal property impressed with a trust by the terms of this chapter.

b. Contributions in the form of a gift, grant, or bequest.

c. Any accumulated income that the trustee of the fund or the cemetery allocates to principal.

25. “*Mausoleum*” means an aboveground

structure designed for the entombment of human remains.

26. "*Mausoleum crypt*" means a chamber in a mausoleum of sufficient size to contain casketed human remains.

27. "*Memorial*" means any product, including any foundation other than a mausoleum or columbarium, used for identifying an interment space or for commemoration of the life, deeds, or career of a decedent including, but not limited to, a monument, marker, niche plate, urn garden plaque, crypt plate, cenotaph, marker bench, and vase.

28. "*Memorial care*" means any care provided or to be provided for the general maintenance of memorials including foundation repair or replacement, resetting or straightening tipped memorials, repairing or replacing inadvertently damaged memorials, and any other care clearly specified in the purchase agreement.

29. "*Memorial dealer*" means any person offering or selling memorials retail to the public.

30. "*Memorialization*" means any permanent system designed to mark or record the name and other data pertaining to a decedent.

31. "*Merchandise*" means any personal property offered or sold for use in connection with the funeral, final disposition, memorialization, or interment of human remains, but which is exclusive of interment rights.

32. "*Neglected cemetery*" means a cemetery where there has been a failure to cut grass or weeds or care for graves, memorials or memorialization, walls, fences, driveways, and buildings, or for which proper records of interments have not been maintained.

33. "*Niche*" means a recess or space in a columbarium or mausoleum used for placement of cremated human remains.

34. "*Opening and closing services*" means one or more services necessarily or customarily provided in connection with the interment or entombment of human remains or a combination thereof.

35. "*Operating a cemetery*" means offering to sell or selling interment rights, or any service or merchandise necessarily or customarily provided for a funeral, or for the entombment or cremation of a dead human, or any combination thereof, including but not limited to opening and closing services, caskets, memorials, vaults, urns, and interment receptacles.

36. "*Outer burial container*" means any container which is designed for placement in the ground around a casket or an urn including, but not limited to, containers commonly known as burial vaults, urn vaults, grave boxes, grave liners, and lawn crypts.

37. "*Perpetual care cemetery*" includes all of the following:

a. Any cemetery that was organized or commenced business in this state on or after July 1, 1995.

b. Any cemetery that has established a care

fund in compliance with section 523I.810.

c. Any cemetery that represents that it is a perpetual care cemetery in its interment rights agreement.

d. Any cemetery that represents in any other manner that the cemetery provides perpetual, permanent, or guaranteed care.

38. "*Person*" means an individual, firm, corporation, partnership, joint venture, limited liability company, association, trustee, government or governmental subdivision, agency, or other entity, or any combination thereof.

39. "*Pioneer cemetery*" means a cemetery where there were six or fewer burials in the preceding fifty years.

40. "*Purchaser*" means a person who purchases memorials, memorialization, opening and closing services, scattering services, interment rights, or a combination thereof. A purchaser need not be a beneficiary of the interment rights agreement.

41. "*Relative*" means a great-grandparent, grandparent, father, mother, spouse, child, brother, sister, nephew, niece, uncle, aunt, first cousin, second cousin, third cousin, or grandchild connected to a person by either blood or affinity.

42. "*Religious cemetery*" means a cemetery that is owned, operated, or controlled by a recognized church or denomination, or a cemetery designated as such in the official Catholic directory on file with the insurance division or in a similar publication of a recognized church or denomination, or a cemetery that the commissioner determines is operating as a religious cemetery upon review of an application by the cemetery that includes a description of the cemetery's affiliation with a recognized church or denomination, the extent to which the affiliate organization is responsible for the financial and contractual obligations of the cemetery, or the provision of the Internal Revenue Code, if any, that exempts the cemetery from the payment of federal income tax.

43. "*Relocation*" means the act of taking remains from the place of interment or the place where the remains are being held to another designated place.

44. "*Remains*" means the body of a deceased human or a body part, or limb that has been removed from a living human, including a body, body part, or limb in any stage of decomposition, or cremated remains.

45. "*Scattering services provider*" means a person in the business of scattering human cremated remains.

46. "*Seller*" means a person doing business within this state, including a person doing business within this state who advertises, sells, promotes, or offers to furnish memorials, memorialization, opening and closing services, scattering services, or interment rights, or a combination thereof, whether the transaction is completed or offered in person, through the mail, over the telephone, by the internet, or through any other

means of commerce.

47. “*Special care*” means any care provided or to be provided that supplements or exceeds the requirements of this chapter in accordance with the specific directions of any donor of funds for such purposes.

48. “*Undeveloped space*” means a designated area or building within a cemetery that has been mapped and planned for future development but is not yet fully developed.

49. “*Veterans cemetery*” means a cemetery that is owned or operated by the state of Iowa or by the United States for the burial of veterans.

2007 Acts, ch 175, §34, 35  
Subsections 3 and 8 amended  
Subsection 17, unnumbered paragraph 1 amended

### 523I.201 Administration.

1. This chapter shall be administered by the commissioner. The commissioner shall employ officers, attorneys, accountants, and other employees as needed for administering this chapter.

2. It is unlawful for the commissioner or any administrative staff to use for personal benefit any information which is filed with or obtained by the commissioner and which is not made public. This chapter does not authorize the commissioner or any staff member to disclose any such information except among themselves or to other cemetery and funeral administrators, regulatory authorities, or governmental agencies, or when necessary and appropriate in a proceeding or investigation under this chapter or as required by chapter 22. This chapter neither creates nor derogates any privileges that exist at common law or otherwise when documentary or other evidence is sought under a subpoena directed to the commissioner or any administrative staff.

3. The commissioner shall submit an annual report to the legislative oversight committee by October 1 of each year reporting on the administration of this chapter. The report shall set forth any recommendations for changes in the law that the commissioner deems necessary or desirable to prevent abuses or evasions of this chapter or rules implementing this chapter or to rectify undesirable conditions in connection with the administration of this chapter or rules implementing this chapter.

2007 Acts, ch 175, §36, 37  
Subsection 1 amended  
NEW subsection 3

### 523I.212 Receiverships.

1. The commissioner shall notify the attorney general of the potential need for establishment of a receivership if the commissioner finds that a cemetery subject to this chapter meets one or more of the following conditions:

a. Is insolvent.

b. Has utilized trust funds for personal or business purposes in a manner inconsistent with this chapter.

c. The amount held in trust in a maintenance fund or care fund is less than the amount required by this chapter.

d. A receivership has been established for a seller subject to chapter 523A who owns or operates a cemetery that is subject to this chapter.

2. The commissioner or attorney general may apply to the district court in any county of the state for the establishment of a receivership. Upon proof that any of the conditions described in this section have occurred, the court may grant a receivership. The commissioner may request that the insurance division be named as a receiver or that the court appoint a third party as a receiver. If the division is appointed as a receiver, the division shall not be subject to the requirements concerning an oath and surety bond contained in section 680.3.

3. In addition to the powers granted to receivers under chapter 680, a receiver appointed under this section shall be granted all powers necessary to locate and to temporarily preserve and protect perpetual care trust funds, consumer and business assets, interment records, records of consumer purchases of interment rights, and records of consumer purchases of funeral services and funeral or cemetery merchandise as defined in chapter 523A. The receiver shall also be granted such powers as are necessary in the course of the receivership to temporarily preserve and protect a cemetery or burial site and to temporarily restore or sustain cemetery operations, including interments, as operating funds or trust funds become available.

4. The commissioner may petition the court to terminate a receivership at any time and to enter such orders as are necessary to transfer the duty to preserve and protect the physical integrity of the cemetery or burial site, the interment records, and other records documenting consumer purchases of interment rights to the applicable governmental subdivision, as provided in section 523I.316, subsection 3. The court shall grant the petition if following the first one hundred twenty days of the receivership such duty to preserve and protect cannot be reasonably assumed by a private entity, association, or by other means.

2007 Acts, ch 175, §38 – 40  
Subsection 1, NEW paragraph d  
Subsection 2 amended  
NEW subsections 3 and 4

### 523I.213 Insurance division’s enforcement fund.

A special revenue fund in the state treasury, to be known as the insurance division’s enforcement fund, is created under the authority of the commissioner. The commissioner shall allocate annually from the examination fees paid pursuant to section 523I.808, an amount not exceeding fifty thousand dollars, for deposit to the insurance division’s enforcement fund. The moneys in the enforcement fund shall be retained in the fund. The mon-

neys are appropriated and, subject to authorization by the commissioner, shall be used to pay examiners, examination expenses, investigative expenses, the expenses of consumer education, compliance, and education programs for filers and other regulated persons, and educational or compliance program materials, the expenses of a toll-free telephone line for consumer complaints, and the expenses of receiverships of perpetual care cemeteries established under section 523I.212.

2007 Acts, ch 175, §41  
Section amended

**523I.213A Examinations — authority and scope.**

1. The commissioner or the commissioner's designee may conduct an examination under this chapter of any cemetery as often as the commissioner deems appropriate. If a cemetery has a trust arrangement, the commissioner shall conduct an examination not less than once every three years.

2. A cemetery shall reimburse the division for the expense of conducting the examination unless the commissioner waives this requirement or the seller has previously provided to the commissioner a certified copy of an audit conducted by an independent certified public accountant verifying compliance with this chapter for each year in question and the examination conducted by the commissioner does not disclose that the seller has not complied with this chapter for the years in question. The expense of an examination involving multiple cemeteries or other persons shall be prorated among them upon any reasonable basis as determined by the commissioner.

3. For purposes of completing an examination pursuant to this chapter, the commissioner may examine or investigate any person, or the business of any person, if the examination or investigation is, in the sole discretion of the commissioner, necessary or material to the examination of the cemetery.

4. Upon determining that an examination should be conducted, the commissioner or the commissioner's designee may appoint one or more examiners to perform the examination and instruct them as to the scope of the examination.

5. A cemetery or person from whom information is sought, and its officers, directors, and agents shall provide to the examiners appointed under subsection 4, timely, convenient, and free access at their offices, at all reasonable hours, to all books, records, accounts, papers, documents, and all electronic or other recordings related to the property, assets, business, and affairs of the cemetery being examined and shall facilitate the examination as much as possible. If a cemetery, by its officers, directors, employees, or agents, refuses to submit to an examination as provided in this chapter, the commissioner shall immediately report the refusal to the attorney general, who shall then

immediately apply to district court for the appointment of a receiver to administer the final affairs of the cemetery.

6. This section shall not be construed to limit the commissioner's authority to terminate or suspend any examination in order to pursue other legal or regulatory actions pursuant to this chapter. Findings of fact and conclusions made pursuant to an examination are deemed to be prima facie evidence in any legal or regulatory action.

2007 Acts, ch 175, §42  
NEW section

**523I.213B Venue.**

All actions relating to the enforcement of this chapter shall be governed by the laws of the state of Iowa. Venue of any action relating to enforcement of this chapter may be in a court of competent jurisdiction in Polk county, at the discretion of the commissioner.

2007 Acts, ch 175, §43  
NEW section

**523I.304 Rulemaking and enforcement.**

1. A cemetery may adopt, amend, and enforce rules for the use, care, control, management, restriction, and protection of the cemetery, as necessary for the proper conduct of the business of the cemetery, including, but not limited to, the use, care, and transfer of any interment space or right of interment.

2. A cemetery may restrict and limit the use of all property within the cemetery by rules that do, but are not limited to doing, all of the following:

a. Prohibit the placement of memorials or memorialization, buildings, or other types of structures within any portion of the cemetery.

b. Regulate the uniformity, class, and kind of memorials and memorialization and structures within the cemetery.

c. Regulate the scattering or placement of cremated remains within the cemetery.

d. Prohibit or regulate the placement of non-human remains within the cemetery.

e. Prohibit or regulate the introduction or care of trees, shrubs, and other types of plants within the cemetery.

f. Regulate the right of third parties to open, prepare for interment, and close interment spaces.

g. Prohibit interment in any part of the cemetery not designated as an interment space.

h. Prevent the use of space for any purpose inconsistent with the use of the property as a cemetery.

3. A cemetery shall not adopt or enforce a rule that prohibits interment because of the race, color, or national origin of a decedent. A provision of a contract or a certificate of ownership or other instrument conveying interment rights that prohibits interment in a cemetery because of the race, color, or national origin of a decedent is void.

4. A cemetery's rules shall be plainly printed

or typewritten and maintained for inspection in the office of the cemetery or, if the cemetery does not have an office, in another suitable place within the cemetery. The cemetery's rules shall be provided to owners of interment spaces upon request.

5. A cemetery's rules shall specify the cemetery's obligations in the event that interment spaces, memorials, or memorialization are damaged or defaced by acts of vandalism. The rules may specify a multiyear restoration of an interment space, or a memorial or memorialization when the damage is extensive or when money available from the cemetery's trust fund is inadequate to complete repairs immediately. The owner of an interment space, or a memorial or memorialization that has been damaged or defaced shall be notified by the cemetery by restricted certified mail at the owner's last known address within sixty days of the discovery of the damage or defacement. The rules shall specify whether the owner is liable, in whole or in part, for the cost to repair or replace an interment space or a damaged or defaced memorial or memorialization.

6. The cemetery shall not approve any rule which unreasonably restricts competition, or which unreasonably increases the cost to the owner of interment rights in exercising these rights.

7. A cemetery owned and controlled by a governmental subdivision shall adopt and enforce a rule allowing any veteran who is a landowner or who lives within the governmental subdivision to purchase an interment space and to be interred within the cemetery. For the purposes of this section, "veteran" means the same as defined in section 35.1 or a resident of this state who served in the armed forces of the United States, completed a minimum aggregate of ninety days of active federal service, and was discharged under honorable conditions.

2007 Acts, ch 175, §44  
NEW subsection 7

### **523I.305 Memorials and memorialization.**

1. *Authorization.* A cemetery is entitled to determine whether a person requesting installation of a memorial is authorized to do so, to the extent that this can be determined from the records of the cemetery, as is consistent with the cemetery's rules. The owner of an interment space or the owner's agent may authorize a memorial dealer or independent third party to perform all necessary work related to preparation and installation of a memorial.

2. *Conformity with cemetery rules.* A person selling a memorial shall review the rules of the cemetery where the memorial is to be installed to ensure that the memorial will comply with those rules prior to ordering or manufacturing the memorial.

3. *Specifications.* Upon request, a cemetery shall provide reasonable written specifications

and instructions governing installation of memorials, which shall apply to all installations whether performed by the cemetery or another person. The written specifications shall include provisions governing hours of installation or any other relevant administrative requirements of the cemetery. A copy of these specifications and instructions shall be provided upon request, without charge, to the owner of the interment space, next of kin, or a personal representative or agent of the owner, including the person installing the memorial. The person installing the memorial shall comply with the cemetery's written installation specifications and instructions. In order to verify that a memorial is installed on the proper interment space in accordance with cemetery rules and regulations, the cemetery shall mark the place on the interment space where the memorial is to be installed and shall inspect the installation when completed. This subsection shall not be construed to require that a cemetery lay out or engineer an interment space for the installation of a memorial. A cemetery shall not adopt or enforce any rule prohibiting the installation of a memorial by a memorial dealer or independent third party, unless the rule is applicable to all memorials from whatever source obtained and enforced uniformly for all memorials installed in the cemetery.

4. *Written notice.* A memorial dealer or independent third party shall provide the cemetery with at least seven business days' prior written notice of intent to install a memorial at the cemetery, or such lesser notice as the cemetery deems acceptable. The notice shall contain the full name, address, and relationship of the memorial's purchaser to the person interred in the interment space or the owner of the interment space, if different. The notice shall also contain the color, type, and size of the memorial, the material, the inscription, and the full name and interment date of the person interred in the interment space.

5. *Preparation and installation.*

a. A person installing a memorial shall be responsible to the cemetery for any damage caused to the cemetery grounds, including roadways, other than normal use during installation of the memorial.

b. Installation work shall cease during any nearby funeral procession or committal service.

c. Installation work shall be done during the cemetery's normal weekday hours or at such other times as may be arranged with the cemetery.

d. A memorial must comply with the cemetery's rules. In the event of noncompliance, the person installing a memorial is responsible for removal of the memorial and shall pay any reasonable expenses incurred by the cemetery in connection with the memorial's removal.

e. The cemetery shall, without charge, provide information as described on the cemetery's map or plat necessary to locate the place where a memorial is to be installed and any other essential infor-

mation the person installing the memorial needs to locate the proper interment space.

*f.* A person installing a memorial shall follow the cemetery's instructions regarding the positioning of the memorial.

*g.* During the excavation, all sod and dirt shall be carefully removed with no sod or dirt left on the interment space except the amount needed to fill the space between the memorial and the adjacent lawn.

*h.* A person installing a memorial shall carefully fill in any areas around the memorial with topsoil or sand, in accordance with the cemetery's written instructions.

*i.* A person installing a memorial shall remove all equipment and any debris which has accumulated during installation of the memorial.

*j.* A person installing a memorial shall check to see if any adjacent memorials have become soiled or dirty during installation of the memorial and, if so, clean the adjacent memorials.

*k.* If the person who is installing a memorial damages any cemetery property, the person shall notify the cemetery immediately. The person installing the memorial shall then repair the damage as soon as possible, upon approval by the cemetery. The cemetery may require a person installing a memorial to provide current proof of workers' compensation insurance as required by state law and current proof of liability insurance, sufficient to indemnify the cemetery against claims resulting from installation of the memorial. Proof of liability insurance in an amount of one million dollars or more shall preclude the cemetery from requiring a person installing a memorial to obtain a performance bond.

*l.* If a cemetery has an office, a person installing a memorial shall immediately leave notice at the cemetery office when the memorial has been installed and all work related to the installation is complete.

**6. Inspection.** A cemetery may inspect the installation site of a memorial at any time. If the cemetery determines that cemetery rules are not being followed during the installation, the cemetery may order the installation to stop until the infraction is corrected. The cemetery shall provide written notice to the installer as soon as possible if the cemetery believes that any of the following have occurred:

*a.* The memorial has not been installed correctly.

*b.* The person installing the memorial has damaged property at the cemetery.

*c.* Other cemetery requirements for installation have not been met, such as removal of debris or equipment.

**7. Location and service charge.** A cemetery may charge a reasonable service charge for allowing the installation of a memorial purchased or obtained from and installed by a person other than

the cemetery or its agents. This service charge shall be based on the cemetery's actual labor costs, including fringe benefits, of those employees whose normal duty is to inspect the installation of memorials, in accordance with generally accepted accounting practices. General administrative and overhead costs and any other functions not related to actual inspection time shall be excluded from the service charge.

**8. Faulty installation.** If a memorial sinks, tilts, or becomes misaligned within twelve months of its installation and the cemetery believes the cause is faulty installation, the cemetery shall notify the person who installed the memorial in writing and the person who installed the memorial shall be responsible to correct the damage, unless the damage is caused by inadequate written specifications and instructions from the cemetery or acts of the cemetery and its agents or employees, including but not limited to running a backhoe over the memorial, carrying a vault or other heavy equipment over the memorial, or opening or closing an interment space adjacent to the memorial.

**9. Perpetual care.** A cemetery may require contributions from the purchaser of a memorial for perpetual care, if a perpetual care fund deposit is uniformly charged on every memorial installed in the cemetery.

2007 Acts, ch 175, §45  
Subsection 3 amended

#### **523I.314A Standards for interment spaces.**

**1.** A standard interment space for full body interment developed on or after July 1, 2007, shall measure at least forty inches in width and ninety-six inches in length.

**2.** Prior to the sale of interment rights in an undeveloped area of a cemetery, internal reference markers shall be installed and maintained no more than one hundred feet apart. The internal reference markers shall be established with reference to survey markers that are no more than two hundred feet apart, have been set by a surveyor and mapper, and have been documented in a land survey. Both the map and the land survey shall be maintained by the cemetery and made available upon request to the commissioner and to members of the public.

2007 Acts, ch 175, §46  
NEW section

#### **523I.808 Examination fee.**

An examination fee shall be submitted with the cemetery's annual report in an amount equal to five dollars for each certificate of interment rights issued during the fiscal year covered by the report. The cemetery may charge the examination fee directly to the purchaser of the interment rights.

2007 Acts, ch 175, §47  
Section amended

**523I.810 Care funds.**

1. A trustee of a care fund shall use the judgment and care under the circumstances then prevailing that persons of prudence, discretion, and intelligence exercise in the management of their own affairs, not in regard to speculation but in regard to the permanent disposition of their funds, considering the probable income as well as the probable safety of their capital. The trustee of a care fund has a fiduciary duty to make reasonable investment decisions and to properly oversee and manage the funds entrusted to the care fund.

*a.* A financial institution may serve as a trustee if granted those powers under the laws of this state or of the United States. A financial institution acting as a trustee of a care fund under this chapter shall invest the funds in accordance with applicable law.

*b.* A financial institution acting as a trustee of a care fund under this chapter has a fiduciary duty to make reasonable investment decisions and to properly oversee and manage the funds entrusted to the financial institution. The commissioner may take enforcement action against a financial institution in its capacity as trustee for a breach of fiduciary duty under this chapter.

*c.* Care fund moneys may be deposited pursuant to a master trust agreement, if each care fund is treated as a separate beneficiary of the trust and each care fund is separable. The master trust shall maintain a separate accounting of principal and income for each care fund. Moneys deposited under a master trust agreement may be commingled by the financial institution for investment purposes.

*d.* Subject to a master trust agreement, the cemetery may appoint an independent investment advisor to advise the financial institution about investment of the care fund.

*e.* Subject to an agreement between the cemetery and the financial institution, the financial institution may receive a reasonable fee from the care fund for services rendered as trustee.

*f.* If the amount of a care fund exceeds two hundred thousand dollars, the cemetery or any officer, director, agent, employee, or affiliate of the cemetery shall not serve as trustee unless the cemetery is a cemetery owned or operated by a governmental subdivision of this state. A financial institution holding care funds shall not do any of the following:

(1) Be owned, under the control of, or affiliated with the cemetery.

(2) Use any funds required to be held in trust under this chapter to purchase an interest in a contract or agreement to which the cemetery is a party.

(3) Otherwise invest care funds, directly or indirectly, in the cemetery's business operations.

2. All moneys required to be deposited in the care fund shall be deposited in the name of the

trustee, as trustee, under the terms of a trust agreement and the trustee may invest, reinvest, exchange, retain, sell, and otherwise manage the care fund trust for the benefit and protection of the cemetery.

3. This section does not prohibit a cemetery from moving care funds from one financial institution to another.

4. A care fund may receive and hold as part of the care fund or as an incident to the care fund any property contributed to the care fund.

5. A contribution to a care fund is considered to be for charitable purposes if the care financed by the care fund is for the following purposes:

*a.* The discharge of a duty due from the cemetery to persons interred and to be interred in the cemetery.

*b.* The benefit and protection of the public by preserving and keeping the cemetery in a dignified condition so that the cemetery does not become a nuisance or a place of disorder, reproach, and desolation in the community in which the cemetery is located.

6. A contribution to a care fund is not invalid because of the following:

*a.* Indefiniteness or uncertainty as to the person designated as a beneficiary in the instrument establishing the care fund.

*b.* A violation of the law against perpetuities or the law against the suspension of the power of alienation of title to or use of property.

7. A care fund shall pay the fund's operation costs and any annual audit fees. The principal of a care fund is intended to remain available perpetually as a funding source for care of the cemetery. The principal of a care fund shall not be reduced voluntarily and shall remain inviolable, except as provided in this section. The trustee or trustees of a care fund shall maintain the principal of the care fund separate from all operating funds of the cemetery.

8. In establishing a care fund, the cemetery may adopt plans for the care of the cemetery and installed memorials and memorialization.

9. A cemetery may, by resolution adopted by a vote of at least two-thirds of the members of its board at any authorized meeting of the board, authorize the withdrawal and use of not more than twenty percent of the principal of the care fund to acquire additional land for cemetery purposes, to repair a mausoleum or other building or structure intended for cemetery purposes, to build, improve, or repair roads and walkways in the cemetery, or to purchase recordkeeping software used to maintain ownership records or interment records. The resolution shall establish a reasonable repayment schedule, not to exceed five years, and provide for interest in an amount comparable to the care fund's current rate of return on its investments. However, the care fund shall not be diminished below an amount equal to the greater of twenty-five



thousand dollars or five thousand dollars per acre of land in the cemetery. The resolution, and either a bond or proof of insurance to guarantee replenishment of the care fund, shall be filed with the commissioner thirty days prior to the withdrawal of funds.

2007 Acts, ch 175, §48  
Subsection 9 amended

**523I.813 Annual report by perpetual care cemeteries.**

1. A perpetual care cemetery shall file an annual report at the end of each fiscal year of the

cemetery.

2. The report shall be filed with the commissioner within four months following the end of the cemetery's fiscal year in the form required by the commissioner.

3. The commissioner shall levy an administrative penalty in the amount of five hundred dollars against a cemetery that fails to file the annual report when due, payable to the state for deposit in the general fund of the state.

2007 Acts, ch 175, §49, 50  
Subsection 1 stricken and rewritten  
NEW subsection 3

## CHAPTER 524

### BANKS

**524.103 Definitions.**

As used in this chapter, unless the context otherwise requires, the term:

1. *"Account"* means any account with a state bank and includes a demand, time or savings deposit account or any account for the payment of money to a state bank.

2. *"Administrator"* means the person designated in section 537.6103.

3. *"Aggregate capital"* means the sum of capital, surplus, undivided profits, and reserves as of the most recent calculation date.

4. *"Agreement for the payment of money"* means a monetary obligation, other than an obligation in the form of an evidence of indebtedness or an investment security; including, but not limited to, amounts payable on open book accounts receivable and executory contracts and rentals payable under leases of personal property.

5. *"Agricultural credit corporation"* means as defined in section 535.12, subsection 4.

6. *"Articles of incorporation"* means the original or restated articles of incorporation and all amendments thereto and includes articles of merger. *"Articles of incorporation"* also means the original or restated articles of organization and all amendments including articles of merger if a state bank is organized as a limited liability company under this chapter.

7. *"Assets"* means all the property and rights of every kind of a state bank.

8. *"Bank"* means a corporation or limited liability company organized under this chapter or 12 U.S.C. § 21.

9. *"Bankers' bank"* means a bank which is organized under the laws of any state or under federal law, and whose shares are owned exclusively by other banks or by a bank holding company whose shares are owned exclusively by other banks, except for directors' qualifying shares when required by law, and which engages exclusively in providing services for depository institutions and officers,

directors and employees of those depository institutions.

10. *"Board of directors"* means the board of directors of a state bank as provided in section 524.601. For a state bank organized as a limited liability company under this chapter, *"board of directors"* means a board of directors or board of managers as designated by the limited liability company in its articles of organization or operating agreement.

11. *"Borrower"* means a person named as a borrower or debtor in a loan or extension of credit, or any other person, including a drawer, endorser, or guarantor, deemed to be a borrower under section 524.904, subsection 3.

12. *"Business of banking"* means the business generally done by banks.

13. *"Calculation date"* means the most recent of the following:

a. The date the bank's statement of condition is required to be filed pursuant to section 524.220, subsection 2.

b. The date an event occurs that reduces or increases the bank's aggregate capital by ten percent or more.

c. As the superintendent may direct.

14. *"Capital"* means the sum of the par value of the preferred and common shares of a state bank issued and outstanding.

15. *"Capital structure"* means the capital, surplus, and undivided profits of a state bank and shall include an amount equal to the sum of any capital notes and debentures issued and outstanding pursuant to section 524.404.

16. *"Chief executive officer"* means the person designated by the board of directors to be responsible for the implementation of and adherence to board policies and resolutions by all officers and employees of the bank.

17. *"Contractual commitment to advance funds"* means a bank's obligation to do either of the following:

a. Advance funds under a standby letter of credit or other similar arrangement.

b. Make payment, directly or indirectly, to a third person contingent upon default by a customer of the bank in performing an obligation and to make such payment in keeping with the agreed upon terms of the customer's contract with a third person, or to make payments upon some other stated condition.

The term does not include commercial letters of credit and similar instruments where the issuing bank expects the beneficiary to draw on the issuer, that do not guarantee payment, and that do not provide for payment in the event of a default by a third person.

18. "Control" means when a person, directly or indirectly or acting through or together with one or more persons, satisfies any of the following:

a. Owns, controls, or has the power to vote fifty percent or more of any class of voting securities or membership interests of another person.

b. Controls, in any manner, the election of a majority of the directors, managers, trustees, or other persons exercising similar functions of another person.

c. Has the power to exercise a controlling influence over the management or policies of another person.

19. "Customer" means a person with an account or other contractual arrangement with a state bank.

20. "Director" means a member of the board of directors and includes a manager of a state bank organized as a limited liability company under this chapter.

21. "Evidence of indebtedness" means a note, draft or similar negotiable or nonnegotiable instrument.

22. "Executive officer" means a person who participates or has authority to participate, other than in the capacity of a director or manager, in major policymaking functions of a state bank, whether or not the officer has an official title, whether or not such a title designates the officer as an assistant, or whether or not the officer is serving without salary or other compensation. The chief executive officer, chairperson of the board, the president, every vice president, and the cashier of a state bank are deemed to be executive officers, unless such an officer is excluded, by resolution of the board of directors of a state bank or by the bylaws of the state bank, from participation, other than in the capacity of a director, in major policymaking functions of the state bank, and the officer does not actually participate in the major policymaking functions. All officers who serve on a board of directors are deemed to be executive officers, except as provided for in section 524.701, subsection 3.

23. "Fiduciary" means an executor, administrator, guardian, conservator, receiver, trustee or one acting in a similar capacity.

24. "Insolvent" means the inability of a state bank to pay its debts and obligations as they become due in the ordinary course of its business. A state bank is also considered to be insolvent if the ratio of its capital, surplus, and undivided profits to assets is at or close to zero or if its assets are of such poor quality that its continued existence is uncertain.

25. "Insured bank" means a state bank the deposits of which are insured in accordance with the provisions of the Federal Deposit Insurance Act.

26. "Manager" means a person designated by the members to manage a state bank organized as a limited liability company under this chapter as provided in the articles of organization or an operating agreement and may include a member of the board of directors.

27. "Member" means a person with a membership interest in a state bank organized as a limited liability company under this chapter.

28. "Membership interest" means a member's share of the profits and losses, the right to receive distributions of assets, and any right to vote or participate in management of a state bank organized as a limited liability company under this chapter.

29. "Municipal corporation" means an incorporated city.

30. "Officer" means chief executive officer, executive officer, or any other administrative official of a bank elected by the bank's board of directors to carry out any of the bank's operating rules and policies.

31. "Operations subsidiary" means a wholly owned corporation incorporated and controlled by a bank that performs functions which the bank is authorized to perform.

32. "Person" means as defined in section 4.1.

33. "Reserves" means the amount of the allowance for loan and lease losses of a state bank.

34. "Sale of federal funds" means any transaction between depository institutions involving the transfer of immediately available funds resulting from credits to deposit balances at federal reserve banks, or from credits to new or existing deposit balances due from a correspondent depository institution.

35. "Shareholder" means one who is a holder of record of shares in a state bank. If a state bank is organized as a limited liability company under this chapter, "shareholder" means any member of the limited liability company.

36. "Shares" means the units into which the proprietary interests in a state bank are divided, including any membership interests of a state bank organized as a limited liability company under this chapter.

37. "Standby letter of credit" means a letter of credit, or similar arrangement, that represents an obligation to the beneficiary on the part of the issuer to do any of the following:

a. Repay money borrowed by or advanced to or

for the account of the account holder.

b. Make payment on account of any indebtedness undertaken by the account holder.

c. Make payment on account of any default by the account holder in the performance of an obligation.

38. “*State association*” or “*state savings and loan association*” means a corporation holding a certificate of authority to operate under chapter 534 as either a mutual association or a stock association, as those terms are defined in chapter 534.

39. “*State bank*” means any bank incorporated pursuant to the provisions of this chapter after January 1, 1970, and any “state bank” or “savings bank” incorporated pursuant to the laws of this state and doing business as such on January 1, 1970, or organized as a limited liability company under this chapter.

40. “*Superintendent*” means the superintendent of banking of this state.

41. “*Supervised financial organization*” as defined and used in the Iowa consumer credit code, chapter 537, includes a person organized pursuant to this chapter.

42. “*Surplus*” means the aggregate of the amount originally paid in as required by section 524.401, subsection 3, any amounts transferred to surplus pursuant to section 524.405 and any amounts subsequently designated as such by action of the board of directors of the state bank.

43. “*Trust company*” means a business organization which is authorized to engage in trust business pursuant to section 524.1005. A bank lawfully exercising trust powers under the laws of this state or of the United States is not a trust company by reason of having authority to engage in trust business in addition to its general business.

44. “*Undivided profits*” means the accumulated undistributed net profits of a state bank, including any residue from the fund established pursuant to section 524.401, subsection 4, after:

a. Payment or provision for payment of taxes and expenses of operations.

b. Transfers to reserves allocated to a particular asset or class of assets.

c. Losses estimated or sustained on a particular asset or class of assets in excess of the amount of reserves allocated therefor.

d. Transfers to surplus and capital.

e. Amounts declared as dividends to shareholders.

45. “*Unincorporated area*” means a village within which a state bank or national bank has its principal place of business.

2007 Acts, ch 88, §2

NEW subsection 38 and former subsections 38 – 44 renumbered as 39 – 45

### **524.211 Prohibitions relating to banking division personnel.**

1. The superintendent, general counsel, examiners, and other employees assigned to the

bank bureau of the banking division are prohibited from obtaining a loan of money or property from a state-chartered bank, a state savings and loan association, or any person or entity affiliated with a state-chartered bank or a state savings and loan association.

2. The superintendent, general counsel, examiners, and other employees assigned to the finance bureau of the banking division are prohibited from obtaining a loan of money or property from a person or entity licensed pursuant to chapter 533A, 533D, 536, or 536A, or a person or entity affiliated with such licensee.

3. The superintendent, general counsel, examiners, and other employees of the banking division, who have credit relations with a person or entity licensed or registered pursuant to chapter 535B or 536C, are prohibited from participating in decisions, oversight, and official review of matters concerning the regulation of the licensee or registrant.

4. Examiners and other employees assigned to the bank bureau of the banking division who have credit relations with a person or entity licensed pursuant to chapter 533A, 533D, 536, or 536A, or with a person or entity affiliated with such licensee, are prohibited from participating in decisions, oversight, and official review of matters concerning the regulation of the licensee.

5. An employee of the banking division, other than the superintendent or a member of the state banking council or one of the boards in the professional licensing and regulation bureau of the division, shall not perform any services for, and shall not be a shareholder, member, partner, owner, director, officer, or employee of, any enterprise, person, or affiliate subject to the regulatory purview of the banking division.

6. For the purposes of this section and section 524.212, an affiliate of a person other than a state bank shall include any corporation, trust, estate, association or other similar organization:

a. Of which such person, directly or indirectly, owns or controls either a majority of the voting shares or more than fifty percent of the number of shares voted for the election of its directors, trustees, or other individuals exercising similar functions at the preceding election, or controls in any manner the election of a majority of its directors, trustees or other individuals exercising similar functions.

b. Of which control is held, directly or indirectly, through share ownership or in any other manner, by the shareholders of such person who own or control either a majority of the shares of such person or more than fifty percent of the number of shares voted for the election of directors of such person at the preceding election or by trustees for the benefit of the shareholders of any such person.

c. Of which a majority of its directors, trustees, or other individuals exercising similar functions

are directors of any one such person.

*d.* Which owns or controls, directly or indirectly, either a majority of the voting shares of such person or more than fifty percent of the total number of shares voted for the election of directors of such person at the preceding election, or controls in any manner the election of a majority of the directors of such person, or for the benefit of whose shareholders or members all or substantially all of the outstanding voting shares of such person is held by trustees.

7. The superintendent, examiners, or other employees who are convicted of a felony while holding such position shall be immediately discharged from employment and shall be forever disqualified from holding any position in the banking division.

2007 Acts, ch 88, §3  
Subsection 1 amended

#### **524.212 Prohibition against disclosure of regulatory information.**

The superintendent, members of the state banking council, general counsel, examiners, or other employees of the banking division shall not disclose, in any manner, to any person other than the person examined and those regulatory agencies referred to in section 524.217, subsection 2, any information relating specifically to the supervision and regulation of any state bank, persons subject to the provisions of chapter 533A, 533C, 536, or 536A, any affiliate of any state bank, or an affiliate of a person subject to the provisions of chapter 533A, 533C, 536, or 536A, except when ordered to do so by a court of competent jurisdiction and then only in those instances referred to in section 524.215, subsection 2, paragraphs “a”, “b”, “c”, and “e”.

Section not amended; internal reference changes applied

#### **524.214 Subpoena — contempt.**

1. The superintendent and, upon the approval of the superintendent, any examiner or other employees of the banking division shall have the power to subpoena witnesses, to compel their attendance, to administer an oath, to examine any person under oath and to require the production of any relevant books or papers. Such examination may be conducted on any subject relating to the duties imposed upon, or powers vested in, the superintendent under the provisions of this chapter or any other chapter administered by the superintendent.

2. Whenever any person subpoenaed pursuant to subsection 1 of this section neglects or refuses to obey the terms of such subpoena, to produce books or papers or to give testimony, as required, the superintendent may apply to the district court of Polk county for the enforcement of such subpoena or the issuance of an order compelling such compliance as the court may direct.

3. The refusal of any person to obey an order of the district court, issued pursuant to subsection 2 of this section, without reasonable cause, shall be considered a contempt of that court.

2007 Acts, ch 88, §4  
Subsection 1 amended

#### **524.215 Records of division of banking.**

1. All records of the division of banking shall be public records subject to the provisions of chapter 22, except that all papers, documents, reports, reports of examinations and other writings relating specifically to the supervision and regulation of any state bank or other person by the superintendent pursuant to the laws of this state shall not be public records and shall not be open for examination or copying by the public or for examination or publication by the news media.

2. The superintendent, members of the state banking council, examiners, or other employees of the banking division shall not be subpoenaed in any cause or proceeding to give testimony concerning information relating specifically to the supervision and regulation of any state bank or other person by the superintendent pursuant to the laws of this state, and the records of the banking division which relate specifically to the supervision and regulation of any such state bank or other such person shall not be offered in evidence in any court or subject to subpoena by any party except, where relevant:

*a.* In such actions or proceedings as are brought by the superintendent.

*b.* In any matter in which an interested and proper party seeks review of a decision of the superintendent.

*c.* In any action or proceeding which arises out of the criminal provisions of the laws of this state or the United States.

*d.* In any action brought as a shareholders derivative suit against a state bank or other entity regulated by the superintendent.

*e.* In an action brought to recover moneys for a loss in connection with an indemnity bond which was a result of embezzlement, misappropriation, or misuse of state bank funds by a director, officer, or employee of the state bank.

*f.* In an action brought to recover moneys for a loss in connection with an indemnity bond which was a result of embezzlement, misappropriation, or misuse of funds, belonging to an entity regulated by the superintendent, by a director, officer, or employee of the entity.

2007 Acts, ch 88, §5, 6

Former unnumbered paragraphs 1 and 2 and subsections 1 – 5 editorially redesignated as subsection 1 and subsection 2, unnumbered paragraph 1 and paragraphs a – e

Subsection 2, paragraph d amended  
Subsection 2, NEW paragraph f

#### **524.215A Preservation of division of banking records.**

1. The division of banking may preserve records, papers, or documents kept by the division or

in the possession or custody of the division by any of the following means:

*a.* Photographing or microphotographing, or otherwise reproducing upon film.

*b.* Preserving in any electronic medium or format capable of being read or scanned by computer and capable of being reproduced by printing or by any other form of reproduction of electronically stored data.

2. Photographs, microphotographs, or photographic films or copies thereof, or reproductions of electronically stored data, created pursuant to subsection 1 shall be deemed to be an original record for all purposes, including introduction in evidence in all state and federal courts or administrative hearings, and shall be admissible to prove any act, transaction, occurrence, or event therein recorded.

3. Photographs, microphotographs, or photographic films or copies thereof, or reproductions of electronically stored data, created pursuant to subsection 1 shall be preserved in such manner as the division prescribes, and the original photographs, microphotographs, photographic films, copies, and reproductions may be destroyed or otherwise disposed of as the division directs.

2007 Acts, ch 170, §1  
NEW section

#### **524.216 Annual report of superintendent.**

1. The superintendent shall make a report in writing annually to the governor in the manner and within the time required by chapter 7A.

2. In addition to the matters required by chapter 7A, the annual report of the superintendent shall contain:

*a.* A summary of applications approved or denied by the superintendent pursuant to this chapter since the superintendent's last previous report.

*b.* A summary of the assets, liabilities, and capital structure of all state banks and state savings and loan associations as of June 30 of the year for which the report is made.

*c.* A statement of the receipts and disbursements of funds of the superintendent during the calendar year ending on the preceding December 31 and of the funds on hand on such December 31.

*d.* Such other information as the superintendent may deem appropriate and advisable to fairly disclose the discharge of the duties imposed upon the superintendent by this chapter.

2007 Acts, ch 88, §7  
Annual report, §7A.8  
Former unnumbered paragraphs 1 and 2 and subsections 1 – 4 editorially redesignated as subsection 1 and subsection 2, unnumbered paragraph 1 and paragraphs a – d respectively  
Subsection 2, paragraph b amended

#### **524.217 Examinations.**

1. The superintendent may do all of the following:

*a.* Make or cause to be made an examination of

every state bank and trust company whenever in the superintendent's judgment such examination is necessary or advisable, but in no event less frequently than once during each two-year period by either the banking division or the appropriate federal banking agency. During the course of each examination of a state bank or trust company, inquiry shall be made as to its financial condition, the security afforded to those to whom it is obligated, the policies of its management, whether the requirements of law have been complied with in the administration of its affairs, and such other matters as the superintendent may prescribe.

*b.* Make or cause to be made such limited examinations at such times and with such frequency as the superintendent deems necessary and advisable to determine the condition of any state bank or trust company and whether any person has violated any of the provisions of this chapter.

*c.* Make or cause to be made an examination of any corporation in which the state bank or trust company owns shares.

*d.* Upon application to and order of the district court of Polk county, make or cause to be made an examination of any person having business transactions or a relationship with any state bank or trust company when such examination is deemed necessary and advisable in order to determine whether the capital of the state bank or trust company is impaired or whether the safety of its deposits has been imperiled. The fee for any such examination shall be paid by the state bank or trust company.

*e.* To the extent necessary for the purpose of any examination provided for by this section and section 524.1105, examine all relevant books, records, accounts, and documents and compel the production of the same in the manner prescribed by section 524.214.

2. The superintendent may furnish to the federal deposit insurance corporation, the federal reserve system, the United States department of the treasury, the national credit union administration, the federal home loan bank, and financial institution regulatory authorities of other states, or to any official or supervising examiner of such regulatory authorities, a copy of the report of any or all examinations made of any state bank and of any affiliate of a state bank.

3. A copy of the report of each examination of a state bank or trust company shall be transmitted by the superintendent to the board of directors of the state bank or trust company except to the extent that the report of any such examination may be confidential to the superintendent, and each member of the board of directors shall furnish to the superintendent, on forms to be supplied by the superintendent, a statement that the member has read the report of examination.

4. All reports of examinations, including any copies of such reports, in the possession of any per-

son other than the superintendent or employee of the banking division, including any state bank or any agency to which any report of such examination may be furnished under subsection 2, shall be confidential communications, shall not be subject to subpoena from such persons, and shall not be published or made public by such persons.

5. The report of examination of any affiliate or of any person examined as provided for in subsection 1, paragraph “c” or “d”, shall not be transmitted by the superintendent to any such affiliate or person or to any state bank or trust company or to the board of directors of any state bank or trust company unless authorized or requested by such affiliate or person.

6. The superintendent may enter into contractual agreements with other state regulators of financial institutions to share examiners or to assist in each state’s respective examinations. The division of banking shall be reimbursed for any costs incurred when providing services to other states pursuant to this subsection. Any division of banking personnel assisting another state with its examination shall be covered by the provisions of the other state’s tort claims act, to the extent permitted by the laws of the other state. If the law of the other state does not extend coverage to the division of banking personnel working on the other state’s examination, the provisions of chapter 669 shall apply.

2007 Acts, ch 170, §2, 3  
Subsection 2 amended  
NEW subsection 6

**524.1409 Conversion of national bank or federal savings association or state savings and loan association into state bank.**

A national bank, federal savings association, or state savings and loan association, subject to the provisions of this chapter, may convert into a state bank upon authorization by and compliance with the laws of the United States, adoption of a plan of conversion by the affirmative vote of at least a majority of its directors and the holders of two-thirds of each class of its shares at a meeting held upon not less than ten days’ notice to all shareholders, and upon approval of the superintendent.

2007 Acts, ch 88, §8  
Section amended

**524.1410 Application for approval by superintendent.**

A national bank, federal savings association, or state savings and loan association shall make an application to the superintendent for approval of the conversion in a manner prescribed by the superintendent and shall deliver to the superintendent, when available:

1. Articles of conversion.
2. As soon as available, proof of publication of the notice required by section 524.1412.
3. The applicable fee payable to the secretary

of state, under section 490.122, for the filing and recording of the articles of conversion.

2007 Acts, ch 88, §9  
Unnumbered paragraph 1 amended

**524.1411 Articles of conversion.**

The articles of conversion shall be signed by two duly authorized officers of the national bank, federal savings association, or state savings and loan association and shall contain all of the following:

1. The name of the national bank, federal savings association, or state savings and loan association and the name of the resulting state bank.
2. The location and post office address of its principal place of business and of each additional office, and the location and post office address of the principal place of business of the resulting state bank and of each additional office to be maintained by the resulting state bank.
3. The votes by which the plan of conversion was adopted and the date and place of each meeting in connection with the adoption.
4. The number of directors constituting the board of directors, and the names and addresses of the persons who are to serve as directors until the next annual meeting of shareholders or until successors be elected and qualify.
5. The provisions required in the articles of incorporation by section 524.302, subsection 1, paragraphs “c” and “d”, and subsection 2, paragraph “b”.

2007 Acts, ch 88, §10  
Section amended

**524.1412 Publication of notice.**

Within thirty days after the application for conversion has been accepted for processing, the national bank, federal savings association, or state savings and loan association shall publish a notice of the delivery of the articles of conversion to the superintendent in a newspaper of general circulation published in the municipal corporation or unincorporated area in which the national bank, federal savings association, or state savings and loan association has its principal place of business, or if there is none, a newspaper of general circulation published in the county, or in a county adjoining the county, in which the national bank, federal savings association, or state savings and loan association has its principal place of business. Proof of publication of the notice shall be delivered to the superintendent within fourteen days. The notice shall set forth all of the following:

1. The name of the national bank, federal savings association, or state savings and loan association and the name of the resulting state bank.
2. The location and post office address of its principal place of business.
3. A statement that articles of conversion have been delivered to the superintendent.
4. The purpose or purposes of the resulting state bank.

5. The date of delivery of the articles of conversion to the superintendent.

2007 Acts, ch 88, §11  
Section amended

**524.1413 Approval of conversion by superintendent.**

1. Upon acceptance for processing of an application for approval of a conversion, the superintendent shall conduct such investigation as the superintendent deems necessary to ascertain the following:

a. The articles of conversion and supporting items satisfy the requirements of this chapter.

b. The plan adequately protects the interests of depositors.

c. The requirements for a conversion under all applicable laws have been satisfied and the resulting state bank would satisfy the requirements of this chapter applicable to it.

d. The resulting state bank will possess an adequate capital structure.

2. Within ninety days after the application has been accepted for processing, the superintendent shall approve or disapprove the application on the basis of the investigation. As a condition of receiving the decision of the superintendent with respect to the application, the national bank, federal savings association, or state savings and loan association shall reimburse the superintendent for all expenses incurred in connection with the application. The superintendent shall give the national bank, federal savings association, or state savings and loan association written notice of the decision and, in the event of disapproval, a statement of the reasons for the decision. If the superintendent approves the application, the superintendent shall deliver the articles of conversion, with the superintendent's approval indicated on the articles of conversion, to the secretary of state. The decision of the superintendent shall be subject to judicial review pursuant to chapter 17A. Notwithstanding the terms of the Iowa administrative procedure Act, chapter 17A, a petition for judicial review must be filed within thirty days after the superintendent notifies the national bank, federal savings association, or state savings and loan association of the superintendent's decision.

2007 Acts, ch 88, §12  
Petition for judicial review, see §17A.19  
Subsection 2 amended

**524.1415 Effect of filing of articles of conversion with secretary of state.**

1. The conversion is effective upon the filing of the articles of conversion with the secretary of state, or at any later date and time as specified in the articles of conversion. The acknowledgment of filing is conclusive evidence of the performance of all conditions required by this chapter for conversion of a national bank, federal savings association, or state savings and loan association into a

state bank, except as against the state.

2. When a conversion becomes effective, the existence of the national bank, federal savings association, or state savings and loan association shall continue in the resulting state bank which shall have all the property, rights, powers, and duties of the national bank, federal savings association, or state savings and loan association, except that the resulting state bank shall have only the authority to engage in such business and exercise such powers as it would have, and shall be subject to the same prohibitions and limitations to which it would be subject, upon original incorporation under this chapter. The articles of incorporation of the resulting state bank shall be the provisions stated in the articles of conversion.

3. A liability of the national bank, federal savings association, or state savings and loan association, or of the national bank's, federal savings association's, or state savings and loan association's shareholders, directors, or officers, is not affected by the conversion. A lien on any property of the national bank, federal savings association, or state savings and loan association is not impaired by the conversion. A claim existing or action pending by or against the national bank, federal savings association, or state savings and loan association may be prosecuted to judgment as if the conversion had not taken place, or the resulting state bank may be substituted in its place.

4. The title to all real estate and other property owned by the converting national bank, federal savings association, or state savings and loan association is vested in the resulting state bank without reversion or impairment.

2007 Acts, ch 88, §13  
Section amended

**524.1416 Authority for conversion of state bank into national bank or federal savings association or state savings and loan association.**

1. A state bank may convert into a national bank, federal savings association, or state savings and loan association upon authorization by and compliance with the laws of the United States, and adoption of a plan of conversion by the affirmative vote of at least a majority of its directors and the holders of two-thirds of each class of its shares at a meeting held upon not less than ten days' notice to all shareholders. The authority of a state bank to convert into a national bank or federal savings association shall be subject to the condition that at the time of the transaction, the laws of the United States shall authorize a national bank or federal savings association located in this state, without approval by the comptroller of the currency of the United States or director of the office of thrift supervision, as applicable, to convert into a state bank under limitations and conditions no more restrictive than those contained in this section and section 524.1417 with respect to conversion of a

state bank into a national bank or federal savings association.

2. A state bank which converts into a national bank or federal savings association shall notify the superintendent of the proposed conversion, provide such evidence of the adoption of the plan as the superintendent may request, notify the superintendent of any abandonment or disapproval of the plan, and file with the superintendent and with the secretary of state a certificate of the approval of the conversion by the comptroller of the currency of the United States or director of the office of thrift supervision, as applicable, and the date upon which such conversion is to become effective. A state bank that converts into a national bank or federal savings association shall comply with the provisions of section 524.310, subsection 1.

3. A state bank that converts into a state savings and loan association shall file with the secretary of state a certificate of the approval of the conversion by the superintendent and the date upon which such conversion is to be effective.

2007 Acts, ch 88, §14  
Section amended

**524.1417 Appraisal rights of shareholder of converting state or national bank or federal or state savings association.**

1. A shareholder of a state bank that converts into a national bank, federal savings association, or a state savings and loan association who objects to the plan of conversion is entitled to appraisal rights as provided in chapter 490, division XIII.

2. If a shareholder of a national bank or federal savings association that converts into a state bank objects to the plan of conversion and complies with the requirements of applicable laws of the United States, the resulting state bank is liable for the value of the shareholder's shares as determined in accordance with such laws of the United States.

3. If a shareholder of a state savings and loan association that converts to a state bank objects to the plan of conversion and complies with the requirements of applicable laws of this state, the resulting bank is liable for the value of the shareholder's shares as determined in accordance with such laws of this state.

2007 Acts, ch 88, §15  
Section amended

**524.1418 Succession to fiduciary accounts and appointments — application for appointment of new fiduciary.**

The provisions of section 524.1009 apply to a resulting state or national bank, federal savings association, or state savings and loan association after a conversion with the same effect as though the state or national bank, federal savings association, or state savings and loan association were a party to a plan of merger, and the conversion were

a merger, within the provisions of that section.

2007 Acts, ch 88, §16  
Section amended

**524.1601 Penalties and criminal provisions applicable to directors, officers, and employees of state banks and bank holding companies.**

1. A director, officer, or employee of a state bank or bank holding company who willfully violates any of the provisions of subsection 4 of section 524.612, section 524.613, subsection 2 of section 524.706, insofar as such subsection incorporates subsection 4 of section 524.612, or section 524.710, shall be guilty of a serious misdemeanor, and, in the following circumstances, shall pay an additional fine or fines equal to:

a. The amount of money or the value of the property which the director, officer, or employee received for procuring, or attempting to procure, a loan, extension of credit, or investment by the state bank or bank holding company, upon conviction of a violation of subsection 1 of section 524.613, or of subsection 1 of section 524.710.

b. The amount by which the director's, officer's, or employee's deposit account in the state bank or bank holding company is overdrawn, upon conviction of a violation of subsection 2 of section 524.613, or of subsection 2 of section 524.710.

c. The amount of any profit which the director, officer, or employee receives on the transaction, upon conviction of a violation of subsection 4 of section 524.612, or of subsection 2 of section 524.706, insofar as each applies to purchases from and sales to a state bank or bank holding company upon terms more favorable to such director, officer, or employee than those offered to other persons.

d. The amount of profit, fees, or other compensation received, upon conviction of a violation of section 524.710, subsection 1, paragraph "b".

2. A director or officer who willfully makes or receives a loan in violation of subsection 1 of section 524.612, or subsection 1 of section 524.706, shall be guilty of a serious misdemeanor and shall be subject to an additional fine equal to that amount of the loan in excess of the limitation imposed by such subsections, and shall be forever disqualified from acting as a director or officer of any state bank or bank holding company. For the purpose of this subsection, amounts which are treated as obligations of an officer or director pursuant to subsection 5 of section 524.612 shall be considered in determining whether the loan or extension of credit is in violation of subsection 1 of section 524.612 and subsection 1 of section 524.706.

3. A director, officer, or employee of a state bank or bank holding company who willfully makes or receives a loan or extension of credit of funds held by the state bank or bank holding company as fiduciary, in violation of subsection 4 of



section 524.1002 shall be guilty of a serious misdemeanor and shall be subject to a further fine equal to the amount of the loan or extension of credit made in violation of subsection 4 of section 524.1002, and shall be forever disqualified from acting as a director, officer, or employee of any state bank or bank holding company.

4. A director, officer, or employee of a state bank or bank holding company who willfully violates, or participates in the violation of, section 524.814, or section 524.819, shall be guilty of a serious misdemeanor.

2007 Acts, ch 22, §93  
Subsection 1, unnumbered paragraph 1 amended

#### **524.1805 Restrictions on acquisitions and mergers.**

1. An out-of-state bank or out-of-state bank holding company shall not directly or indirectly acquire control of, or directly or indirectly acquire all or substantially all of the assets of, a bank located in this state unless the bank has been in continuous existence and operation for at least five years.

2. For purposes of subsection 1, a bank that has been chartered solely for the purpose of, and does not open for business prior to, acquiring control of, or acquiring all or substantially all of the assets of, a bank located in this state is deemed to have been in existence for the same period of time as the bank to be acquired.

3. For purposes of subsection 1, the period of existence and operation of a bank is deemed to be

continuous, notwithstanding any of the following:

a. Any direct or indirect change in the name, ownership, or control of the bank.

b. Any rechartering or merger of the bank.

4. For purposes of subsection 1, a bank that has been chartered solely for the purpose of, and does not open for business prior to, acquiring control of, or acquiring all or substantially all of the assets of, one or more branches owned and operated on January 1, 1997, by a savings association, as defined in 12 U.S.C. § 1813, which association is an affiliate of the bank, is deemed to have been in continuous existence and operation as a bank for the combined periods of continuous existence and operation of the bank and the savings association from which the branch or branches were acquired.

5. For purposes of subsection 1, a bank that resulted from the conversion of a state savings and loan association or federal savings association, as defined in 12 U.S.C. § 1813, is deemed to have been in continuous existence and operation as a bank for the combined periods of continuous existence and operation of the bank and the association from which it was converted.

6. An out-of-state bank or out-of-state bank holding company that is organized under laws other than those of this state is subject to and shall comply with the provisions of chapter 490, division XV, relating to foreign corporations, and shall immediately provide the superintendent of banking with a copy of each filing submitted to the secretary of state under that division.

2007 Acts, ch 88, §17  
Subsection 5 amended

## CHAPTER 533

### CREDIT UNIONS

Former chapter 533 repealed by 2007 Acts, ch 174, §98  
With respect to proposed amendments to former  
§533.16, 533.24, and 533.27, see Code editor's note to chapter 533

#### SUBCHAPTER I

##### ADMINISTRATION OF ACT

#### **533.101 Title.**

This chapter shall be known as the "*Iowa Credit Union Act*".

2007 Acts, ch 174, §1  
NEW section

#### **533.102 Definitions.**

As used in this chapter, unless the context otherwise requires:

1. "*Account insurance plan*" means an arrangement providing account and share insurance which is of a type authorized under section 533.307.

2. "*Common bond*" means the shared charac-

teristic of members of a credit union.

3. "*Credit union*" means a cooperative, non-profit association, organized or incorporated in accordance with the provisions of this chapter or under the laws of another state or the Federal Credit Union Act, 12 U.S.C. § 1751 et seq., for the purposes of creating a source of credit at a fair and reasonable rate of interest, of encouraging habits of thrift among its members, and of providing an opportunity for its members to use and control their own money on a democratic basis in order to improve their economic and social condition.

A credit union is also a supervised financial organization as that term is defined and used in chapter 537, the Iowa consumer credit code.

4. "*Credit union service organization*" means a corporation or limited partnership organized under state law to provide financial and financial-

related services for one or more credit unions, each of which owns part of the capital stock of the credit union service organization, as authorized under section 533.301, subsection 5, paragraph “f”, and which corporation or limited partnership is subject to examination by the credit union division of the Iowa department of commerce or a federal supervisory agency.

5. “*Ownership share*” means a share of a credit union acquired by a member at the time membership is initiated.

6. “*Review board*” means the credit union review board.

7. “*State credit union*” means a credit union organized pursuant to section 533.201.

8. “*Superintendent*” means the superintendent of credit unions appointed pursuant to section 533.104.

2007 Acts, ch 174, §2  
NEW section

#### **533.103 Credit union division created.**

A credit union division of the department of commerce is created to administer this chapter.

2007 Acts, ch 174, §3  
NEW section

#### **533.104 Superintendent.**

1. A superintendent of credit unions shall be appointed by the governor, subject to confirmation by the senate, to regulate credit unions.

a. The appointee shall be selected solely with regard to qualification and fitness to discharge the duties of office.

b. The individual appointed shall have at least five years’ experience as a director or executive officer of a credit union, or comparable experience in the regulation or examination of credit unions. For purposes of this paragraph, credit union membership does not qualify as credit union experience.

2. The superintendent shall have an office at the seat of government. The superintendent’s term of office shall be four years beginning and ending as provided by section 69.19. The governor may remove the superintendent for malfeasance in office, or for any cause that renders the superintendent ineligible, incapable, or unfit to discharge the duties of the office.

3. The superintendent shall receive a salary set by the governor within a range established by the general assembly.

4. A vacancy in the office of superintendent shall be filled for the unexpired portion of the regular term.

5. The superintendent may adopt rules as necessary or appropriate to administer this chapter, subject to the prior approval of the rules by the review board.

2007 Acts, ch 174, §4  
Confirmation, see §2.32  
NEW section

#### **533.105 Deputy superintendent.**

1. The superintendent may appoint an employee of the credit union division as deputy superintendent to perform the duties of the superintendent during the superintendent’s absence or inability to act.

2. The deputy superintendent shall serve at the pleasure of the superintendent. If the office of the superintendent becomes vacant, the deputy superintendent shall have all powers and duties of the superintendent until a new superintendent is appointed by the governor in accordance with this chapter.

3. The deputy superintendent shall receive a salary to be fixed by the superintendent.

2007 Acts, ch 174, §5  
NEW section

#### **533.106 Employees.**

1. a. The superintendent may appoint assistants, examiners, and other employees as the superintendent considers necessary to the proper discharge of duties imposed upon the superintendent by the laws of this state.

b. Pay plans shall be established for the credit union division employees, other than clerical employees, who supervise and examine the accounts and affairs of credit unions and other persons, subject to supervision and regulation by the superintendent, that are substantially equivalent to those paid by the national credit union administration and other federal supervisory agencies in this area of the United States.

2. a. A state credit union, or its officers, directors, or employees, shall not directly or indirectly make a loan of money or property to the superintendent.

b. The superintendent shall not directly or indirectly accept a loan of money or property from a state credit union, or its officers, directors, or employees.

3. a. An employee of the credit union division, other than the superintendent, may borrow money from a state credit union only on comparable terms and conditions to those ordinarily extended to all members of the credit union. The employee shall notify the superintendent of the acceptance of a loan from a state credit union.

b. The superintendent may restrict borrowing by employees from state credit unions if the superintendent determines such borrowing will interfere with the functions of the credit union division.

c. An employee shall not participate in the examination of a credit union where the employee has a loan.

4. The superintendent or an employee of the credit union division, other than a member of the review board, shall not perform any services for or be an officer, director, or employee of a state credit union or any other entity supervised or regulated by the credit union division.

5. A person who violates this section shall be

permanently disqualified from acting as an officer, director, or employee of a state credit union and permanently disqualified from acting as superintendent or an employee of the credit union division.

6. The superintendent or an employee of the credit union division who is convicted of theft, burglary, robbery, larceny, embezzlement, or other crime involving breach of trust shall be forever disqualified from holding any position in the credit union division.

2007 Acts, ch 174, §6  
NEW section

### 533.107 Credit union review board.

1. A credit union review board is created. The review board shall consist of seven members, five of whom shall have been members in good standing for at least the previous five years of either an Iowa state chartered credit union, or a credit union chartered under the Federal Credit Union Act\* and having its principal place of business in Iowa. Two of the members may be public members; however, at no time shall more than five of the members be directors or employees of a credit union. The members shall serve for three-year staggered terms beginning and ending as provided by section 69.19.

2. The members of the review board shall be appointed by the governor subject to confirmation by the senate. The governor may appoint the members of the review board from a list of nominees submitted to the governor by the credit unions located in this state.

3. The review board shall meet at least four times each year and shall hold special meetings at the call of the chairperson. Four members constitute a quorum.

4. Each member of the review board shall receive actual and necessary expenses incurred in the discharge of official duties. Each member of the review board may also be eligible to receive compensation as provided in section 7E.6.

5. A member of the review board shall not take part in any action or participate in any decision when the matter under consideration specifically relates to a credit union of which the review board member is a member.

6. The review board may adopt rules pursuant to chapter 17A or take other action as it deems necessary or suitable, to administer this chapter.

2007 Acts, ch 174, §7  
\*12 U.S.C. §1751 et seq.  
Confirmation, see §2.32  
NEW section

### 533.108 Records of credit union division.

1. *a.* Records of the credit union division are public records subject to the provisions of chapter 22, except as otherwise provided in this chapter.

*b.* Papers, documents, writings, reports, reports of examinations and other information relat-

ing specifically to the supervision and regulation of a specific state credit union or of other persons by the superintendent pursuant to the laws of this state are not public records and shall not be open for examination or copying by the public or for examination or publication by the news media. The superintendent or an employee of the credit union division shall not disclose such information in any manner to any person other than the person examined, except as otherwise authorized by this section.

2. *a.* The superintendent or an employee of the credit union division shall not be subpoenaed in any cause or proceeding to give testimony concerning papers, documents, writings, reports, reports of examinations, or other information relating to the supervision and regulation of a specific state credit union or persons by the superintendent pursuant to the laws of this state.

*b.* The papers, documents, writings, reports, reports of examinations, and other information of the credit union division that relate to the supervision and regulation of a specific state credit union or persons shall not be offered in evidence in a court or be subject to subpoena by a party, except when relevant in the following matters:

(1) In actions or proceedings brought by the superintendent.

(2) In matters in which an interested and proper party seeks review of a decision of the superintendent.

(3) In actions or proceedings that arise out of the criminal provisions of the laws of this state or of the United States.

(4) In actions brought as shareholder derivative suits against a credit union by a member who has acquired an ownership share.

(5) In actions brought to recover moneys or to recover upon an indemnity bond for embezzlement, misappropriation, or misuse of credit union funds.

3. *a.* Information, records, and documents utilized for the purpose of, or in the course of, investigation, regulation, or examination of a specific credit union, received by the credit union division from some other governmental entity that treats such information, records, and documents as confidential, are confidential and shall not be disclosed by the division and are not subject to subpoena.

*b.* Information, records, and documents under paragraph "a" do not constitute a public record subject to examination and copying under chapter 22.

*c.* The superintendent may exchange with governmental regulatory officials confidential information, records, and documents that are not a public record subject to examination and copying under chapter 22 provided that the other officials are subject to, or agree to comply with, standards

of confidentiality comparable to those contained in this section.

2007 Acts, ch 174, §8  
NEW section

### **533.109 Insurance and surety bond.**

1. The superintendent shall acquire good and sufficient bond in a company authorized to do business in this state in order to ensure both of the following:

*a.* The faithful performance of the deputy superintendent, assistants, examiners, and all other employees of the credit union division.

*b.* Protection from any liability that may accrue in case of the loss of property of a state credit union, or of a member of a state credit union or of any other person, in the course of an examination, investigation, or other function required or allowed by the laws of this state.

2. The superintendent shall be bonded in accordance with chapter 64, provided that such bond shall be in the amount of one hundred thousand dollars.

2007 Acts, ch 174, §9  
NEW section

### **533.110 Reimbursement of expenses.**

1. The superintendent, deputy superintendent, assistants, examiners, and other employees of the credit union division are entitled to receive reimbursement for expenses incurred in the performance of their duties.

2. The superintendent, and when specifically authorized by the superintendent, the deputy superintendent, assistants, examiners, and other employees of the division, are entitled to receive reimbursement for expenses incurred while attending conventions, meetings, conferences, schools, or seminars relating to the performance of their duties.

2007 Acts, ch 174, §10  
NEW section

### **533.111 Expenses of the credit union division.**

1. *a.* All expenses required in the discharge of the duties and responsibilities imposed upon the credit union division, the superintendent, and the review board by the laws of this state shall be paid from fees provided by the laws of this state and appropriated by the general assembly from the general fund of the state.

*b.* All fees imposed under this chapter are payable to the superintendent, who shall pay all fees and other moneys received to the treasurer of state within the time required by section 12.10. The treasurer of state shall deposit such funds in the general fund of the state.

2. The superintendent shall account for receipts and disbursements according to the separate duties imposed upon the superintendent by the laws of this state, and each separate duty shall

be fiscally self-sustaining.

3. The credit union division may expend additional funds, including funds for additional personnel, if the additional expenditures are actual expenses that exceed the funds budgeted for credit union examinations and directly result from examinations of state credit unions.

*a.* The amounts necessary to fund the excess examination expenses shall be collected from state credit unions being regulated, and the collections shall be treated as repayment receipts as defined in section 8.2.

*b.* The division shall notify in writing the legislative services agency and the department of management when hiring additional personnel. The written notification shall include documentation that any additional expenditure related to such hiring will be totally reimbursed to the general fund of the state, and shall also include the division's justification for hiring such personnel. The division must obtain the approval of the department of management only if the number of additional personnel to be hired exceeds the number of full-time equivalent positions authorized by the general assembly.

4. *a.* All fees and other moneys collected shall be deposited into the general fund of the state and expenses required to be paid under this section shall be paid from funds appropriated for those purposes. Moneys deposited into the general fund of the state pursuant to this section shall be subject to the requirements of section 8.60.

*b.* Funds appropriated to the credit union division shall be subject at all times to the warrant of the director of revenue,\* drawn upon written requisition of the superintendent or a designated representative, for the payment of all salaries and other expenses necessary to carry out the duties of the credit union division.

5. The credit union division may accept reimbursement of expenses related to the examination of a state credit union from the national credit union administration or any other guarantor or insurance plan authorized by this chapter. These reimbursements shall be deposited into the general fund of the state.

2007 Acts, ch 174, §11

\*The "director of the department of administrative services" probably intended; corrective legislation is pending  
NEW section

### **533.112 Annual fees — examination fees — delinquencies.**

1. Each state credit union shall pay an annual fee as determined by the superintendent based on the actual cost of operating the credit union division. The superintendent shall consider recommendations from the review board and from state credit unions in determining the amount of the annual fee.

2. Each state credit union, corporation, credit union service organization, or other person sub-

ject to an examination pursuant to section 533.113 shall pay an examination fee. The superintendent shall establish by rule an examination fee schedule.

3. *a.* Failure of a state credit union, corporation, credit union service organization, or other person to pay a fee pursuant to subsection 1 or 2 shall result in the fee being considered delinquent and a penalty equal to five percent of the original fee may be assessed for each day or part of a day the payment remains delinquent.

*b.* A fee delinquency under this subsection by a corporation, credit union service organization, or other person may result in the superintendent collecting the delinquent fee and penalty from the state credit union owning shares or investments or having business transactions or a relationship with such corporation, credit union service organization, or other person.

*c.* A fee delinquency under this subsection may also constitute grounds for revocation of the certificate of approval of the credit union to operate in this state.

2007 Acts, ch 174, §12  
NEW section

### 533.113 Examinations.

1. The superintendent may do any or all of the following:

*a.* Make or cause to be made an examination of a credit union whenever the superintendent believes such examination is necessary or advisable, but in no event less frequently than once during each twenty-four-month period.

*b.* Make or cause to be made such limited examinations at such times and with such frequency as the superintendent deems necessary and advisable to determine the condition of any state credit union and whether any person has violated the provisions of this chapter.

*c.* Make or cause to be made an examination of any corporation or credit union service organization in which a state credit union owns shares or has made an investment.

*d.* Make or cause to be made an examination of any person having business transactions or a relationship with any state credit union, upon application to and order of the district court of Polk county, when such examination is deemed necessary and advisable in order to determine whether the capital of the state credit union is impaired or whether the safety of its deposits is imperiled.

*e.* Accept, in lieu of the examination of a state credit union, or any corporation or credit union service organization in which a state credit union owns shares or has made an investment, or of any person having business transactions or a relationship with any state credit union, an examination report prepared by a federal regulatory authority.

*f.* Accept, in lieu of the examination of a state credit union, an audit report conducted by a certified public accounting firm selected from a list of

firms previously approved by the superintendent. The cost of the audit shall be paid by the state credit union.

*g.* Accept, in lieu of the examination of an out-of-state credit union which also conducts business in this state, an examination report prepared by a state or federal regulatory authority.

*h.* Retain, at the examinee's expense, accountants, investigators, and other experts as reasonably necessary to assist in the conduct of the examination. Any person so retained shall serve in a purely advisory capacity at the direction of the superintendent.

2. A state credit union and all of its officers and agents shall give to the representatives of the superintendent free and unimpeded access to all books, papers, securities, records, and other sources of information under their control.

3. *a.* A report of examination shall be forwarded to the chairperson of a state credit union within thirty days after the completion of the examination. Within thirty days of the receipt of this report, a meeting of the directors shall be called by the state credit union to consider matters contained in the report and the action taken shall be set forth in the minutes of the board.

*b.* The report of examination of any affiliate or of any person examined as provided in this subsection shall not be transmitted by the superintendent to any such affiliate or person or to the board of directors of any state credit union unless authorized or requested by such affiliate or person.

4. *a.* Whenever the superintendent deems it necessary and advisable, the superintendent may notify the board of directors of a state credit union that a meeting will be held at a place and time and manner as the superintendent directs. The superintendent's notice may disclose the purpose of the meeting.

*b.* The superintendent may present to the board at the meeting any item the superintendent desires to bring to the attention of the board, including but not limited to any report of an examination required or allowed by this chapter, any conclusions or projections drawn by the superintendent, any recommendations made relative to a report of an examination, and any other matters concerning the operation and condition of the state credit union.

*c.* The state credit union shall cause the matters presented at the meeting to be recorded in the minutes of the meeting.

*d.* Each member of the board of directors shall furnish the superintendent a statement on forms supplied by the superintendent that the member is familiar with the matters presented by the superintendent.

5. The superintendent may require any of the following state credit unions to submit to an additional examination or to an independent audit performed by a certified public accounting firm as provided in subsection 1, paragraph "f", at the ex-

pense of the state credit union:

*a.* A state credit union where the records are inadequate.

*b.* A state credit union in which the books have not been balanced as of the end of the month not less than thirty days previously.

*c.* A state credit union whose affairs are in an unfavorable condition.

6. The superintendent may furnish a copy of the examination report and materials relating to any or all examinations made of any state credit union and any affiliate of a state credit union to any or all of the following, including any official or supervising examiner of any office or regulatory authority:

*a.* The national credit union administration.

*b.* The federal deposit insurance corporation.

*c.* The federal reserve system.

*d.* The office of the comptroller of the currency.

*e.* The office of thrift supervision.

*f.* The federal home loan bank.

*g.* Financial institution regulatory authorities of other states.

*h.* The financial crimes enforcement network of the United States department of the treasury.

7. If the superintendent concludes that a state credit union's affairs are in an unfavorable condition, the superintendent may direct the state credit union to consider consolidation, dissolution, or any other form of reorganization.

2007 Acts, ch 174, §13  
NEW section

#### **533.114 Annual report of superintendent.**

1. The superintendent shall report annually to the governor in the manner and within the time required by chapter 7A. A copy of the report shall be furnished by the superintendent to each state credit union and to the Iowa credit union league and its affiliates.

2. In addition to the matters required by chapter 7A, the annual report of the superintendent shall contain all of the following:

*a.* A summary of applications approved or denied by the superintendent pursuant to this chapter since the last previous report.

*b.* A summary of the assets, liabilities, and capital structures of all state credit unions, and a summary of the volume of consumer installment credit outstanding per state credit union, as of December 31 of the year for which the report is made.

*c.* A statement of the receipts and disbursements of funds of the superintendent during the calendar year ending on the preceding December 31 and of the funds on hand on that December 31, including an estimate of the disbursements of credit union division funds for consumer credit protection during the year for which the report is made.

*d.* Information that the administrator of the Iowa consumer credit code may require to be included.

*e.* A list of state credit unions that have been designated as serving predominantly low-income members pursuant to section 533.301, subsection 1.

*f.* Other information the superintendent deems appropriate and advisable to disclose in the discharge of the duties imposed upon the superintendent by this chapter.

2007 Acts, ch 174, §14  
NEW section

#### **533.115 Reciprocity.**

1. Subject to rules of the superintendent, a credit union organized in another state may do business in Iowa if state credit unions organized in Iowa may do business in the state in which the out-of-state credit union is organized.

2. Notwithstanding subsection 1, an out-of-state credit union shall meet the same deposit insurance requirements established by this chapter for a state credit union prior to doing business in Iowa.

2007 Acts, ch 174, §15  
NEW section

#### **533.116 Enforcement of Iowa consumer credit code.**

1. The superintendent shall enforce the Iowa consumer credit code with respect to state credit unions, as provided in sections 537.2303, 537.2305, and 537.6105.

2. The superintendent shall cooperate with the administrator of the Iowa consumer credit code as designated in section 537.6103, and shall assist that administrator whenever necessary to provide for the discharge of the duties of that administrator.

3. Notwithstanding other provisions of this chapter to the contrary, the superintendent shall furnish to the administrator of the Iowa consumer credit code, access to or copies of records in the custody of the credit union division that relate to a state credit union when necessary to enable the administrator of the Iowa consumer credit code to enforce chapter 537.

2007 Acts, ch 174, §16  
NEW section

#### **533.117 Small loans legislation.**

This chapter does not apply to any person engaged in the business of loaning money under chapter 536.

2007 Acts, ch 174, §17  
NEW section

### SUBCHAPTER II

#### ORGANIZATION OF CREDIT UNIONS

#### **533.201 Organization.**

1. In order to simplify the organization of state credit unions, the superintendent shall cause to be prepared an approved form of articles of incorpo-

ration and a form of bylaws, consistent with this chapter, which shall be used by state credit union incorporators.

2. *a.* A group comprised of at least seven residents of the state of Iowa may apply to the superintendent for permission to organize a state credit union.

*b.* A state credit union shall be organized by delivering to the superintendent articles of incorporation that state all of the following:

(1) The name and location of the proposed state credit union.

(2) The names and addresses of the subscribers to the articles and the number of shares subscribed to by each.

(3) The share structure of the state credit union. A state credit union may have more than one class of shares. The par value of the shares of the state credit union shall be established by the board of directors.

3. The applicants shall prepare and adopt bylaws for the general governance of the state credit union consistent with the provisions of this chapter.

4. The articles and the bylaws, both executed in duplicate, shall be forwarded with a fee of ten dollars to the superintendent.

5. *a.* The superintendent shall determine whether the articles and bylaws conform to the provisions of this chapter within thirty days of receipt.

*b.* The superintendent shall notify the applicants of the determination after review of the articles and bylaws.

*c.* If the decision is favorable, the superintendent shall issue a certificate of approval, which shall be attached to the duplicate articles of incorporation and returned, together with the duplicate bylaws, to the applicants.

*d.* Articles and bylaws approved by the superintendent shall be binding upon the applicants and the board of directors of a state credit union. If the board of directors does not follow the articles of incorporation and bylaws, the members of the state credit union may pursue a derivative action in Iowa district court.

6. *a.* The applicants shall file the duplicate of the articles of incorporation and the attached certificate of approval with the county recorder of the county within which the state credit union is to have its principal place of business.

*b.* The county recorder shall record and index the duplicate of the articles of incorporation and the attached certificate of approval and return the articles of incorporation and the certificate of approval, with the recorder's certificate of record attached, to the superintendent for permanent record.

7. Articles of incorporation may be amended by a favorable vote of a majority of the members present at a meeting, if that number constitutes a quorum and if the proposed amendment was con-

tained in the notice of the meeting.

8. Bylaws may be amended by any of the following methods:

*a.* The favorable vote of a majority of the members present at a meeting, if that number constitutes a quorum and if the proposed amendment was contained in the notice of the meeting.

*b.* The favorable vote of a majority of the members of the board.

*c.* By a majority vote of members voting by mailed or electronic ballot, ensuring the confidentiality of voters, according to procedures specified by rule of the superintendent, requiring at least twenty days' notice to all members. An announcement shall be made to members of the results of the vote. Ballots shall be preserved for a reasonable period of time following the vote.

*d.* A combination of procedures as specified in paragraphs "a" and "c", whereby members are allowed to vote either in person at a meeting or by mailed or electronic ballot, according to procedures specified by rule of the superintendent. If the proposed amendment receives a favorable majority of the total votes cast in person and by mailed or electronic ballot, the bylaws shall be amended.

9. An amendment to the articles of incorporation or bylaws must be approved by the superintendent before the amendment becomes effective.

10. The original articles or amended articles may contain a provision eliminating or limiting the personal liability of a director, officer, or employee of the state credit union or its shareholders for monetary damages for breach of fiduciary duty as a director, officer, or employee, provided that the provision does not eliminate or limit the liability of a director, officer, or employee for any breach of the director's, officer's, or employee's duty of loyalty to the state credit union or its shareholders, for acts or omissions not in good faith or that involve intentional misconduct or a knowing violation of law, or for any transaction from which the director, officer, or employee derives an improper personal benefit. However, a provision shall not eliminate or limit the liability of a director, officer, employee, or shareholder for any act or omission occurring prior to the date when the provision in the articles of incorporation becomes effective.

2007 Acts, ch 174, §18  
NEW section

### **533.202 Common bond — membership — ownership share.**

1. *a.* State credit union organization shall be available to groups of individuals who have a common bond of association such as, but not limited to, occupation, common employer, or residence within specified geographic boundaries.

*b.* Changes in the common bond may be made by the board of directors.

2. *a.* The membership of a state credit union consists of those persons in the common bond who

have subscribed to one ownership share and have complied with the other requirements specified by the articles of incorporation and bylaws.

*b.* Organizations, incorporated or otherwise, may be members.

*c.* Unless the state credit union's bylaws state otherwise, once a person or organization becomes a member of a state credit union in accordance with this chapter, the person or organization may remain a member of that state credit union, and retain all membership privileges, until the person or organization chooses to withdraw from the membership of the state credit union, or is expelled pursuant to section 533.210.

2007 Acts, ch 174, §19  
NEW section

### **533.203 Fiscal year — membership meetings.**

1. The fiscal year of all state credit unions shall end December 31.

2. Annual meetings shall be held, and special meetings may be held, in the manner indicated in the bylaws.

*a.* At all meetings, a member shall have one vote regardless of the number of or class of shares held by the member.

*b.* There shall be no voting by proxy.

*c.* A member other than a natural person may cast a single vote through a delegated agent.

3. *a.* The majority of members present at any meeting may vote to modify, amend, or reverse any act of the board of directors or instruct the board to take action not inconsistent with the articles, bylaws, or this chapter.

*b.* In order to be binding upon the board of directors, any action taken by the membership to modify, amend, or reverse an act of the board, or to instruct the board to take action, requires an affirmative vote of a majority of all eligible members obtained by submitting the modification, amendment, or reversal to the members by mail or electronic ballot, pursuant to rules adopted by the superintendent.

2007 Acts, ch 174, §20  
NEW section

### **533.204 Election of board.**

1. At the organizational meeting, a board of directors of not less than nine members shall be elected to hold office for such terms as the bylaws provide and until successors are elected and qualified.

2. At each annual meeting, one member shall be elected to fill each position vacated by reason of an expiring term or other cause.

3. Pursuant to rules adopted by the superintendent, state credit unions may allow members to vote on the election of directors via electronic means including but not limited to the internet or telephone.

4. A record of the names and addresses of the directors, officers, and committee persons shall be filed with the superintendent within ten days following each election.

5. A state credit union wishing to maintain a board of directors of less than nine members may apply to the superintendent for permission to reduce the required number of directors. An application to reduce the required number of directors under this subsection must demonstrate both of the following:

*a.* The application is necessitated by a hardship or other special circumstance.

*b.* A lesser number of directors is in the best interest of the state credit union and its members.

In no event may the superintendent allow fewer than seven directors on a state credit union board.

2007 Acts, ch 174, §21  
NEW section

### **533.205 Board of directors — duties.**

1. Within five days following the organizational meeting and each annual meeting, the directors shall elect the following officers from the membership of the board of directors:

*a.* A chairperson of the board.

*b.* A vice chairperson.

*c.* A secretary.

*d.* A chief financial officer whose title shall be designated by the board.

2. *a.* The board of directors shall appoint the following committees:

(1) A credit committee of not less than three members.

(2) An auditing committee of not less than three members.

*b.* The board may also appoint alternate members of the credit committee.

*c.* Only a member of the board or a member of the state credit union may be appointed to the credit committee or to the auditing committee.

*d.* The board may appoint an executive committee to act on its behalf.

3. The duties and responsibilities of a director and of the board of directors shall include, but are not limited to, all of the following:

*a.* General management of the affairs of the state credit union.

*b.* Setting the amount of the surety bond that shall be required of all officers and employees handling money.

*c.* Attendance at no less than seventy-five percent of the regular board meetings held during the calendar year.

*d.* Periodic review of the original records of the state credit union, or comprehensive summaries prepared by the officers of the state credit union, pertaining to loans, security interests, and investments.

*e.* Review of the adequacy of the state credit union's internal controls.



f. Periodic review of utilization of security measures.

g. Establishing education and training programs to ensure that the director possesses adequate knowledge to manage the affairs of the state credit union.

4. a. Directors of a state credit union shall discharge the duties of their position in good faith and with that diligence, care, and skill which ordinarily prudent persons would exercise under similar circumstances in like positions.

b. The directors have a continuing responsibility to assure themselves that the state credit union is being managed according to law and that the practices and policies adopted by the board are being implemented.

5. a. The board of directors shall name or employ an individual who performs active executive or official duties for the state credit union as its chief executive officer.

b. The board shall fix the tenure and provide for the reasonable compensation of the chief executive officer.

c. The chief executive officer may be a member of the board of directors.

6. a. The chief executive officer or the chief executive officer's designee shall determine the compensation and tenure of employees of the state credit union.

b. An employee of the state credit union shall not be a member of the board of directors.

c. For purposes of this section, an "employee of the state credit union" means an individual employed by the state credit union other than the chief executive officer.

7. A state credit union shall not pay an overdraft of a director, officer, or employee of the state credit union on an account at the state credit union, unless the payment of funds is made in accordance with either of the following:

a. A written, preauthorized, interest-bearing extension of credit plan that specifies a method of repayment.

b. A written, preauthorized transfer of collected funds from another account of the account holder at the state credit union.

8. A credit union director shall not receive compensation for service as a director. However, a director may be reimbursed for reasonable expenses directly related to such service.

2007 Acts, ch 174, §22  
NEW section

#### 533.206 Meetings of the board.

Unless the bylaws provide otherwise, the board of directors may permit any and all directors to participate in all except one meeting per year of the board of directors through the use of any means of communication by which all directors participating in the meeting may simultaneously hear each other and communicate during the meeting. A director participating in a meeting by

this means is deemed to be present at the meeting.

2007 Acts, ch 174, §23  
NEW section

#### 533.207 Credit committee.

1. The credit committee shall have responsibility for the general supervision of all loans to members.

2. Applications for loans shall be on a form approved by the credit committee.

a. All applications shall set forth the purpose for which the loan is desired, the security, if any, offered, and such other data as may be required.

b. Within the meaning of this section, an assignment of shares or deposits or the endorsement of a note may be deemed security.

3. At least a majority of the members of the credit committee shall review and act on all loan applications and may grant approval, or the credit committee, with the prior approval of the board of directors, may grant one or more loan officers the power to approve or reject loans subject to written conditions and regulations adopted by the credit committee.

4. The credit committee shall meet as often as may be necessary after due notice to each member.

2007 Acts, ch 174, §24  
NEW section

#### 533.208 Auditing committee.

The auditing committee shall perform the following functions:

1. Make or cause to be made an examination of the affairs of the state credit union at least annually, including an audit of its financial records. If the auditing committee feels such action to be necessary, the auditing committee shall call the members together after the audit and submit to them its report.

2. Make or cause to be made an annual report and submit it at the annual meeting of the members.

3. Suspend by unanimous vote any officer, director, or member of the auditing committee and call the members together to act on the suspension, if the auditing committee deems the action to be necessary to the proper conduct of the state credit union. The members at the meeting may sustain the suspension and remove the officer, director, or member permanently or may reinstate the officer, director, or member.

4. Call a special meeting of state credit union members by majority vote to consider a matter to be submitted by the auditing committee.

2007 Acts, ch 174, §25  
NEW section

#### 533.209 Conflicts of interest.

1. A director, committee member, officer, or employee of a state credit union shall not directly or indirectly participate in either the deliberation upon or the determination of any matter in which the director, committee member, officer, or em-

ployee has a direct or indirect interest.

2. For the purposes of this section, an “*interest*” may include, but is not limited to, a pecuniary or familial interest.

2007 Acts, ch 174, §26  
NEW section

**533.210 Expulsion or withdrawal of credit union member.**

1. The board of directors may expel any member of a state credit union who has failed to do either of the following:

*a.* Carry out the member’s obligations to the state credit union.

*b.* Comply with the state credit union’s bylaws or policies.

2. A member of a state credit union may be expelled by a majority vote of the board of directors at a regular or special meeting of the board.

*a.* An expelled member may request a hearing before the membership of the state credit union, which shall be held within sixty days of an expelled member’s request.

*b.* At the hearing, the membership may reinstate the expelled member by majority vote, upon terms and conditions prescribed at the hearing.

3. Any member may withdraw from the state credit union at any time, but advance notice of withdrawal may be required as provided in this section.

4. After deducting all amounts due from the member to the state credit union and the amount necessary to honor outstanding share drafts drawn against accounts of the member, all amounts paid on shares or as deposits of an expelled or withdrawing member, along with accrued dividends and interest to the date of expulsion or withdrawal, shall be paid to that member.

5. Upon expulsion or withdrawal of a member from a state credit union, or at any other time, the state credit union may require sixty days’ notice of intention to withdraw shares and thirty days’ notice of intention to withdraw deposits, except that a state credit union shall not at any time require notice of withdrawal with respect to funds that are subject to withdrawal by share drafts.

6. Withdrawing or expelled members shall have no further rights in the state credit union. However, withdrawing or expelled members shall not be released from any remaining liability to the state credit union because of the expulsion or withdrawal.

2007 Acts, ch 174, §27  
NEW section

**533.211 Suspension or restriction of services.**

1. A state credit union may suspend or deny certain services to members who have done any of the following:

*a.* Caused a loss to the state credit union.

*b.* Violated the membership agreement or any policy adopted by the board.

*c.* Been physically or verbally abusive to state credit union members or staff.

2. Members with suspended services may maintain a share account and continue to vote at annual and special meetings.

2007 Acts, ch 174, §28  
NEW section

**533.212 Use of name “credit union” requirements — restrictions — exceptions.**

1. *a.* A state credit union organized in accordance with this chapter shall include the words “credit union” in its name.

*b.* All state credit union offices shall be identified by use of the state credit union’s full name.

*c.* The full name of a state credit union shall be used in all legal documents of the state credit union.

2. *a.* A person other than a credit union shall not use a name or title containing the words “credit union”, or any derivation, and shall not represent in advertising or otherwise that the person is conducting business as a credit union, except as provided in subsection 3.

*b.* A person who violates paragraph “*a*” may be enjoined from the use of words, advertising, or other representation prohibited by paragraph “*a*”.

3. The prohibitions contained in subsection 2 do not apply to any of the following entities:

*a.* A credit union organized under this chapter or the laws of another state.

*b.* A credit union organized under the Federal Credit Union Act, 12 U.S.C. § 1751 et seq.

*c.* The Iowa credit union league, a chapter, affiliate, or subsidiary of the Iowa credit union league or a political action committee formed pursuant to the Federal Election Campaign Act, 2 U.S.C. § 431 et seq., or chapter 68A by the Iowa credit union league or by credit unions organized under this chapter or federal law.

*d.* A joint service center operated by two or more credit unions where credit union services are made available to credit union members.

*e.* An organization formed for educational purposes in association with an accredited elementary or secondary school that engages in receipt of deposits of no more than twenty dollars per depositor and uses the words “educational credit union” in its name. An educational credit union must be affiliated with a state credit union organized under this chapter. Notwithstanding this recognition given to an educational credit union, an educational credit union is not a state credit union within the scope or regulation of this chapter.

2007 Acts, ch 174, §29  
NEW section

**533.213 Corporate central credit union.**

1. A corporate central credit union may be established.

*a.* Credit unions organized under this chapter,

the Federal Credit Union Act,\* or any other credit union act and credit union organizations may be members.

*b.* Regulated financial institutions, nonprofit organizations, and cooperative organizations may also be members to the extent and manner provided for in the bylaws of the corporate central credit union.

2. A corporate central credit union shall not be required to transfer to its legal reserve more than five percent of its net income for the year.

3. A corporate central credit union shall have all the powers, restrictions, and obligations imposed upon or granted to a state credit union under this chapter, except that the corporate central credit union may also exercise any of the following additional powers subject to the adoption of rules by the superintendent and with the prior written approval of the superintendent:

*a.* Borrow any amount from any source.

*b.* Invest in or purchase obligations or securities or other designated investments to the same extent authorized for other supervised financial institutions.

*c.* Invest in or acquire shares, stocks, or other obligations of an organization providing services that are associated with the operations of credit unions. However, the aggregate amount invested pursuant to this paragraph shall not exceed fifty percent of the total of all reserves and undivided earnings of the corporate central credit union.

*d.* Buy or sell investment securities and corporate bonds that are evidences of indebtedness. However, the purchase or sale is limited to marketable obligations of a corporation or state or federal agency issued without recourse.

*e.* Establish one or more capital accounts in the same manner as if it were a federal credit union.

*f.* Sell all or part of its assets to another corporate central credit union and assume the liabilities of a selling corporate central credit union if the action is pursuant to a plan agreed upon by a majority of the board of directors and, in the case of the sale of all of its assets, the affirmative vote of a majority of its members either by mail or in person at a meeting called for that purpose.

*g.* Invest in the shares or deposits of another similarly organized corporate central credit union, or central liquidity facility.

*h.* Make other investments approved by the superintendent.

2007 Acts, ch 174, §30  
\*12 U.S.C. §1751 et seq.  
NEW section

#### **533.214 Central credit unions.**

Credit unions known as central credit unions may exist for the purpose of serving credit unions, members of dissolved and members of other credit unions, directors, officers, and employees of credit unions, employee groups as described in section

533.301, subsection 13, and such other persons as the superintendent approves.

2007 Acts, ch 174, §31  
NEW section

### SUBCHAPTER III

#### CREDIT UNION OPERATIONS

#### **533.301 Powers.**

A state credit union shall have the power to do all of the following:

1. Receive payments for ownership shares, other shares, or as deposits from any or all of the following:

*a.* Members of the state credit union.

*b.* Nonmembers as prescribed by rule where the state credit union is serving predominantly low-income members. Rules adopted allowing nonmember deposits in state credit unions serving predominantly low-income members shall be designed solely to meet the needs of the low-income members.

*c.* Other state credit unions.

*d.* Federal, state, county, and city governments.

2. Make loans or leases to members.

3. Make loans to a cooperative society or other organization having membership in the state credit union.

4. Make deposits in state and national banks, state and federal savings banks or savings and loan associations, and state and federal credit unions, the accounts of which are insured by the federal deposit insurance corporation or the national credit union share insurance fund.

5. Make investments in any or all of the following:

*a.* Time deposits in state and national banks, state and federal savings banks or savings and loan associations, and state and federal credit unions, the deposits of which are insured by the federal deposit insurance corporation or the national credit union share insurance fund.

*b.* Obligations, participations, or other instruments of or issued by, or fully guaranteed as to principal and interest by the United States government or any agency of the United States government, or any trust or trusts established for investing directly or collectively in the United States government or any agency of the United States government.

*c.* General obligations of this state and any subdivision of this state.

*d.* Purchase of notes of liquidating credit unions with the approval of the superintendent.

*e.* Shares and deposits in other credit unions.

*f.* Shares, stocks, loans, and other obligations or a combination of shares, stocks, loans, and other obligations of a credit union service organization, corporation, or association, provided the membership or ownership, as the case may be, of

the credit union service organization, corporation, or association is primarily confined or restricted to credit unions or organizations of credit unions, and provided that the purpose of the credit union service organization, corporation, or association is primarily designed to provide services to credit unions, organizations of credit unions, or credit union members. However, the aggregate amount invested pursuant to this paragraph shall not exceed five percent of the assets of the credit union.

*g.* Obligations issued by federal land banks, federal intermediate credit banks, banks for co-operatives, or any of the federal farm credit banks.

*h.* Commercial paper issued by United States corporations as defined by rule.

*i.* Corporate bonds as defined by and subject to terms and conditions imposed by the superintendent, provided that the superintendent shall not approve investment in corporate bonds unless the bonds are rated in the two highest grades of corporate bonds by a nationally accepted rating agency.

*j.* Any permissible investment for federal credit unions, provided that this paragraph shall not permit a credit union to invest in a credit union service organization except as provided in paragraph “*f*”.

6. Borrow money as provided in this chapter.

7. Assess penalties as may be provided by the bylaws.

8. Sue and be sued.

9. Make contracts.

10. Purchase, hold, and dispose of property necessary and incidental to its operation, except that any property acquired through foreclosure shall be disposed of within a period not to exceed ten years.

11. Exercise such incidental powers as may be necessary or requisite to enable the state credit union to carry on the business effectively for which it is incorporated.

12. Apply for share account and deposit account insurance that meets the requirements of this chapter, and take all actions necessary to maintain an insured status.

13. Serve a group of persons having an insufficient number of members to form or conduct the affairs of a separate credit union, upon the approval of the superintendent. The existence of a common bond relationship between the group and the credit union affecting that service shall not be required.

14. Deposit with a credit union that has been in existence for not more than a year, an amount not to exceed twenty-five percent of the assets of the new credit union, but only one credit union may, at any time, make such a deposit.

15. Acquire the conditional sales contracts, promissory notes, or other similar instruments executed by its members, but the rate of interest existing on the instruments shall not exceed the highest rate charged by the acquiring credit union on its outstanding loans.

16. *a.* Sell, participate in, or discount the obligations of its members with or without recourse.

*b.* Purchase the obligations of credit union members, provided the obligations meet the requirements of this chapter.

17. Acquire and hold shares in a corporation engaged in providing and operating facilities through which a credit union and its members may engage, by means of either the direct transmission of electronic impulses to and from the credit union or the recording of electronic impulses or other indicia of a transaction for delayed transmission to the credit union, in transactions in which such credit union is otherwise permitted to engage pursuant to applicable law, subject to the prior approval of the superintendent.

18. Engage in any transaction otherwise permitted by this chapter and applicable law, by means of either the direct transmission of electronic impulses to or from the state credit union or the recording of electronic impulses or other indicia of a transaction for delayed transmission to the state credit union.

*a.* Subject to the provisions of chapter 527, a state credit union may utilize, establish, or operate, alone or with one or more other credit unions, banks incorporated under chapter 524 or federal law, savings and loan associations incorporated under chapter 534 or federal law, corporations licensed under chapter 536A, or third parties, the satellite terminals permitted under chapter 527, by means of which the state credit union may transmit to or receive from any member electronic impulses constituting transactions pursuant to this subsection. However, such utilization, establishment, or operation shall be lawful only when in compliance with chapter 527.

*b.* This subsection shall not be construed as authority for any person to engage in transactions not otherwise permitted by applicable law, and shall not be deemed to repeal, replace, or in any other way affect any applicable law or rule regarding the maintenance of or access to financial information maintained by any credit union.

19. Establish one or more state credit union offices other than its main office.

*a.* A state credit union may furnish at any of its offices all credit union services ordinarily furnished to the membership at its principal place of business.

*b.* The central executive and official business and recordkeeping functions of a state credit union shall be exercised at its principal place of business or at another state credit union office or a location authorized by the superintendent for these functions.

*c.* A state credit union shall file an informational statement in the form prescribed by the superintendent prior to opening a state credit union office.

*d.* A state credit union office shall not be opened without a certificate to establish a state

credit union office issued by the superintendent.

*e.* The establishment of a state credit union office must be reasonably necessary for service to, and in the best interests of, the members of the state credit union, and shall not endanger the safety and soundness of the state credit union opening the office.

*f.* A state credit union may join with one or more credit unions in the operation of an office facility to meet the service needs of its members.

20. Contract with another credit union to furnish services which either could otherwise legally perform. Contracted services provided under this subsection are subject to regulation and examination like other services.

21. Purchase insurance or make the purchase of insurance available for members.

22. Charge fees and penalties and apply them to income.

23. *a.* (1) Act as agent of the federal government when requested by the secretary of the United States department of treasury.

(2) Perform such services as may be required in connection with the collection of taxes and other obligations due the United States and the lending, borrowing, and repayment of moneys by the United States.

(3) Act as a depository of public money when designated for that purpose.

*b.* (1) Act as agent of this state when requested by the treasurer of state.

(2) Perform such services as may be required in connection with the collection of taxes and other obligations due this state and the lending, borrowing, and repayment of moneys by this state.

(3) Act as a depository of public moneys when designated for that purpose.

24. Receive public funds pursuant to chapter 12C and pledge its assets to secure the deposit of public funds.

25. Engage in any activity authorized by the superintendent which would be permitted if the state credit union were federally chartered and which is consistent with state law.

26. To promote the public welfare, make donations for religious, charitable, scientific, educational, or community betterment purposes.

27. Set off a member's accounts against any of the member's debts or liabilities owed the state credit union pursuant to an agreement entered into between the member and the state credit union. The state credit union shall also have a lien on the shares and deposits of a member for any sum due to the state credit union from the member or for any loan endorsed by the member.

28. Sell, to persons in the field of membership, negotiable checks, including traveler's checks; money orders; and other similar money transfer instruments including international and domestic electronic fund transfers.

29. Cash checks and money orders, and re-

ceive international and domestic electronic fund transfers, for persons in the field of membership.

2007 Acts, ch 118, §1, 3; 2007 Acts, ch 174, §32  
Code editor directive applied  
NEW section

### **533.302 Capital.**

1. The capital of a credit union shall consist of the payments that have been made to it by the several members thereof on shares. A credit union may charge an entrance fee as may be provided by the bylaws.

2. A credit union may establish an equity share having a par value not to exceed one hundred dollars which shall be a part of the capital of the credit union and shall not be withdrawn or transferred except upon termination of membership in the credit union. At the option of the credit union, the equity share may earn a dividend and may be insured.

2007 Acts, ch 174, §33  
NEW section

### **533.303 Reserves.**

1. At the end of each dividend period, but no less than quarterly, the gross income of the state credit union shall be determined.

2. A legal reserve against losses on loans and against such other losses as may be specified by rule shall be set aside from the gross income in accordance with the following schedule:

*a.* A state credit union in operation for more than four years and having assets of five hundred thousand dollars or more shall set aside the following amounts in the following order:

(1) Ten percent of the gross income until the legal reserve equals four percent of the total outstanding loans and risk assets.

(2) Five percent of the gross income until the legal reserve equals six percent of the total outstanding loans and risk assets.

*b.* A state credit union in operation for less than four years or having assets of less than five hundred thousand dollars shall set aside the following amounts in the order set forth:

(1) Ten percent of the gross income until the legal reserve equals seven and one-half percent of the total outstanding loans and risk assets.

(2) Five percent of the gross income until the legal reserve equals ten percent of the total outstanding loans and risk assets.

3. *a.* If the legal reserve falls below the percent of the total outstanding loans and risk assets required for a state credit union by this section, the state credit union shall replenish the legal reserve by regular contributions in the amounts needed to reach the required reserve. However, the superintendent may waive the reserve requirement when in the superintendent's opinion the waiver is necessary or desirable.

*b.* The legal reserve shall belong to the state credit union and shall be used to meet losses.

c. The reserve shall not be distributed to members as interest or dividends except on liquidation of the state credit union or in accordance with a plan approved by the superintendent.

4. The superintendent may require a state credit union to set aside additional amounts as a special reserve if an examination of assets discloses that the legal reserve of the state credit union is inadequate.

5. A state credit union shall maintain an adequate allowance for loan and lease losses account and such other valuation allowance accounts as may be necessary to provide for the full and fair disclosure, in the state credit union's financial statements, of the assets, liabilities, and equity of the state credit union.

6. For the purpose of establishing legal reserves, the following shall not be considered risk assets:

- a. Cash on hand.
- b. Deposits and shares in federally insured banks, savings banks, and credit unions.
- c. Assets which are insured by, fully guaranteed as to principal and interest by, or due from the United States government, its agencies, and instrumentalities.
- d. Loans to other credit unions.
- e. Student loans insured under the provisions of 20 U.S.C. § 1071 – 1087 or similar state programs.
- f. Loans insured by the federal housing administration under 12 U.S.C. § 1703.
- g. Loans fully insured or guaranteed by the federal government, a state government, or any agency of either.
- h. Common trust investments which deal in investments authorized in section 533.301.
- i. Prepaid expenses.
- j. Accrued interest on nonrisk investments.
- k. Furniture and equipment.
- l. Land and buildings.
- m. Loans fully secured by a pledge of shares within the state credit union.
- n. Deposits in the national credit union share insurance fund.
- o. Real estate loans in transit to the secondary market as specified by rule.

7. Notwithstanding any other provision of this section, a state credit union shall maintain a sufficient amount of net worth as required by the state credit union's deposit insurer and rules of the superintendent.

2007 Acts, ch 174, §34  
NEW section

### **533.304 Investment in certain shares or equity interests.**

1. For purposes of this section, unless the context otherwise requires:

a. *“Equity interests”* means limited partnership interests and other equity investments in which liability is limited to the amount of the in-

vestment, but does not mean general partnership interests or other interests involving general liability.

b. *“Small business”* means a corporation, partnership, proprietorship, or other entity formed under the laws of the United States, or a state, district, or territory of the United States, that meets the appropriate United States small business administration definition of small business and that is principally engaged in the development or exploitation of inventions, technological improvements, new processes, or other products not previously generally available in this state, or other investments which provide an economic benefit to this state.

c. *“Venture capital fund”* means a corporation, partnership, proprietorship, or other entity formed under the laws of the United States, or a state, district, or territory of the United States, whose principal business is or will be the making of investments in and the provision of significant managerial assistance to small businesses that meet the United States small business administration definition of small business.

2. A state credit union may invest in either of the following to the extent that the total investments under this section shall not be more than five percent of the state credit union's assets:

a. Shares or equity interests in venture capital funds that agree to invest an amount equal to at least fifty percent of the state credit union's investment in small businesses having their principal offices within this state and having either more than one-half of their assets within this state or more than one-half of their employees employed within this state.

b. Shares or equity interests in small businesses having their principal offices within this state and having either more than one-half of their assets within this state or more than one-half of their employees employed within this state. A state credit union shall not invest in more than twenty percent of the total capital and surplus of any one small business under this paragraph.

2007 Acts, ch 174, §35  
NEW section

### **533.305 Investment in banks or savings banks — required findings.**

1. *Investment in banks.* A state credit union may, with the prior approval of the superintendent, invest in the capital stock, obligations, or other securities of a bank.

2. *Investment in savings banks.* A state credit union may, with the prior approval of the superintendent, invest in the capital stock, obligations, or other securities of a savings bank.

3. *Findings required.* The superintendent shall not grant an approval under subsection 1 or 2, unless the superintendent makes one of the following findings:

a. Based upon a preponderance of the evidence

presented, the proposed investment will not have the immediate effect of significantly reducing competition between depository financial institutions located in the same community as the institution whose shares would be acquired.

*b.* Based upon a preponderance of the evidence presented, the proposed investment would have an anticompetitive effect as described in paragraph “a”, but other factors, specifically cited, outweigh the anticompetitive effect so that there would be a net public benefit as a result of the investment.

*4. Competition preserved.*

*a.* The subsequent liquidation of a bank or savings bank whose shares are acquired under this section shall not prevent the subsequent incorporation of another bank or savings bank in the same community.

*b.* The superintendent of banking shall not find the liquidation of a bank whose shares are acquired under this section to be grounds for disapproving the incorporation of another bank in the same community under section 524.305.

*c.* The superintendent of savings and loan associations shall not find the liquidation of a savings and loan association whose shares are acquired under this section to be grounds for disapproving the incorporation of another savings and loan association in the same community under chapter 534.

2007 Acts, ch 174, §36  
NEW section

**533.306 Power to borrow.**

A state credit union may borrow from any source in total a sum that shall not exceed fifty percent of the sum of its share and deposit account balances.

2007 Acts, ch 174, §37  
NEW section

**533.307 Account insurance.**

Except as provided in section 533.302, subsection 2, a credit union organized under this chapter, as a condition of maintaining its privilege of organization, shall acquire and maintain insurance to protect each shareholder and each depositor against loss of funds held on account by the credit union. The insurance shall be obtained from the national credit union administrator or from some other share guarantor or insurance plan approved by the Iowa commissioner of insurance and the superintendent, provided that each credit union shall acquire deposit insurance from the appropriate agency of the federal government.

2007 Acts, ch 174, §38  
NEW section

**533.308 Fidelity bond and general insurance coverage.**

1. A state credit union shall maintain a fidelity bond for state credit union employees and officials

in a sufficient amount to indemnify the state credit union against losses that may be incurred by reason of any act or acts of fraud, dishonesty, forgery, theft, larceny, embezzlement, wrongful abstraction, misapplication, misappropriation, or other unlawful act committed by the employee or official directly or through connivance with others, and general insurance coverage for losses caused by persons not associated with the state credit union.

*a.* The fidelity bond and general insurance coverage shall be obtained from a company authorized to do business in this state.

*b.* The superintendent may require additional coverage for a state credit union if, in the opinion of the superintendent, current coverage is insufficient. The board of directors of the state credit union shall obtain the additional coverage within thirty days after written notice from the superintendent.

2. The superintendent may furnish to any official of an insurance plan by which the accounts of a state credit union are insured or by which its employees and officials are bonded, any information relating to examinations, investigations, and reports of the status of that state credit union or its employees and officials for the purpose of facilitating the availability or continuation of the insurance or bond of the state credit union or resolution of a claim.

2007 Acts, ch 174, §39  
NEW section

**533.309 Share accounts.**

A state credit union may have share accounts including but not limited to the following types:

1. *Ownership share account.* The ownership share account shall consist of an account balance held by the state credit union in accordance with the state credit union’s bylaws. Each member may acquire only one ownership share. In the case of a joint account, the joint account owners may acquire only one ownership share unless each joint account owner applies for and is accepted as an individual member. The state credit union shall not set off fees against a member’s ownership share.

2. *Joint accounts.* A member may designate any person or persons to hold shares, deposits, and thrift club accounts with the member in joint tenancy with the right of survivorship, but such joint tenants shall not be permitted to cast more than one vote per ownership share jointly held in the state credit union. However, a joint tenant may have other rights of a jointly held ownership share, including the ability to obtain loans, or hold office or be required to pay an entrance fee. Payment of part or all of such joint accounts to any of the joint tenants shall, to the extent of such payment, discharge the liability to all.

3. *Account for minors.* Shares may be issued and deposits accepted in the name of a minor. Such shares and deposits may be withdrawn by

the minor and payments made on such withdrawals shall be valid. A minor under sixteen years of age shall not be entitled to vote in the meetings of the members either personally or through the minor's parent or guardian, and a minor shall not become a director until the minor reaches the minor's eighteenth birthday.

4. *Beneficiary account.* If a member makes a deposit for the benefit of a person other than the depositor, the name and residence address of the beneficiary shall be disclosed and the account shall be kept in the name of the depositor, for the benefit of the beneficiary. The account balance may be withdrawn by the depositor or, upon the death of the depositor, by the beneficiary or the beneficiary's legal representative.

2007 Acts, ch 174, §40  
NEW section

### **533.310 Deposits in the names of two or more individuals.**

When a deposit is made in a state credit union in the names of two or more individuals that is payable to any one or more of them or is payable to the survivor or survivors, the deposit, including interest, or any part, may be paid to any one or more of the individuals, whether or not the others are living. The receipt or a quitclaim of the individuals who are paid is a valid and sufficient release and discharge of the state credit union for any payment made pursuant to this section.

2007 Acts, ch 174, §41  
NEW section

### **533.311 Acceptance of deposits and investments while insolvent.**

When a state credit union is insolvent, the state credit union shall not do either of the following:

1. Accept any deposits or investments in ownership shares.
2. Renew or extend the term of any time deposits or time investments.

2007 Acts, ch 174, §42  
NEW section

### **533.312 Dividends and interest.**

1. The board of directors may declare dividends at such rates and upon such classes of shares as are determined by the board, at such intervals and for such periods as the board may authorize, and after provision for required reserves pursuant to section 533.303.

2. Dividends shall be considered a normal operating expense of the state credit union and shall be paid on all paid-up shares outstanding at the close of the period for which the dividend is declared and shall be available only from undivided earnings.

3. The superintendent may restrict or prohibit the payment of a dividend or interest when an impairment of capital exists.

2007 Acts, ch 174, §43  
NEW section

### **533.313 Share drafts.**

1. A state credit union may provide its members with share draft accounts.

a. "*Share draft*" means a negotiable draft which is payable upon demand and is used to withdraw funds from a share draft account.

b. A share draft is an item for purposes of chapter 554, article 4.

c. The term does not include a draft issued by a state credit union for the transfer of funds between the issuing credit union and another credit union, a bank, a savings and loan association, or another depository financial institution.

2. A share draft account is an account that is a demand account from which a state credit union has agreed that funds may be withdrawn by means of a share draft. A share draft account may bear interest or dividends as determined by the board of directors, provided that the state credit union shall not pay interest or dividends on a share draft account at a rate that exceeds the maximum interest rate which a regulated financial institution is able to pay on comparable instruments as allowed by the depository institutions deregulatory committee.

3. A state credit union may guarantee payment for a share draft if both the following conditions are met:

a. A specific guarantee authorization is obtained for the share draft from the state credit union.

b. The guarantee authorization is immediately noted on the share draft account to prevent the withdrawal of funds needed to pay the guaranteed share draft.

4. A state credit union may charge fees and penalties on share drafts and apply fees and penalties to the state credit union's income in relation to share draft services.

5. The superintendent may adopt rules relating to share draft programs as necessary to administer this chapter.

2007 Acts, ch 174, §44  
NEW section

### **533.314 Payment of share drafts during dissolution.**

Other provisions of section 533.404 notwithstanding, when a state credit union is dissolved, first priority of payment shall be given to unpaid share drafts. However, a share draft shall not be paid if any of the following conditions exist:

1. The share draft was issued on or after the date of dissolution, or on or after the date the state credit union is required by section 533.405, subsection 2, to cease doing business in the event of a voluntary dissolution.

2. The share draft is written against an account that does not contain sufficient funds with which to pay the share draft.

3. The share draft is payable to a member of the state credit union, or to a member of the family



of the issuer of the share draft, or to a business in which the issuer of the share draft has an interest. However, the exception contained in this subsection does not apply to any person referred to in this subsection if the person is a holder in due course, as provided in chapter 554, article 3.

2007 Acts, ch 174, §45  
NEW section

### 533.315 Loans.

1. *General lending power.* A state credit union may loan to a member for a provident or productive purpose.

a. Loans are subject to the conditions contained in this section and in the bylaws.

b. A loan may be repaid by the borrower, in whole or in part, any day the office of the state credit union is open for business.

c. A loan shall be made pursuant to an application with supportive credit information.

d. The superintendent may adopt rules requiring periodic updating of credit or financial information for all loans or for classes of loans designated in the rules.

2. *Aggregate lending to one member.* A state credit union shall not lend in the aggregate to a member more than ten percent of its member savings.

3. *Lending to a credit union director.* A director of a state credit union may borrow from that state credit union under the provisions of this chapter, but the rates, terms, and conditions of a loan or line of credit either made to or endorsed or guaranteed by the director shall not be more favorable than the rates, terms, or conditions of comparable existing loans or lines of credit provided to other members. The aggregate amount of all director loans and lines of credit shall not exceed twenty-five percent of the assets of the state credit union.

4. *Loans on real property.*

a. A state credit union may make permanent loans, construction loans, combined construction and permanent loans, or second mortgage loans secured by liens on real property, as authorized by rules adopted by the superintendent. The rules shall contain provisions as necessary to ensure the safety and soundness of these loans, and to ensure full and fair disclosure to borrowers of the effects of provisions in agreements for these loans, including provisions permitting change or adjustment of any terms of a loan, provisions permitting, requiring, or prohibiting repayment of a loan on a basis other than of equal periodic installments of interest plus principal over a fixed term, provisions imposing penalties for a borrower's noncompliance with requirements of a loan agreement, or provisions allowing or requiring a borrower to choose from alternative courses of action at any time during the effectiveness of a loan agreement.

b. (1) A state credit union may include in the

loan documents signed by the borrower a provision requiring the borrower to pay the state credit union each month in addition to interest and principal under the note an amount equal to one-twelfth of the estimated annual real estate taxes, special assessments, hazard insurance premium, mortgage insurance premium, or any other payment agreed to by the borrower and the state credit union in order to better secure the loan. The state credit union shall be deemed to be acting in a fiduciary capacity with respect to these funds.

(2) A state credit union receiving funds in escrow pursuant to an escrow agreement executed on or after July 1, 1982, in connection with a loan as defined in section 535.8, subsection 1, shall pay interest to the borrower on those funds, calculated on a daily basis, at the rate the state credit union pays to its members on ordinary savings deposits.

(3) A state credit union that maintains an escrow account in connection with any loan authorized by this subsection, whether or not the mortgage has been assigned to a third person, shall each year deliver to the mortgagor a written annual accounting of all transactions made with respect to the loan and escrow account.

c. A state credit union that obtains a report or opinion by an attorney or from another mortgage lender relating to defects in or liens or encumbrances on the title to real property, the unmarketability of the title to real property, or the invalidity or unenforceability of liens or encumbrances on real property, shall provide a copy of the report or opinion to the mortgagor and the mortgagor's attorney.

5. *Escrow reports.* A state credit union may act as an escrow agent with respect to real property that is mortgaged to the state credit union, and may receive funds and make disbursements from escrowed funds in that capacity. The state credit union shall be deemed to be acting in a fiduciary capacity with respect to escrowed funds. A state credit union that maintains an escrow account, whether or not a mortgage has been assigned to a third person, shall deliver to the mortgagor a written summary of all transactions made with respect to the loan and escrow accounts during each calendar year. However, the mortgagor and mortgagee may, by mutual agreement, select a fiscal year reporting period other than the calendar year. The summary shall be delivered or mailed not later than thirty days following the year to which the disclosure relates. The summary shall contain all of the following information:

a. The name and address of the mortgagee.

b. The name and address of the mortgagor.

c. A summary of escrow account activity during the year as follows:

(1) The balance of the escrow account at the beginning of the year.

(2) The aggregate amount of deposits to the escrow account during the year.

(3) The aggregate amount of withdrawals from the escrow account for each of the following categories:

- (a) Payments against loan principal.
  - (b) Payments against interest.
  - (c) Payments against real estate taxes.
  - (d) Payments for real property insurance premiums.
  - (e) All other withdrawals.
- (4) The balance of the escrow account at the end of the year.

d. A summary of loan principal for the year as follows:

- (1) The amount of principal outstanding at the beginning of the year.
- (2) The aggregate amount of payments against principal during the year.
- (3) The amount of principal outstanding at the end of the year.

6. *Other loans.* Loans that are not secured by real property shall be subject to the following conditions:

a. Loans to any one member that in the aggregate exceed the unsecured loan limit established by the board of directors of a state credit union shall be secured by one or more cosigners or guarantors, or by a first lien on collateral having a value that is approximately equal to the amount in excess of such unsecured loan limit. Every cosigner or guarantor shall furnish the state credit union with evidence of financial responsibility.

b. This subsection shall not be deemed to preclude a credit committee or loan officer from requiring security for any loan.

c. A state credit union may make loans according to any or all of the following:

- (1) Loans insured under the provisions of 20 U.S.C. § 1071 – 1087 or similar state programs.
- (2) Loans insured by the federal housing administration under 12 U.S.C. § 1703.
- (3) Loans to families of low or moderate income as a part of programs authorized in chapter 16.

d. The restrictions and limitations contained in this subsection do not apply to loans made to a member credit union by a corporate central credit union.

7. *Loan renewals and extensions.* This section shall not prevent the renewal or extension of loans.

8. *Penalties.* The superintendent may impose a penalty on a state credit union for each loan made in violation of this section. If a state credit union, after notice in writing, and opportunity for hearing, fails to satisfactorily resolve the matter within sixty days from receipt of such notice, the superintendent may impose a penalty against such state credit union in an amount not to exceed one hundred dollars per day per violation for each day the violation remains unresolved.

9. *Consumer credit code.*

a. The provisions of the Iowa consumer credit code\* shall apply to consumer loans made by a state credit union, and a provision of that code shall supersede any conflicting provision of this chapter with respect to a consumer loan.

b. Notwithstanding paragraph “a”, a state credit union may offer voluntary debt cancellation coverage, whether insurance or debt waiver, to members. The amount charged for the coverage shall be included in the amount financed, as defined in section 537.1301. However, the charge for such coverage may be excluded from the finance charge under the federal Truth in Lending Act as defined in section 537.1302.

10. *Early loan repayment.* If a member elects to repay a loan secured by a mortgage or deed of trust upon real property that is a single-family or a two-family dwelling or agricultural land at a date earlier than is required by the terms of the loan, the state credit union shall be governed by section 535.9.

11. *Interest on prepayment.* Real estate loans on one-family to four-family dwellings may be repaid in part or in full at any time, except that a state credit union may charge not to exceed six months’ advance interest on that part of the aggregate amount of all prepayments made on such loan in any twelve-month period which exceeds twenty percent of the original principal amount of the loan; and may charge any negotiated rate on other loans. This subsection, however, does not authorize a state credit union to charge any advance interest or prepayment penalty where prohibited by section 535.9.

2007 Acts, ch 174, §46

\*Consumer credit code, chapter 537  
NEW section

### **533.316 Interest rates.**

1. a. Interest rates on loans made by a state credit union, other than loans secured by a mortgage or deed of trust which is a first lien upon real property, shall not exceed the finance charge permitted in sections 537.2401 and 537.2402 on consumer loans.

b. Interest rates on business loans shall not exceed the finance charge permitted by section 535.2.

2. With respect to a loan secured by a mortgage or deed of trust which is a first lien upon real property, a state credit union shall not charge a rate of interest that exceeds the maximum rate permitted by section 535.2.

3. The provisions of this section do not apply to a loan that is subject to section 636.46.

2007 Acts, ch 174, §47

NEW section

### **533.317 Authority to lease safe deposit boxes.**

1. A state credit union may lease safe deposit boxes for the storage of property on terms and con-

ditions prescribed by the state credit union. The terms and conditions shall not bind any person to whom the state credit union does not give notice of the terms and conditions by delivery of a lease and agreement in writing containing the terms and conditions.

2. A state credit union may limit its liability provided that the limitations are set forth in the lease and agreement in at least the same size and type as the other substantive provisions of the contract.

3. The lease and agreement of a safe deposit box may provide that evidence tending to prove that property was left in a safe deposit box upon the last entry by the member or the member's authorized agent, and that the property or any part of the property was found missing upon subsequent entry, is not sufficient to raise a presumption that the property was lost by any negligence or wrongdoing for which the state credit union is responsible, or put upon the state credit union the burden of proof that the alleged loss was not the fault of the state credit union.

4. A state credit union may lease a safe deposit box to a minor.

*a.* A state credit union may deal with a minor with respect to a safe deposit lease and agreement without the consent of a parent, guardian, or conservator and with the same effect as though the minor were an adult.

*b.* Any action of the minor with respect to such safe deposit lease and agreement is binding on the minor with the same effect as though the minor were an adult.

5. A state credit union that has on file a power of attorney of a member covering a safe deposit lease and agreement, which has not been revoked by the member, shall incur no liability as a result of continuing to honor the provisions of the power of attorney in the event of the death or incompetence of the donor of the power of attorney until the state credit union receives written notice of the death, or written notice of adjudication by a court of the incompetence of the member and the appointment of a guardian or conservator.

2007 Acts, ch 174, §48  
NEW section

### **533.318 Safe deposit box access.**

1. A state credit union shall permit a person named in and authorized by a court order to open, examine, and remove the contents of a safe deposit box located at the state credit union.

2. If a court order has not been delivered to a state credit union, the following persons may access and remove any or all contents of a safe deposit box located at the state credit union and described in an ownership or rental agreement or lease between the state credit union and a deceased owner or lessee:

*a.* A co-owner or co-lessee of the safe deposit box.

*b.* A person designated in the safe deposit box agreement or lease to have access to the safe deposit box upon the death of the lessee, to the extent provided in the safe deposit box agreement or lease.

*c.* An executor or administrator of the estate of a deceased owner or lessee upon delivery to the state credit union of a certified copy of letters of appointment.

*d.* A person named as an executor in a copy of a purported will produced by the person, provided such access shall be limited to the removal of a purported will, and no other contents shall be removed.

*e.* A trustee of a trust created by the deceased owner or lessee upon delivery to the state credit union of a copy of the trust together with an affidavit by the trustee that certifies that the copy of the trust delivered to the state credit union with the affidavit is an accurate and complete copy of the trust, the trustee is the duly authorized and acting trustee under the trust, the trust property includes property in the safe deposit box, and that to the knowledge of the trustee the trust has not been revoked.

3. A person removing any contents of a safe deposit box pursuant to subsection 1 or 2 shall deliver any writing purported to be a will of the decedent to the court having jurisdiction over the decedent's estate.

4. *a.* If a person authorized to have access under subsection 1 or 2 does not request access to the safe deposit box within the thirty-day period immediately following the date of death of the owner or lessee of a safe deposit box, and the state credit union has knowledge of the death of the owner or lessee of the safe deposit box, the safe deposit box may be opened by or in the presence of two employees of the state credit union.

*b.* If a safe deposit box is opened pursuant to paragraph "a", the state credit union employees present at such opening shall do all of the following:

(1) Remove any purported will of the deceased owner or lessee.

(2) Unseal, copy, and retain in the records of the state credit union a copy of a purported will removed from the safe deposit box. An additional copy of such purported will shall be made, dated, and signed by the credit union employees present at the safe deposit box opening and placed in the safe deposit box. The safe deposit box shall then be resealed.

(3) The original of a purported will shall be sent by certified mail or restricted certified mail or personally delivered to the district court in the county of the last known residence of the deceased owner or lessee, or the court having jurisdiction

over the testator's estate. If the residence is unknown or last known and not in this state, the purported will shall be sent by certified mail or restricted certified mail or personally delivered to the district court in the county where the safe deposit box is located.

c. If no key is produced, the state credit union may cause the safe deposit box to be opened and the state credit union shall have a claim against the estate of the deceased owner or lessee and a lien upon the contents of the safe deposit box for the costs of opening and resealing the safe deposit box.

5. a. A state credit union may rely upon published information or other reasonable proof of death of an owner or lessee.

b. A state credit union has no duty to inquire about or discover, and is not liable to any person for failure to inquire about or discover, the death of the owner or lessee of a safe deposit box.

c. A state credit union has no duty to open or cause to be opened, and is not liable to any person for failure to open or cause to be opened, a safe deposit box of a deceased owner or lessee.

d. Upon compliance with the requirements of this section as appropriate, the state credit union is not liable to any person as a result of the opening of the safe deposit box, removal and delivery of the purported will, or retention of the unopened safe deposit box and contents.

2007 Acts, ch 174, §49  
NEW section

### **533.319 Adverse claims to property in safe deposit and safekeeping.**

1. A state credit union shall not be required, in the absence of a court order or indemnity required by this section, to recognize any claim to, or claim of authority to exercise control over, property held in safe deposit or property held for safekeeping pursuant to section 533.321 made by a person or persons other than the following:

a. The member in whose name the property is held by the state credit union.

b. An individual or group of individuals who are authorized to have access to the safe deposit box, or to the property held for safekeeping, pursuant to a certified corporate resolution or other written arrangement with the member, currently on file with the state credit union, which has not been revoked by valid corporate action in the case of a corporation, or by a valid agreement or other valid action appropriate for the form of legal organization of any other member, of which the state credit union has received notice and which is not the subject of a dispute known to the state credit union as to its original validity. The safe deposit and safekeeping account records of a state credit union shall be presumptive evidence as to the identity of the member on whose behalf the property is held.

2. A person making an adverse claim to, or an

adverse claim of authority to control, property held in a safe deposit box or for safekeeping, must do either of the following:

a. Obtain and serve on the state credit union an appropriate court order or judicial process directed to the state credit union, restraining any action with respect to the property until further order of the court or instructing the state credit union to deliver the property, in whole or in part, as indicated in the order or process.

b. Deliver to the state credit union a bond, in form and amount with sureties satisfactory to the state credit union, indemnifying the state credit union against any liability, loss, or expense which the state credit union might incur because of its refusal to deliver the property to any person described in subsection 1, paragraph "a" or "b".

2007 Acts, ch 174, §50  
NEW section

### **533.320 Remedies and proceedings for nonpayment of rent on safe deposit box.**

1. A state credit union has a lien upon the contents of a safe deposit box for past due rentals and any expense incurred in opening the safe deposit box, replacement of the locks on the safe deposit box, and of a sale made pursuant to this section.

2. If the rental of a safe deposit box is not paid within six months from the day the rental is due, at any time after the six months and while the rental remains unpaid, the state credit union shall mail a notice by restricted certified mail to the member at the member's last known address as shown upon the records of the state credit union, stating that if the amount due for the rental is not paid on or before a specified day, which shall be at least thirty days after the date of mailing such notice, the state credit union will remove the contents of the safe deposit box and hold the contents for the account of the member.

3. If the rental for the safe deposit box has not been paid after the expiration of the period specified in a notice mailed pursuant to subsection 2, the state credit union, in the presence of two of its officers, may cause the safe deposit box to be opened and the contents removed. An inventory of the contents of the safe deposit box shall be made by the two officers present and the contents held by the state credit union for the account of the member.

4. a. If the contents are not claimed within two years after their removal from the safe deposit box, the state credit union may proceed to sell so much of the contents as is necessary to pay the past due rentals and expense incurred in opening the safe deposit box, replacement of the locks on the safe deposit box, and the sale of the contents.

b. The sale shall be held at the time and place specified in a notice published prior to the sale once each week for two successive weeks in a newspaper of general circulation published in the city or unincorporated area in which the state

credit union has its principal place of business, or if there is none, a newspaper of general circulation published in the county, or in a county adjoining the county, in which the state credit union has its principal place of business.

c. A copy of the published notice shall be mailed to the member at the member's last known address as shown upon the records of the state credit union.

d. The notice shall contain the name of the member and need only describe the contents of the safe deposit box in general terms.

e. The contents of any number of safe deposit boxes may be sold under one notice of sale and the cost of the sale apportioned ratably among the several safe deposit box members involved.

f. At the time and place designated in the notice the contents taken from each respective safe deposit box shall be sold separately to the highest bidder for cash and the proceeds of each sale applied to the rentals and expenses due to the state credit union and the residue from any such sale shall be held by the state credit union for the account of the member or members.

g. An amount held as proceeds from such sale shall be credited with interest at the customary annual rate for savings accounts at the state credit union, or in lieu, at the customary rate of interest in the community where such proceeds are held. The crediting of interest does not activate the account to avoid an abandonment as unclaimed property under chapter 556.

5. a. Notwithstanding the provisions of this section, shares, bonds, or other securities which, at the time of a sale pursuant to subsection 4, are listed on an established stock exchange in the United States shall not be sold at public sale but may be sold through an established stock exchange.

b. Upon making a sale of any such securities, an officer of the state credit union shall execute and attach to the securities an affidavit reciting facts showing that the securities were sold pursuant to this section, and that the state credit union has complied with the provisions of this section. The affidavit constitutes sufficient authority to any corporation whose shares are sold or to any registrar or transfer agent of such corporation to cancel the certificates representing the shares to the purchaser of the shares, and to any registrar, trustee, or transfer agent of registered bonds or other securities, to register any such bonds or other securities in the name of the purchaser of the bonds or other securities.

6. The proceeds of any sale made pursuant to this section, after the payment of any amounts with respect to which the state credit union has a lien, any property that was not offered for sale and property which, although offered for sale, was not sold, shall be retained by the state credit union until such time as the property is presumed aban-

doned according to section 556.2, and shall be handled pursuant to chapter 556.

2007 Acts, ch 174, §51  
NEW section

### **533.321 Authority to receive property for safekeeping.**

1. A state credit union may accept property for safekeeping if the state credit union issues a receipt for the property, except in the case of night depositories.

a. A state credit union accepting property for safekeeping shall purchase and maintain reasonable insurance coverage to ensure against loss incurred in connection with the acceptance of property for safekeeping.

b. Property held for safekeeping shall not be commingled with the property of the state credit union or the property of others.

2. A state credit union has a lien upon any property held for safekeeping and for expenses incurred in any sale made pursuant to this subsection.

a. If the charge for safekeeping of property is not paid within six months from the day the charge is due, at any time after the six months and while the charge remains unpaid, the state credit union may mail a notice to the member at the member's last known address as shown upon the records of the state credit union, stating that if the amount due is not paid on or before a specified day, which shall be at least thirty days after the date of mailing the notice, the state credit union will remove the property from safekeeping and hold the property for the account of the member.

b. After the expiration of the period specified in the notice, if the charge for safekeeping has not been paid, the state credit union may remove the property from safekeeping, cause the property to be inventoried, and hold the property for the account of the member.

c. If the property is not claimed within two years after its removal from safekeeping, the state credit union may proceed to sell so much of the property as is necessary to pay the charge which remains unpaid and the expense incurred in making the sale in the manner provided for in section 533.320, subsections 4 and 5.

d. The proceeds of any sale made pursuant to this section, after payment of any amounts with respect to which the state credit union has a lien, any property that was not offered for sale, and property which, although offered for sale, was not sold, shall be retained by the state credit union until such time as the property is presumed abandoned according to section 556.2, and shall be handled pursuant to chapter 556.

2007 Acts, ch 174, §52  
NEW section

### **533.322 Preservation of records.**

1. The superintendent may adopt rules re-

garding the preservation of records and files of a state credit union or any other person supervised or regulated by the superintendent. A state credit union is not required to preserve its records for a period longer than eleven years after the first day of January of the year following the time of the making or filing of such records. However, account records showing unpaid balances due to depositors shall not be destroyed.

2. A copy of an original may be kept in lieu of any original records.

*a.* For purposes of this section, a copy includes any duplicate, rerecording or reproduction of an original record from any photograph, photostat, microfilm, microcard, miniature or microphotograph, computer printout, electronically stored data or image, or other process that accurately reproduces or forms a durable medium for accurately and legibly reproducing an unaltered image or reproduction of the original record.

*b.* A copy is deemed to be an original and shall be treated as an original record in a judicial or administrative proceeding for purposes of admissibility in evidence. A facsimile, exemplification, or certified copy of any such copy reproduced from a film record is deemed to be a facsimile, exemplification, or certified copy of the original.

2007 Acts, ch 174, §53  
NEW section

### **533.323 Photographic records.**

1. Any state credit union writing or record, or a photostatic or photographic reproduction of such writing or record, whether in the form of an entry in a book or otherwise, made as a memorandum or record of any act, transaction, occurrence, or event, shall be admissible in evidence as proof of the act, transaction, occurrence, or event, if made in the regular course of business.

2. A printout or other tangible output, readable by sight, shown to accurately reflect data contained in a promissory note, negotiable instrument, or letter of credit, that contains a signature made or created by electronic or digital means such that it is stored by a computer or similar device, is deemed to be an original of such note, instrument, or letter for purposes of presenting such note, instrument, or letter for payment, acceptance, or honor, or for purposes of a judicial proceeding involving a claim based upon such note, instrument, or letter.

2007 Acts, ch 174, §54  
NEW section

### **533.324 Liability for destruction.**

1. With the exception of certain account records which shall not be destroyed pursuant to section 533.322, liability shall not accrue against a state credit union for destroying records if the records were maintained for the minimum time provided for in this chapter.

2. In any cause or proceeding in which state

credit union records or files may be called in question or be demanded of the state credit union, or any officer or employee of the state credit union, a showing that such records or files have been destroyed in accordance with the provisions of this chapter or rules adopted pursuant to this chapter shall be a sufficient excuse for the failure to produce them.

2007 Acts, ch 174, §55  
NEW section

### **533.325 Confidentiality of state credit union information.**

1. The directors, officers, committee members, and employees of a state credit union shall hold in confidence all information regarding transactions of the state credit union, including information regarding transactions with its members and their personal affairs, except to the extent necessary in connection with making, extending, or collecting a loan or line of credit, guaranteeing of member share drafts by third parties, or complying with the examination of credit union records by regulatory authorities or compliance with an order from a court having jurisdiction over the state credit union.

2. The board of directors may authorize participation of a state credit union in a credit or consumer reporting agency if the board has determined that use of such an agency is essential in making and extending a loan or line of credit, or guaranteeing member share drafts, and that information supplied by the state credit union to such agency will be made available only to legitimate members of that agency having a legitimate business need for the information in connection with a business transaction involving the state credit union.

2007 Acts, ch 174, §56  
NEW section

### **533.326 Governmental employees.**

1. When a state credit union has been organized by the employees of the state or any political subdivision of the state, the officer who writes warrants for the state or other governmental body by which any public employee state credit union member is employed, may withhold from the salary or wages of the employee, and pay over to such state credit union, sums as may be designated by written authorization signed by the employee.

2. The provisions of section 539.4 shall have no application to this section.

2007 Acts, ch 174, §57  
NEW section

### **533.327 Change in place of business.**

A state credit union may change its place of business on written notice to the superintendent.

2007 Acts, ch 174, §58  
NEW section

**533.328 Conducting business outside of state.**

If a state credit union has an office and conducts business in another state having laws or regulations allowing credit unions to exercise additional powers, the state credit union may request permission from the superintendent to exercise such additional powers while operating in the other state with only the resident members of that other state.

2007 Acts, ch 174, §59  
NEW section

**533.329 Taxation.**

1. A state credit union shall be deemed an institution for savings and is subject to taxation only as to its real estate and moneys and credits. The shares shall not be taxed.

2. *a.* The moneys and credits tax on state credit unions is imposed at a rate of one-half cent on each dollar of the legal and special reserves that are required to be maintained by the state credit union under section 533.303, and shall be levied by the board of supervisors and placed upon the tax list and collected by the county treasurer. However, an exemption shall be given to each state credit union in the amount of forty thousand dollars.

*b.* The amount collected in each taxing district within a city shall be apportioned twenty percent to the county, thirty percent to the city general fund, and fifty percent to the general fund of the state, and the amount collected in each taxing district outside of cities shall be apportioned fifty percent to the county and fifty percent to the general fund of the state.

*c.* The moneys and credits tax shall be collected at the location of the state credit union as shown in its articles of incorporation.

*d.* The moneys and credits tax imposed under this section shall be reduced by a tax credit authorized pursuant to section 15.331C for certain sales taxes paid by a third-party developer.

*e.* The moneys and credits tax imposed under this section shall be reduced by an investment tax credit authorized pursuant to section 15.333.

*f.* The moneys and credits tax imposed under this section shall be reduced by a qualified expenditure tax credit authorized pursuant to section 15.393, subsection 2, paragraph "a".

*g.* The moneys and credits tax imposed under this section shall be reduced by an investment tax credit authorized pursuant to section 15.393, subsection 2, paragraph "b".

*h.* The moneys and credits tax imposed under this section shall be reduced by an investment tax credit authorized pursuant to section 15E.43.

*i.* The moneys and credits tax imposed under this section shall be reduced by an investment tax credit authorized pursuant to section 15E.51.

*j.* The moneys and credits tax imposed under this section shall be reduced by an Iowa fund of

funds tax credit authorized pursuant to section 15E.66.

*k.* The moneys and credits tax imposed under this section shall be reduced by an economic development region revolving fund contribution tax credit authorized pursuant to section 15E.232.

*l.* The moneys and credits tax imposed under this section shall be reduced by an endow Iowa tax credit authorized pursuant to section 15E.305.

*m.* The moneys and credits tax imposed under this section shall be reduced by a wage-benefits tax credit authorized pursuant to section 15I.2.

2007 Acts, ch 162, §12, 13; 2007 Acts, ch 174, §60, 99  
Paragraphs f and g of subsection 2 take effect May 17, 2007, and apply retroactively to tax years beginning on or after January 1, 2007; 2007 Acts, ch 162, §13  
Code editor directive applied  
NEW section

**533.330 Reports.**

1. A state credit union shall report quarterly at a specified time to the superintendent in a format prescribed by the superintendent for that purpose.

*a.* If any quarterly report is in arrears, a penalty of one hundred dollars for each day or fraction of a day such report is in arrears may be levied by the superintendent against the offending state credit union. This penalty shall be in addition to the penalty for failure to pay the annual fee pursuant to section 533.112.

*b.* If a quarterly report is not provided to the superintendent within thirty days of the due date, the superintendent may, after written notice to the board of directors of the state credit union, suspend or revoke the certificate of approval, take possession of the business and property of the state credit union, and order its dissolution.

2. In addition to the quarterly report, the superintendent may, from time to time, require a state credit union to provide other supplemental reports at a specified time. Failure of a state credit union to provide supplemental reports when due may result in the superintendent levying a penalty of fifty dollars per day for each day or fraction of a day such report is late.

2007 Acts, ch 174, §61  
NEW section

SUBCHAPTER IV

MERGER, CONVERSION, AND  
DISSOLUTION OF CREDIT UNIONS

**533.401 Merger.**

1. With the approval of the superintendent, a state credit union may merge with another credit union under the existing certificate of approval of the other credit union if the merger is pursuant to a plan agreed upon by a majority of the board of directors of each credit union joining in the merger and the merger is approved by the affirmative vote of a majority of the members of the merging credit

union either by mail or in person at a meeting called for the purpose of voting on the merger.

2. A plan of merger, whether by act of consolidation, acquisition, or business combination, along with evidence that the plan has been approved by the members of the merging credit union in accordance with the provisions of this section, shall be submitted to the superintendent, along with any additional materials the superintendent may request.

3. The superintendent may approve a merger according to the plan agreed upon by the majority of the board of directors of each credit union if the superintendent receives a written and verified application filed by the board of directors of each credit union and finds all of the following:

a. Notice of the meeting called to consider the merger was mailed to each member of the merging credit union entitled to vote upon the question at least twenty days prior to the date of the merger meeting.

b. The notice disclosed the purpose of the meeting and properly informed the membership that approval of the merger would be sought pursuant to this section.

c. At the meeting called to consider the merger, a majority of the votes received, by regular mail or in person, upon the question were in favor of the merger.

d. Control of the merging credit union shall transfer to the board of directors of the continuing credit union upon approval of the merger by the superintendent and the favorable vote of a majority of the members as prescribed in paragraph "c". Upon transfer of control, the board of directors of the merging credit union may only do such things necessary to execute the merger.

4. The superintendent may disapprove a merger if the superintendent finds either of the following:

a. The merger would not result in a safe and sound credit union.

b. The procedures required by this section, particularly those used to obtain member approval for the merger, were not followed or were irregular.

5. The superintendent may waive the membership merger vote if the superintendent finds that an emergency exists which justifies the waiver.

6. The certificate of merger and a copy of the agreed plan of merger shall be forwarded to the superintendent, certified by the superintendent, and returned to both credit unions within thirty days of the date of receipt by the superintendent.

7. a. Upon return of the certificate from the superintendent, all of the merging credit union's property, property rights, and members' interests shall vest in the continuing credit union without the legal need for deeds, endorsements or other instruments of transfer, and all debts, obligations, and liabilities of the merging credit union shall be

assumed by the continuing credit union.

b. The rights and privileges of the members of the merging credit union shall continue as provided in the plan.

c. Credit union membership in the continuing credit union shall be available to persons within the common bond of the merging credit union.

8. This section shall be construed to permit a credit union organized under any other statute to merge with one organized under this chapter, or to permit one organized under this chapter to merge with one organized under any other statute.

9. As used in this section, the term "merger" or "merge" means the combination of assets and liabilities of one credit union with those of another credit union such that one credit union continues and the other credit union surrenders its charter to operate as a credit union.

2007 Acts, ch 174, §62  
NEW section

### **533.402 Conversion of financial institution to state credit union.**

1. Any financial institution may convert to a state credit union by complying with the laws of the original chartered authority and upon the approval of the superintendent. As used in this section, "financial institution" means any credit union, bank, savings bank, or savings and loan association chartered under federal or state law.

a. Application for approval of the conversion to a state credit union shall be submitted to the superintendent in the form prescribed by the superintendent, together with the articles of incorporation and bylaws as required for organization of a state credit union pursuant to this chapter.

b. The superintendent may cause an examination to be made of any converting financial institution. The converting financial institution shall reimburse the superintendent for the division's costs related to the conversion.

2. a. If the superintendent approves the application of a financial institution for conversion to a state credit union, the superintendent shall cause the articles of incorporation of the resulting state credit union to be filed and recorded in the county in which the state credit union has its principal place of business and the superintendent shall issue a certificate of authority to do business under the laws of this state to the resulting state credit union. The financial institution shall then become a state credit union subject to the laws of this state.

b. The superintendent shall furnish a copy of the certificate to the administrator of the national credit union administration.

3. a. Upon conversion, the existence of the original financial institution shall cease.

b. The state credit union resulting from the conversion shall have only the authority to engage in the business and exercise the powers of a state credit union.



4. *a.* A liability of the original financial institution or of its members, directors, or officers shall not be affected, and any lien on any property of the financial institution shall not be impaired by the conversion.

*b.* Any claim existing or action pending by or against the original financial institution may be prosecuted to judgment as if the conversion had not taken place, or the resulting state credit union may be substituted in its place.

2007 Acts, ch 174, §63  
NEW section

#### **533.403 Conversion of state credit union into federal credit union.**

1. A state credit union may convert into a federal credit union with the approval of the administrator of the national credit union administration and by the affirmative vote of a majority of the credit union's members who vote on the proposal. This vote, if taken, shall be at a meeting called for that purpose and shall be in the manner prescribed by the bylaws.

2. The board of directors of the state credit union shall notify the superintendent of any proposed conversion and of any abandonment or disapproval of the conversion by the members or by the administrator of the national credit union administration. The board of directors of the state credit union shall file with the superintendent appropriate evidence of approval of the conversion by the administrator of the national credit union administration and shall notify the superintendent of the date on which the conversion is to be effective.

3. Upon receipt of satisfactory proof that the state credit union has complied with all applicable laws of this state and of the United States, the superintendent shall issue a certificate of conversion which shall be filed and recorded in the county in which the state credit union has its principal place of business and in the county in which its original articles of incorporation were filed and recorded.

2007 Acts, ch 174, §64  
NEW section

#### **533.404 Dissolution generally.**

The following shall apply to dissolution of a state credit union under this chapter, whether voluntary or involuntary:

1. Distribution of the assets of the state credit union shall be made in the following order:

*a.* The payment of costs and expense of the administrator of dissolution.

*b.* The payment of claims for public funds deposited pursuant to chapter 12C and the payment of claims which are given priority by applicable statutes. If the assets are insufficient for payment of the claims in full, priority shall be determined by the statutes or, in the absence of conflicting provisions, on a pro rata basis.

*c.* The payment of deposits, including accrued

interest, up to the date of the special meeting of the members at which voluntary dissolution was authorized, or in the case of involuntary dissolution, the date of appointment of a receiver.

*d.* The pro rata apportionment of the balance among the members of record on the date of the special meeting of the members at which voluntary dissolution was authorized, or in the case of involuntary dissolution, the members of record on the date of appointment of a receiver.

2. All amounts due members who are unknown, or who are under a disability and no person is legally competent to receive the amounts, or who cannot be found after the exercise of reasonable diligence, shall be transmitted to the treasurer of state who shall hold the amounts in the manner prescribed by chapter 556. All amounts due creditors as described in section 490.1440 shall be transmitted to the treasurer of state in accordance with that section and shall be retained by the treasurer of state and subject to claim as provided for in that section.

3. The superintendent shall assume custody of the records of a state credit union dissolved pursuant to this chapter and shall retain the records which, in the superintendent's discretion, are deemed necessary, in accordance with the provisions of section 533.322. The superintendent may cause film, photographic, photostatic, or other copies of the records to be made and the superintendent shall retain the copies in lieu of the original records.

4. *a.* The dissolution of a state credit union shall not remove or impair any remedy available to or against such state credit union, its directors, officers, or members for any right or claim existing or any liability incurred prior to such dissolution if an action or other proceeding to enforce the right or claim is commenced within two years after the date of filing of a certificate or decree of dissolution with the county recorder in the county in which the state credit union has its principal place of business.

*b.* Any such action or proceeding by or against the state credit union may be prosecuted or defended by the state credit union in its corporate name.

*c.* The members, directors, and officers shall have power to take such corporate or other action as shall be appropriate to protect such remedy, right, or claim.

2007 Acts, ch 174, §65  
NEW section

#### **533.405 Voluntary dissolution.**

The process of voluntary dissolution shall be as follows:

1. At a special meeting called for that purpose, a state credit union may dissolve upon the affirmative vote of a majority of its members eligible to vote at the special meeting.

*a.* Notice of the meeting's purpose shall be con-

tained in the meeting's notice.

*b.* Any member eligible to vote and not present at the meeting may, within twenty days after the date on which the meeting was held, vote in favor of dissolution by signing a statement in a form approved by the superintendent. This vote shall have the same force and effect as if cast at the meeting.

2. *a.* The state credit union shall cease to do business except for the purposes of liquidation immediately upon giving notice of the special meeting called for the members' vote on dissolution.

*b.* The board of directors shall immediately notify the superintendent of the intention of the state credit union to dissolve.

*c.* The state credit union shall not resume its regular business unless the dissolution fails to receive the required vote of the members or unless the members have revoked prior affirmative action to dissolve as provided for in subsection 6.

3. *a.* The board of directors shall have power to terminate and settle the affairs of a state credit union in voluntary dissolution.

*b.* The state credit union shall continue in existence for the purpose of discharging its liabilities, collecting and distributing its assets, and doing all acts required in order to terminate its affairs.

*c.* The state credit union may sue and be sued for the purpose of enforcing such liabilities and for the purpose of collecting its assets until its affairs are fully settled.

*d.* During the course of dissolution proceedings, the state credit union shall make such reports and shall be subject to such examinations as the superintendent may require.

*e.* If at any time after the affirmative vote of a majority of the members of a state credit union to dissolve the state credit union, the superintendent finds that the state credit union is not making reasonable progress toward terminating its affairs, the superintendent may apply to the district court for appointment of a receiver to terminate the affairs of the state credit union.

*f.* If the superintendent finds that a dissolving state credit union is insolvent, the superintendent may proceed as otherwise provided in this chapter.

4. *a.* The board of directors may appoint by resolution any responsible person as defined in section 4.1, whose appointment has been approved by the superintendent, to exercise its powers to terminate and settle the affairs of the state credit union pursuant to this section.

*b.* The superintendent may adopt rules establishing the qualifications that must be met by such appointees, including but not limited to filing a surety bond with the superintendent.

5. *a.* Upon such proof as is satisfactory to the superintendent that all assets have been liquidated from which there is a reasonable expectance of realization, that the liabilities of the state credit union have been discharged and distribution

made to its members, and that the liquidation has been completed, the superintendent shall issue a certificate of dissolution, which certificate shall be filed and recorded in the county in which the state credit union has its principal place of business and in the county in which its original articles of incorporation were filed and recorded.

*b.* Upon the issuance of a certificate of dissolution, the existence of the state credit union shall cease.

6. *a.* At any time prior to any distribution of its assets, a state credit union may revoke the voluntary dissolution proceedings by the affirmative vote of a majority of its members eligible to vote. This vote, if taken, shall be at a special meeting called for that purpose in the manner prescribed by the bylaws.

*b.* The board of directors shall immediately notify the superintendent of any such action to revoke voluntary dissolution proceedings.

2007 Acts, ch 174, §66  
NEW section

#### **533.406 State credit union merger, conversion, or dissolution.**

Notwithstanding section 533.301, subsection 25, a state credit union shall comply with the state law requirements for merger, conversion, or dissolution of a state credit union.

2007 Acts, ch 174, §67  
NEW section

### SUBCHAPTER V

#### SUPERVISORY ACTIONS, LIMITATIONS, AND PENALTIES

#### **533.501 Supervisory action.**

1. *Cease and desist order.*

*a.* (1) If the superintendent has reason to believe that an officer, director, employee, or committee member of a state credit union has violated any law, rule, or cease and desist order relating to a state credit union, or has engaged in an unsafe or unsound practice in conducting the business of a state credit union, the superintendent may cause notice to be served upon the officer, director, employee, or committee member to appear before the superintendent to show cause why the person should not be removed from office or employment. A copy of such notice shall be sent by certified mail or restricted certified mail to each director of the state credit union affected.

(2) If the superintendent finds that the accused has violated a law, rule, or cease and desist order relating to a state credit union, or has engaged in an unsafe or unsound practice in conducting the business of a state credit union, after granting the accused a hearing before an independent administrative law judge, the superintendent in the superintendent's discretion may order that the accused be removed from office and from any position of employment with the state credit

union. The superintendent may further order that the accused not accept employment in any state credit union under the superintendent's jurisdiction without the superintendent's prior approval.

(3) A copy of the order shall be served upon the accused and upon the state credit union affected, at which time the accused shall cease to be an officer, director, employee, or committee member of the state credit union.

b. (1) If the superintendent determines that a state credit union has violated any of the provisions of this chapter, after notice and opportunity for hearing, the superintendent shall order the state credit union to correct the violation, except when the state credit union is insolvent.

(2) The superintendent may specify the manner in which the violation is to be corrected and grant the state credit union not more than sixty days within which to comply with the order.

(3) The superintendent may revoke a state credit union's certificate of approval for failure to comply with the order.

(4) If the certificate of approval has been revoked, the superintendent may apply to the district court of the county in which the state credit union is located for the appointment of a receiver for the state credit union.

2. *Summary cease and desist order.*

a. (1) If it appears to the superintendent that a state credit union, or any director, officer, employee, or committee member of a state credit union, is engaging in or is about to engage in an unsafe or unsound practice or dishonest act in conducting the business of the state credit union that is likely to cause insolvency or substantial dissipation of assets or earnings of the state credit union, or is likely to seriously weaken the condition of the state credit union or otherwise seriously prejudice the interests of its members, the superintendent may issue an interim summary cease and desist order requiring the state credit union, or any director, officer, employee, or committee member, to cease and desist from any such practice or act, and may take affirmative action, including suspension of the director, officer, employee, or committee member to prevent such insolvency, dissipation, condition, or prejudice.

(2) The interim order shall become effective upon personal service upon the state credit union, or upon the director, officer, employee, or committee member of the state credit union, and remain effective and enforceable pending the completion of administrative proceedings conducted pursuant to this section and issuance of a final order.

b. (1) The interim order shall contain a concise statement of the facts constituting the alleged unsafe or unsound practice or alleged dishonest act, and shall fix a time and place at which a hearing will be held to determine whether a final order to cease and desist should issue against the state credit union, or any director, officer, employee, or committee member.

(2) The hearing shall be fixed for a date not later than thirty days after service of the interim order unless a later date is set at the request of the party served.

(3) If the state credit union, or the director, officer, employee, or committee member, fails to appear at the hearing, the state credit union, or the director, officer, employee, or committee member, is deemed to have consented to the issuance of a final cease and desist order.

(4) In the event of such consent, or if upon the record made at the hearing the superintendent finds that any unsafe or unsound practice or dishonest act specified in the interim order has been established, the superintendent may issue and serve upon the state credit union, or the director, officer, employee, or committee member, a final order to cease and desist from any such practice or act. The order may require the state credit union, or the director, officer, employee, or committee member, to cease and desist from any such practice or act and direct affirmative action, including suspension of the director, officer, employee, or committee member.

c. (1) A hearing provided for in this section shall be presided over by an administrative law judge appointed in accordance with section 17A.11.

(2) The hearing shall be private, unless the superintendent determines after full consideration of the views of the party afforded the hearing, that a public hearing is necessary to protect the public interest.

(3) After the hearing, and within thirty days after the case has been submitted for decision, the superintendent shall review the proposed order of the administrative law judge and render a final decision, including findings of fact upon which the decision is predicated, and issue and serve upon each party to the proceeding an order consistent with this section.

(4) Records and information relating to the hearing shall be confidential and not subject to subpoena. Such records and information shall not constitute a public record subject to examination or copying under chapter 22.

d. Any final order issued by the superintendent shall become effective upon service upon the state credit union, director, officer, employee, or committee member.

e. In the case of violation or threatened violation of, or failure to obey, an order, the superintendent may apply to the district court of the county in which the state credit union has its principal place of business for the enforcement of the order and such court shall have jurisdiction and power to order and require compliance with the order.

f. (1) Within ten days after a state credit union or any director, officer, employee, or committee member is served with a summary cease and desist order, the state credit union or director, officer, employee, or committee member affected may ap-

ply to the district court in the county in which the state credit union has its principal place of business for an injunction setting aside, limiting, or suspending the enforcement, operation, or effectiveness of the interim order pending the completion of administrative proceedings.

(2) If serious prejudice to the interests of the superintendent, the state credit union, or the officer, director, employee, or committee member would result from a court hearing, the court may order the judicial proceeding to be conducted in camera.

2007 Acts, ch 174, §68  
NEW section

### **533.502 Grounds for management of state credit union by superintendent.**

1. Notwithstanding any other provision of this chapter, the superintendent may take over the management of the property and business of a state credit union when it appears to the superintendent that any of the following actions have occurred or conditions exist:

*a.* The state credit union has violated any law of this state.

*b.* The capital of the state credit union is impaired.

*c.* The state credit union is conducting its business in an unsafe or unsound manner.

*d.* The state credit union is in such condition that it is unsound, unsafe, or inexpedient for it to transact business.

*e.* The state credit union has suspended or refused payment of its deposits or other liabilities.

*f.* The state credit union refuses to make its records available to the superintendent for examination or otherwise refuses to make available, through an officer or employee having knowledge, information required by the superintendent for the proper discharge of the duties of the superintendent's office.

*g.* The state credit union neglects or refuses to observe any order of the superintendent made pursuant to the provisions of this chapter, unless the enforcement of such order is stayed in a court proceeding brought by the state credit union.

*h.* The state credit union has not transacted any business or performed any of the duties contemplated by its authorization to do business for a period of at least one hundred eighty days.

2. The superintendent shall thereafter manage the property and business of the state credit union until such time as the superintendent may relinquish to the state credit union the management, upon such conditions as the superintendent may prescribe, or until the affairs of the state credit union are finally dissolved as provided in this chapter.

3. Judicial review of the actions of the superintendent may be sought in accordance with chapter 17A. However, the contested case provisions of chapter 17A, the Iowa administrative procedure

Act, do not apply to an action by the superintendent to take over the management of or to manage a state credit union, as authorized by this section.

2007 Acts, ch 174, §69  
NEW section

### **533.503 Superintendent as receiver.**

1. In all situations in which the superintendent has been appointed as receiver as provided in this chapter, the superintendent shall make a diligent effort to collect and realize on the assets of the state credit union, and shall make distribution of the proceeds from time to time to those entitled in the order provided for by law.

*a.* The superintendent may execute as receiver, or after the receivership has terminated, assignments, releases, and satisfactions to effectuate sales and transfers.

*b.* Upon the order of the court in which the receivership is pending, the superintendent may sell or compound all bad or doubtful debts.

*c.* Upon the order of the court in which the receivership is pending, the superintendent may sell all the real and personal property of the state credit union, on such terms as the court shall direct.

2. All expenses of the receivership and dissolution shall be determined by the superintendent, subject to the approval of the district court, and shall be paid out of the assets of the state credit union.

3. At the completion of the receivership, the superintendent shall file a final report which shall contain details of receivership activity and such additional facts as the court may require.

4. *a.* Upon the submission and approval of the final report, the court shall enter a decree dissolving the state credit union and discharging the receiver, at which time the existence of the state credit union shall cease.

*b.* The clerk of the district court shall file and record certified copies of the decree with the county recorder of the county in which the state credit union has its principal place of business and with the county recorder of the county in which its original articles of incorporation were filed and recorded. A fee shall not be charged by the county recorder for the filing or recording of such decree.

2007 Acts, ch 174, §70  
NEW section

### **533.504 Tender of receivership to insurance plan.**

1. *a.* The superintendent may tender to the administrator of an account insurance plan approved under this chapter the appointment as receiver for an insured state credit union.

*b.* If the insurance plan administrator accepts the appointment as receiver, the rights of the members and other creditors of the insured state credit union shall be determined in accordance with the laws of this state and the insurance plan administrator shall comply with all applicable provisions of this chapter.

2. The administrator of an account insurance plan as receiver shall possess the powers, rights, and privileges given to the superintendent as provided by law.

3. If the administrator of an account insurance plan pays or makes available for payment the insured liabilities of a state credit union, the administrator shall be subrogated by operation of law to all rights of the members against the insured state credit union in the same manner and to the same extent as subrogation is provided for in applicable laws in the case of a closed federal credit union.

2007 Acts, ch 174, §71  
NEW section

### **533.505 Subpoena — contempt.**

1. The superintendent or the superintendent's designee may subpoena witnesses, compel their attendance, administer an oath, examine any person under oath, and require the production of any relevant record during the period of examination.

2. An examination may be conducted on any subject relating to the duties imposed upon or powers vested in the superintendent.

3. Whenever a person subpoenaed pursuant to subsection 1 fails to produce a record or to give testimony as required by the terms of the subpoena, the superintendent may apply to the district court of Polk county for the enforcement of the subpoena or the issuance of an order compelling compliance.

4. The refusal of any person to obey an order of the district court issued pursuant to subsection 1,\* without reasonable cause, shall be considered a contempt of court.

2007 Acts, ch 174, §72  
\*Subsection 3 probably intended; corrective legislation is pending  
NEW section

### **533.506 Limitation of actions.**

1. All causes of action against a state credit union based upon a claim or claims inconsistent with an entry or entries in a state credit union record or ledger, made in the regular course of business, shall be deemed to have accrued, and shall accrue, one year after the date of such entry or entries.

2. An action founded upon such a cause shall not be brought after the expiration of ten years from the date of such accrual.

2007 Acts, ch 174, §73  
NEW section

### **533.507 False statements for credit — fraudulent practice.**

A person who knowingly makes or causes to be made, directly or indirectly, any false statement in writing, or who procures, knowing that a false statement in writing has been made concerning

the financial condition or means or ability to pay of such person or any other person in which such person is interested or for whom such person is acting with the intent that such statement shall be relied upon by a state credit union for the purpose of procuring the delivery of property, the payment of cash, or the receipt of credit in any form, for the benefit of such person or of any other person in which such person is interested or for whom such person is acting, is guilty of a fraudulent practice.

2007 Acts, ch 174, §74  
NEW section

### **533.508 False statements — penalties.**

1. A director, officer, or employee of a state credit union shall not intentionally publish, disseminate, or distribute any advertising or notice containing any false, misleading, or deceptive statements concerning rates, terms, or conditions on which loans are made, or deposits or share installments are received, or concerning any charge which the state credit union is authorized to impose pursuant to this chapter, or concerning the financial condition of the state credit union. Any director, officer, or employee of a state credit union who violates the provisions of this section is guilty of a fraudulent practice.

2. Any person who maliciously or with intent to deceive makes, publishes, utters, repeats, or circulates any false statement concerning any state credit union which imputes or tends to impute insolvency, unsound financial condition or financial embarrassment, or which may tend to cause or provoke or aid in causing or provoking a general withdrawal of deposits from such state credit union, or which may otherwise injure or tend to injure the business or goodwill of such state credit union, is guilty of a simple misdemeanor.

2007 Acts, ch 174, §75  
NEW section

### **533.509 Penalty for falsification.**

A director, officer, agent, or employee of a state credit union, a credit union service organization, or any other person who knowingly signs, makes, or consents to another person making any false statement or false entry in the books of the state credit union or credit union service organization, or knowingly signs, makes, or consents to the making of any false report regarding a state credit union or credit union service organization, or knowingly diverts the funds of the state credit union, is guilty of a class "C" felony and is forever after barred from holding any office or position in a state credit union or credit union service organization.

2007 Acts, ch 174, §76  
NEW section

## CHAPTER 533A

### DEBT MANAGEMENT

#### 533A.2 Licenses required — exceptions.

1. A person shall not engage in the business of debt management in this state without a license as provided for in this chapter unless exempt under subsection 2. A person engages in the business of debt management in this state if the person solicits to provide, or enters into a contract with one or more debtors to provide debt management to a debtor who resides in this state.

2. The following persons, including employees of such persons, shall not be required to be licensed when engaged in the regular course of their respective businesses and professions:

- a. Attorneys at law.
- b. Banks, savings and loan associations, credit unions, mortgage bankers and mortgage brokers licensed or registered under chapter 535B, insurance companies and similar fiduciaries, regulated loan companies licensed under chapter 536, and industrial loan companies licensed under chapter 536A, authorized and admitted to transact business in this state and performing credit and financial adjusting in the regular course of their principal business, or while performing an escrow function.
- c. Abstract companies, while performing an escrow function.
- d. Employees of licensees under this chapter.
- e. Judicial officers or others acting under court orders.
- f. Nonprofit religious, fraternal, or cooperative organizations offering to debtors gratuitous debt-management service.
- g. Those persons whose principal business is the origination of first mortgage loans on real estate for their own portfolios or for sale to institutional investors.

3. The application for a license shall be in the form prescribed by the superintendent. If the applicant is not a natural person, a copy of the legal documents creating the applicant shall be filed with the application. The application shall contain all of the following:

- a. The name of the applicant.
- b. If the applicant is not a natural person, the type of business entity of the applicant and the date the entity was organized.
- c. The address where the business is to be conducted, including information as to any branch office of the applicant.
- d. The name and resident address of the applicant's owner or partners, or, if a corporation, association, or agency, of the members, shareholders, directors, trustees, principal officers, managers, and agents.
- e. Other pertinent information as the superin-

tendent may require, including a credit report.

4. Each application shall be accompanied by a bond to be approved by the superintendent in favor of the people of the state of Iowa in the penal sum of twenty-five thousand dollars for each office, and conditioned that the obligor will not violate any law pertaining to such business and upon the faithful accounting of all moneys collected upon accounts entrusted to such person engaged in debt management, and their employees and agents for the purpose of indemnifying debtors for loss resulting from conduct prohibited by this chapter. The aggregate liability of the surety to all debtors doing business with the office for which the bond is filed shall, in no event, exceed the penal sum of such bond. The surety on the bond shall have the right to cancel such bond upon giving thirty days' notice to the superintendent and thereafter shall be relieved of liability for any breach of condition occurring after the effective date of the cancellation. A person shall not engage in the business of debt management until a good and sufficient bond is filed in accordance with the provisions of this chapter.

5. Each applicant shall furnish with the application a copy of the contract the applicant proposes to use between the applicant and the debtor, which shall contain a schedule of fees to be charged the debtor for the applicant's services.

6. At the time of making the application the applicant shall pay to the superintendent the sum of two hundred fifty dollars as a license fee for each of the applicant's offices and an investigation fee in the sum of one hundred dollars. A separate application shall be made for each office maintained by the applicant.

2007 Acts, ch 126, §92  
Subsection 3 amended

#### 533A.5 Renewal.

1. To continue in the business of debt management, each licensee shall annually apply on or before June 1 to the superintendent for renewal of its license. The superintendent may assess a late fee of ten dollars per day for applications submitted and accepted for processing after June 1.

2. The renewal application shall be on the form prescribed by the superintendent and shall be accompanied by a fee of two hundred fifty dollars. A separate renewal application shall be made for each office maintained by the applicant.

2007 Acts, ch 126, §93  
Subsection 1 amended

#### 533A.9A Donations.

A donation shall not be charged to a debtor or creditor, deducted from a payment to a creditor,

deducted from the debtor's account, or deducted from payments made to the licensee pursuant to the debt management contract. If a licensee requests a donation from a debtor, the licensee must clearly indicate that any donation is voluntary and not a condition or requirement for providing debt management.

2007 Acts, ch 126, §94  
Section amended

#### **533A.10 Examination of licensee — records.**

1. The superintendent may examine the condition and affairs of a licensee. In connection with any examination, the superintendent may examine on oath any licensee, and any director, officer, employee, customer, creditor, or stockholder of a licensee concerning the affairs and business of the licensee. The superintendent shall ascertain whether the licensee transacts its business in the manner prescribed by the law and applicable rules. The licensee shall pay the cost of the examination as determined by the superintendent based on the actual cost of the operation of the finance bureau of the banking division of the department of commerce, including the proportionate share of the administrative expenses in the operation of the banking division attributable to the finance bureau, as determined by the superintendent, incurred in the discharge of duties imposed upon the superintendent by this chapter. Failure to pay the examination fee within thirty days of receipt of demand from the superintendent shall subject the li-

ensee to a late fee of up to five percent per day of the amount of the examination fee for each day the payment is delinquent.

2. In the investigation of alleged violations of this chapter, the superintendent may compel the attendance of any person or the production of any books, accounts, records and files, and may examine under oath all persons in attendance.

3. Except as otherwise provided by this chapter, all papers, documents, examination reports and other writings relating to the supervision of licenses are not public records and are not subject to disclosure under chapter 22. The superintendent may disclose information to representatives of other state or federal regulatory authorities. The superintendent may release summary complaint information as long as the information does not specifically identify the complainant. The superintendent may prepare and circulate reports reflecting financial information examination results for all licensees on an aggregate basis, including other information considered pertinent to the purpose of each report for general statistical information. The superintendent may prepare and circulate reports provided by law. The superintendent may release the reports and correspondence in the course of an enforcement proceeding or a hearing held by the superintendent and may provide this information to the attorney general for purposes of enforcing this chapter or the consumer fraud Act, section 714.16.

2007 Acts, ch 170, §4  
NEW subsection 3

## CHAPTER 533C

### UNIFORM MONEY SERVICES ACT

#### **533C.103 Exclusions.**

This chapter does not apply to:

1. The United States or a department, agency, or instrumentality thereof.
2. A money transmission by the United States postal service or by a contractor on behalf of the United States postal service.
3. A state, county, city, or any other governmental agency or governmental subdivision of a state.
4. The following entities whether chartered or organized under the laws of a state or of the United States: a bank, bank holding company, savings and loan association, savings bank, credit union, office of an international banking corporation, branch of a foreign bank, corporation organized pursuant to the federal Bank Service Company Act, 12 U.S.C. § 1861 – 1867, or corporation organized under the federal Edge Act, 12 U.S.C. § 611 – 633.
5. Electronic funds transfer of governmental benefits for a federal, state, county, or government-

tal agency by a contractor on behalf of the United States or a department, agency, or instrumentality thereof, or a state or governmental subdivision, agency, or instrumentality thereof.

6. A board of trade designated as a contract market under the federal Commodity Exchange Act, 7 U.S.C. § 1 – 25, or a person that, in the ordinary course of business, provides clearance and settlement services for a board of trade to the extent of its operation as or for such a board.

7. A registered futures commission merchant under the federal commodities laws to the extent of its operation as such a merchant.

8. A person that provides clearance or settlement services pursuant to a registration as a clearing agency or an exemption from such registration granted under the federal securities laws to the extent of its operation as such a provider.

9. An operator of a payment system to the extent that it provides processing, clearing, or settlement services, between or among persons excluded by this section, in connection with wire trans-

fers, credit card transactions, debit card transactions, stored-value transactions, automated clearing house transfers, or similar funds transfers.

10. A person registered as a securities broker-dealer under federal or state securities laws to the extent of its operation as such a broker-dealer.

11. A delayed deposit services business as defined in chapter 533D.

12. A real estate broker or salesperson as defined in chapter 543B.

13. Pari-mutuel wagering, racetracks, excursion gambling boats, and gambling structures as provided in chapters 99D and 99F.

14. A person engaging in the business of debt management that is licensed or exempt from licensing pursuant to section 533A.2.

15. An insurance company organized under chapter 508, 514, 514B, 515, 518, 518A, or 520, or authorized to do the business of insurance in Iowa to the extent of its operation as an insurance company.

16. An insurance producer as defined in section 522B.1 to the extent of its operation as an insurance producer.

2007 Acts, ch 188, §20  
Subsection 13 amended

## CHAPTER 533D

### DELAYED DEPOSIT SERVICES

#### **533D.6 Continued operation after change in ownership — approval of superintendent required.**

1. The prior written approval of the superintendent is required for the continued operation of a delayed deposit services business whenever a change in control of a licensee is proposed. The person requesting such approval shall pay to the superintendent a fee of one hundred dollars. Control in the case of a corporation means direct or indirect ownership of, or the right to control, ten percent or more of the voting shares of the corporation, or the ability of a person to elect a majority of

the directors or otherwise effect a change in policy. Control in the case of any other entity means any change in the principals of the organization, whether active or passive. The superintendent may require information deemed necessary to determine whether a new application is required. Costs incurred by the superintendent in investigating a change of control request shall be paid by the person requesting such approval.

2. A license issued pursuant to this chapter is not transferable or assignable.

2007 Acts, ch 22, §94  
Subsection 1 amended

## CHAPTER 534

### SAVINGS AND LOAN ASSOCIATIONS

#### **534.102 Definitions.**

When used in this chapter, the following words and phrases shall have the following meanings, except to the extent that any such word or phrase is specifically qualified by its context:

1. “*Administrator*” means the person designated in section 537.6103.

2. “*Association*” or “*state association*” means a corporation holding a certificate of authority to operate under this chapter as either a mutual association or a stock association.

3. “*Association holding company*” means a person other than an individual that directly or indirectly owns, controls or votes more than twenty-five percent of any class of voting stock of a stock association or that controls in any manner the election of a majority of the directors of a stock association or mutual association.

4. “*Bank*” means any person who is authorized under chapter 524 to engage in the business of

banking in this state.

5. “*Bank holding company*” means a bank holding company as defined in section 524.1801 that is authorized under chapter 524, division XVIII, to do business in this state as a bank holding company.

6. “*Dividend*” shall mean that part of the net earnings of an association which is declared payable on share accounts from time to time by the board of directors and is the cost of savings money to the association.

7. “*Federal association*” means a corporation operating under the federal Home Owners’ Loan Act, 12 U.S.C. § 1461 et seq., as amended, as either a mutual association or a stock association.

8. “*Foreign association*” means a building and loan or savings and loan association, incorporated by the laws of another state or country, which as of January 1, 1984, did not have an office, agency, or agent operating in this state.



9. “*Gross income*” shall mean the sum for an accounting period of the following:

- a. Operating income.
- b. Real estate income.
- c. All profits actually received during such accounting period from the sale of securities, real estate or other property.
- d. Other nonrecurring income.

10. “*Home loan*” shall mean a real estate loan on a dwelling or dwellings for not more than four families, the principal use of which is for residential purposes. A “*home*” is the same as “*home property*” and constitutes the homestead of the owner. A home on a farm is a home.

11. “*Impaired condition*” shall mean a condition in which the assets of an association do not have an aggregate value equal to the aggregate amount of liabilities of the association to its creditors, its members and all other persons.

12. “*Insured*”, when used in conjunction with the words “*association*”, “*state association*”, “*foreign association*”, or “*federal association*”, means an institution whose deposits are insured in part by the savings association insurance fund of the federal deposit insurance corporation or another insurance plan approved by the superintendent.

13. “*Insured mortgage*” is a mortgage covered in part by insurance.

14. “*Member*” shall mean a person owning a share account of an association, and a person borrowing from or assuming or obligated upon a loan held by an association, or purchasing property securing a loan held by an association and any contract purchaser from the association. A joint and survivorship relationship, whether of investors or borrowers, constitutes a single membership.

15. “*Mutual association*” means a corporation organized on a mutual ownership basis without shareholders.

16. “*Net earnings*” shall mean gross income for an accounting period less the aggregate of the following:

- a. Operating expenses.
- b. Real estate expenses.
- c. All losses actually sustained during such accounting period from the sale of securities, real estate or other property, or such portion of such losses as shall not have been charged to reserves, pursuant to the provisions of this chapter.
- d. All interest paid, or due but unpaid, on borrowed money.
- e. Other nonrecurring income.

17. “*Operating expenses*” shall mean all expenses actually paid, or due but unpaid, by an association during an accounting period, excluding the following:

- a. Real estate expenses.
- b. Other nonrecurring charges.

That portion of prepaid expenses which is not apportionable to the period may be excluded from operating expenses, in which event operating expenses for future periods shall exclude that por-

tion of such prepaid expenses apportionable thereto.

18. “*Operating income*” shall mean all income actually received by an association during an accounting period, excluding the following:

- a. Foreclosed real estate income.
- b. Other nonrecurring income.

19. “*Real estate expenses*” shall mean all expenses actually paid, or due but unpaid, in connection with the ownership, maintenance, and sale of real estate (other than office building or buildings and real estate held for investment) by an association during an accounting period, excluding capital expenditures and losses on the sale of real estate.

20. “*Real estate income*” shall mean all income actually received by an association during an accounting period from real estate owned (other than from office building or buildings and real estate held for investment) excluding profit from sales of real estate.

21. “*Real estate loan*” shall mean any loan or other obligation secured by real estate, whether in fee or in a leasehold extending or renewable automatically for a period of at least fifty years or ten years beyond the maturity date of the loan.

22. “*Regular lending area*” shall mean the entire area within this state and an area which is outside this state and which is within one hundred miles from any approved office.

23. “*Savings account*” means a deposit account in a stock association or mutual association or a withdrawable share account or time share account in a mutual association.

24. “*Savings liability*” shall mean the aggregate amount of share accounts of members, including dividends credited to such accounts, less redemptions and withdrawals.

25. “*Service corporation*” means a corporation which is organized under chapter 490 and which is owned in any part by one or more state associations or federal associations or a combination of these.

26. “*Share account or shares*” shall mean that part of the savings liability of the association which is credited to the account of the holder thereof.

27. “*Stock association*” means a corporation owned by shareholders.

28. “*Superintendent*” means the superintendent of savings and loan associations appointed pursuant to section 534.401.

29. “*Supervised financial organization*” as defined and used in the Iowa consumer credit code, chapter 537, includes a person organized pursuant to this chapter.

30. “*Supervised organization*” means an association, association holding company, service corporation, licensed foreign association, or a subsidiary of an association, holding company, service corporation, or licensed foreign association.

31. “*Withdrawal value*” shall mean the

amount credited to a share account of a member, less lawful deductions therefrom, as shown by the records of the association.

2007 Acts, ch 88, §18, 19  
Subsections 7 and 13 amended

### 534.103 General powers.

Every such association shall have the following general powers:

1. *General corporate power.* To sue and be sued, complain and defend in any court of law or equity; to purchase, acquire, hold, and convey real and personal estate consistent with its objects and powers; to mortgage, pledge, or lease any real or personal estate owned by the association and to authorize a pledgee to repledge the property; to take property by gift, devise, or bequest; to have a corporate seal, which may be affixed by imprint, facsimile, or otherwise; to appoint officers, agents, and employees as its business requires and allow them suitable compensation; to provide for life, health, and casualty insurance for its officers and employees and to adopt and operate reasonable bonus plans and retirement benefits for the officers and employees to enter into payroll savings plans; to adopt and amend bylaws; to insure its accounts with the federal deposit insurance corporation and qualify as a member of a federal home loan bank; to become a member of, deal with, or make contributions to any organization to the extent that the organization assists in furthering or facilitating the association's purposes or powers and to comply with conditions of membership; to accept savings as provided in this chapter together with other powers otherwise expressly provided for in this chapter, together with implied powers as reasonably necessary for the purpose of carrying out the express powers granted in this chapter.

2. *Fiscal agent.* Any such association which is a member of a federal home loan bank shall have power to act as fiscal agent of the United States and, when designated for the purpose by the secretary of the treasury, it shall perform under such regulations as the secretary may prescribe all such reasonable duties as fiscal agent of the United States as the secretary may require, and shall have power to act as agent for any United States government instrumentality. An association may also handle travelers checks and money orders.

3. *Lock boxes.* Any association may own and rent to its members lock boxes for storage or safekeeping of securities and valuables.

4. *Power to borrow.* Except as provided by its articles of incorporation, an association may borrow not more than an aggregate amount equal to its savings liability on the date of borrowing. A subsequent reduction of savings liability shall not affect in any way outstanding obligations for borrowed money. All loans and advances may be secured by property of the association. In addition to the above unsecured or secured borrowing, an

association may issue notes, bonds, debentures and other obligations or securities approved by the superintendent, and if authorized by the regulations of the federal office of thrift supervision. However, the obligations and securities are subject to the priority of the rights of the owners of the savings and deposits of the association.

5. *Service corporations.* Any association may organize and own, alone or with any other similar corporation, a service corporation for the mutual good of the associations. The superintendent shall have the right to examine service corporations.

6. *Limited trust powers.* An association incorporated under this chapter may act as trustee for trusts which are created or organized in the United States, and which form part of a stock bonus, pension, or profit sharing plan which qualifies for special tax treatment under section 401(d) or subsection (a) of section 408 of the Internal Revenue Code, as amended, or as trustee with no active fiduciary duties, if the funds of the trust are invested only in savings accounts or deposits in the association or in obligations or securities issued by the association. All funds held in such a fiduciary capacity by an association may be commingled for appropriate purposes of investment, but individual records shall be kept by the fiduciary for each participant and shall show in proper detail all transactions engaged in under the authority of this subsection.

The superintendent is authorized to grant by special permit to an association the right to act as trustee, executor, administrator, guardian, or in any other fiduciary capacity. However, this authority is available only for periods of time when federally chartered savings and loan associations operating in this state are granted similar authority, and the state authorization is subject to the rights and limitations established in rules adopted by the superintendent, which shall be consistent with the rights and limitations for federally chartered associations engaged in this type of activity.

7. *Tax and loan accounts.* To act as depository for receipt of payments of federal or state taxes and loan funds from persons other than the state or subdivisions, agencies or instrumentalities of the state, and satisfy any federal or state statutory or regulatory requirements in connection therewith, including pledging of assets as collateral, payment of earnings at prescribed rates and, notwithstanding any other provision of this chapter, issuing such accounts subject to the right of immediate withdrawal.

8. *Leasing of personal property.* To acquire, upon the specific request of and for the use of a customer, and lease, personal property pursuant to a binding arrangement for the leasing of the property to the customer upon terms requiring payment to the association, during the minimum period of the lease, of rentals which in the aggregate, when added to the estimated tax benefits to the associa-

tion resulting from the ownership of the leased property plus the estimated residual market value of the leased property at the expiration of the initial term of the lease, will be at least equal to the total expenditures by the association for, and in connection with, the acquisition, ownership, maintenance, and protection of the property. A lease made under authority of this section shall be made pursuant to personal property lease guidelines approved by the superintendent for use by the lessor association or pursuant to a personal property lease guideline rule of general applicability for use by all associations.

9. *Electronic transactions.* Engage in any transaction otherwise permitted by this chapter and applicable law, by means of either the direct transmission of electronic impulses to or from the association or the recording of electronic impulses or other indicia of a transaction for delayed transmission to the association. Subject to the provisions of chapter 527, an association may utilize, establish or operate, alone or with one or more other associations, banks incorporated under the provisions of chapter 524 or federal law, credit unions incorporated under the provisions of chapter 533 or federal law, corporations licensed under chapter 536A, or third parties, the satellite terminals permitted under chapter 527, by means of which the association may transmit to or receive from any member electronic impulses constituting transactions pursuant to this subsection. However, such utilization, establishment or operation shall be lawful only when in compliance with chapter 527. Nothing in this subsection shall be construed as authority for any association or other person to engage in transactions not otherwise permitted by applicable law, nor shall anything in this subsection be deemed to repeal, replace or in any other way affect any applicable law or rule regarding the maintenance of or access to financial information maintained by any association.

10. *Automatic authorization.* Any association may have the right to participate in any new or additional powers or activities hereafter granted to such association under this chapter immediately upon the effective date of such additional authority, if authorized by the articles of incorporation of such association.

2007 Acts, ch 88, §20 – 22  
Subsections 1, 4, and 8 amended

#### **534.105 Defamation of institutions — penalty.**

Whoever maliciously or with intent to deceive makes, publishes, utters, repeats, or circulates any false report concerning any savings and loan association which imputes or tends to impute, insolvency or unsound financial condition or financial embarrassment, or which may tend to cause or provoke or aid in causing or provoking a general withdrawal of funds from such association, or which may otherwise injure or tend to injure the

business or goodwill of such savings and loan association, shall be guilty of a serious misdemeanor.

2007 Acts, ch 88, §23  
Section amended

#### **534.108 Financial statement — reports.**

Every association shall file with the superintendent all monthly, quarterly, and annual reports required by and filed with its federal regulator.

2007 Acts, ch 88, §24  
Section amended

**534.109 Effect of changes in law.** Repealed by 2007 Acts, ch 88, § 46.

#### **534.111 Rights of federal associations — reciprocity.**

1. Every federal savings and loan association incorporated under the Home Owners' Loan Act, 12 U.S.C. § 1461 et seq., as amended, and the holders of share accounts issued by any such association have all the rights, powers, and privileges and are entitled to the same exemptions and immunities, as savings and loan associations organized under the laws of this state and members thereof are entitled.

2. Every association organized under this chapter has all the rights, powers, and privileges not in conflict with the laws of this state, which are conferred upon federal savings and loan associations by the Home Owners' Loan Act, and conferred by regulations adopted by the federal housing finance board and the federal office of thrift supervision.

2007 Acts, ch 88, §25  
Section amended and editorially renumbered

**534.113 References to United States Code and regulations.** Repealed by 2007 Acts, ch 88, § 47.

#### **534.205 Required real estate loan practices.**

Real estate loans must meet the following requirements:

1. *Appraisal.* A qualified person shall conduct an inspection of the property securing the loan and submit a signed appraisal of the market value of that property. However, an appraisal is only required if the loan is secured by a first lien. An appraisal must conform to the standards promulgated by the federal office of thrift supervision as mandated by Title XI of the federal Financial Institutions Reform, Recovery, and Enforcement Act of 1989.

2. *Note.* A note shall be signed by the borrower and delivered to the association.

3. *Lien.* The loan shall be secured by a mortgage, deed of trust or similar instrument constituting a lien or claim upon real estate. Such instrument shall provide for the full protection of the

association in the event of default.

4. *Payment terms.* The loan shall provide for repayment upon those terms set forth in the note signed by the borrower.

5. *Loan settlement statement.* The borrower shall receive a statement setting forth in detail the charges and fees the borrower has paid or is obligated to pay in connection with the loan.

6. *Balloon payments.* An association shall mail to the borrower an offer to refinance a balloon payment under a loan at least twenty days before the balloon payment date if at that time no payments under the loan are delinquent. The offer shall be at an interest rate no greater than one percent per annum above the index rate and with monthly payments no greater than those necessary to fully amortize the amount of the balloon payment plus interest over a term which, when added together with the term representing the number of monthly payments made before the most recent notice to refinance, is not less than the original loan term. The association must offer to the borrower a term of at least one year before the next balloon payment. If the balloon payment is due one month after the preceding monthly payment date, the association may require the borrower to make a payment equal to the preceding monthly payment on the balloon payment date if the first payment under the note to refinance the balloon note is one month after the balloon payment date. The association may offer repayment plans to refinance a balloon payment in addition to the plan required by this subsection. For purposes of this subsection, "loan" means the same as defined in section 535.8, subsection 1; "balloon payment" means a payment which is more than three times as big as the mean average of the payments which precede it; and "index rate" means the national average mortgage contract rate for major lenders on the purchase of previously occupied homes which is most recently published in final form by the federal housing finance board not more than four months before the date on which the balloon payment is due, or, alternatively, a rate based upon any other independently verifiable index approved by the superintendent.

2007 Acts, ch 88, §26  
Subsection 6 amended

#### **534.213 Investment in securities and real estate.**

Every association shall have power to invest in securities and real estate as follows:

1. *General investment powers.* An association may invest without limit, except as expressly stated, in any of the following securities:

a. Obligations of, or obligations which are guaranteed as to principal and interest by, the United States or this state.

b. Stock of a federal home loan bank of which the association is eligible to be a member and any obligation or consolidated obligations of any feder-

al home loan bank or banks.

c. Stock, obligations, or other instruments of the federal national mortgage association, the government national mortgage association, the federal home loan mortgage corporation, or any successor.

d. Demand time or savings deposits, or bankers acceptances with any bank or trust company the deposits of which are insured by the federal deposit insurance corporation.

e. Stock or obligations of any corporation or agency of the United States or this state or deposits of the corporation or agency to the extent that the corporation or agency assists in furthering or facilitating the association's purposes or powers.

f. Savings accounts of any savings and loan association the deposits of which are insured by the federal deposit insurance corporation.

g. Bonds, notes, or other evidences of indebtedness which are a general obligation of a city, village, county, school district, or other municipal or political subdivision so long as the total investment under this paragraph does not exceed five percent of the assets of the association, except that any investments which are securities or obligations which are evidence of first mortgage liens on real estate are exempt from the five percent limitation.

h. Bonds or bond instruments secured by an interest in real estate.

i. Capital stock, obligations, or other securities of service corporations; however, the aggregate investment in service corporations shall not exceed ten percent of the assets of the association.

j. An open-end management investment company registered under the federal Investment Company Act of 1940, the portfolio of which is restricted to investments in which an association may invest; however, the association's total investment in the shares of any one such company shall not exceed five percent of the association's assets without prior notification of the superintendent, who may prohibit exceeding the five percent limit by order.

k. Shares or equity interests in venture capital funds which agree to invest an amount equal to at least fifty percent of the association's investment in small businesses having their principal offices within this state and having either more than one half of their assets within this state or more than one half of their employees employed within this state. An association shall not invest more than a total of five percent of its assets in investments permitted under this paragraph or paragraph "l". For purposes of this paragraph, "venture capital fund" means a corporation, partnership, proprietorship, or other entity formed under the laws of the United States, or a state, district, or territory of the United States, whose principal business is or will be the making of investments in, and the provisions of significant managerial assistance to, small businesses which meet the small business

administration definition of small business. “*Equity interests*” means limited partnership interests and other equity interests in which liability is limited to the amount of the investment, but does not mean general partnership interests or other interests involving general liability.

l. Shares or equity interests in small businesses having their principal offices within this state and having either more than one half of their assets within this state or more than one half of their employees employed within this state. The total amount of an association’s investments under this paragraph shall not exceed five percent of the association’s capital and surplus. An association shall not invest in more than twenty percent of the total capital and surplus of any one small business under this paragraph. For purposes of this paragraph, “*small business*” means a corporation, partnership, proprietorship, or other entity formed under the laws of the United States, or a state, district, or territory of the United States, which meets the appropriate small business administration definition of small business and which is principally engaged in the development or exploitation of inventions, technological improvements, new processes, or other products not previously generally available in this state or other investments which provide an economic benefit to the state; and “*equity interests*” means limited partnership interests and other equity interests in which liability is limited to the amount of investment, but does not mean general partnership interests or other interests involving general liability.

m. In addition to other investments authorized in this section, an association may invest and may continue previous investments in capital stock, obligations, or other securities of finance subsidiaries and may exercise powers with respect to finance subsidiaries to the same extent as a federal association is permitted under the Home Owners’ Loan Act, 12 U.S.C. § 1461 et seq., as amended, and regulations adopted thereunder by the federal office of thrift supervision. Investments authorized by this paragraph shall not be counted in applying the limitations on investments in service corporations in paragraph “i”.

n. In addition to other investments authorized in this section, an association may invest and may continue previous investments in capital stock, obligations, or other securities of corporations which are wholly owned by the association and which exercise only those powers which may be exercised by an association under this chapter. Investments authorized by this paragraph shall not be counted in applying the limitations on investments in service corporations in paragraph “i”.

o. Commercial paper and corporate debt securities with investment characteristics as defined by rules adopted by the superintendent.

2. *Investment in real estate.* In real estate purchased at sheriff’s sale or at any other sale,

public or private, judicial or otherwise, upon which the association has a lien or claim, legal or equitable; in real estate accepted by the association in satisfaction of any obligation; in real estate purchased for sale or improvement and sale, upon contracts, at the cost of land and improvements, when such contracts are executed concurrently with or prior to such purchase, such transactions to be subject to all the limitations herein provided with respect to real estate loans; in real estate acquired by the association in exchange for real estate owned by the association; in real estate acquired by the association in connection with salvaging the value of property owned by the association; an amount not exceeding the sum of its reserves and undivided profits in the purchase and development of real estate for the purpose of producing income or for sale or for improvement thereof and the erection of buildings thereon for sale or rental purposes. Title to all real estate shall be taken and held in the name of the association and such title shall immediately be recorded in accordance with law. No association shall invest in any loan at any time when its liquid assets are less than five percent of its savings liability, unless the superintendent shall have issued written approval.

3. *Investment in EFT organizations.* Subject to the prior approval of the superintendent, in shares in a corporation engaged in providing and operating facilities through which an association and its members may engage, by means of either the direct transmission of electronic impulses to and from the association or the recording of electronic impulses or other indicia of a transaction for delayed transmission to the association, in transactions in which the association is otherwise permitted to engage pursuant to applicable law.

4. *Deposits of funds by associations.* Funds of such associations may be deposited in any state or national bank insured by the federal deposit insurance corporation on certificate of deposit, or the usual bank pass book credit, subject to check by the proper designated officers of such association or in the federal home loan bank of the district in which Iowa is located.

5. *Investment in home office buildings.* Any such association may invest an amount not to exceed five percent of its paid-in savings liability or such additional amounts as are authorized by the superintendent in unencumbered real estate for use wholly or partly as its business office.

2007 Acts, ch 88, §27  
Investments in federally insured bonds, §636.45  
Subsection 1, paragraph m amended

### 534.301 Savings account authority.

1. *Deposit accounts.* A stock association or mutual association may receive money for deposit.

2. *Share accounts.* A mutual association may receive money to be held in withdrawable share accounts and time share accounts.

3. *NOW accounts.* An association may offer savings accounts under which the owner of the account may order or authorize the withdrawal of part or all of the savings account by means of a negotiable or nonnegotiable draft or similar instrument payable to the owner or to third parties or their order.

4. *Terms and conditions.* An association shall establish the interest rate, method of computing interest, service charges, and other terms and conditions of each type of savings account it will accept. These terms and conditions shall be consistent with this chapter, and shall be applied equally to all similar accounts. An association shall furnish a copy of the terms and conditions of a savings account upon request. An association shall give reasonable notice of any change in the terms and conditions to the owners of each type of savings account which is changed, provided that notice of changes in interest rates or methods of computing interest may be provided by posting a conspicuous notice of the change in each of the association's offices. The terms and conditions of an account established for a specified time period cannot be changed during that time period except with mutual consent or according to the original terms.

5. *Inducements.* An association may give inducements for the opening of a savings account or the making of additions to a savings account.

6. *Operating under federal rules as to deposits and interest.* A savings and loan association operating under this chapter may operate in a manner similar to federally chartered savings and loan associations regarding the use of the terms "deposit" and "interest" and with such other powers as have been authorized to federally chartered associations under the Home Owners' Loan Act, 12 U.S.C. § 1461 et seq., as amended, and as permitted under the rules and regulations of the federal housing finance board and the federal office of thrift supervision, to the extent that similar rules and regulations have been adopted by the superintendent and have been filed with the secretary of state. This subsection does not diminish or restrict the powers otherwise granted to such association by the laws of Iowa.

The adoption and filing of such rules or regulations by the superintendent shall not diminish or restrict the rights of associations which do not make the above determination.

7. *Limitation on members' savings.* Associations having assets of five hundred thousand dollars or less shall not accept from any one member savings liability of more than ten thousand dollars. Associations having assets in excess of five hundred thousand dollars shall not accept from any one member savings liability in excess of ten percent of its assets. These limitations shall not apply to share accounts issued to the United

States government, or to any other federal government agency or instrumentality.

2007 Acts, ch 88, §28  
Subsection 6 amended

### 534.302 Ownership of savings accounts.

1. *Ownership.* Savings accounts may be opened and held solely and absolutely in the person's own right by, or in trust for, any person, including an adult or minor individual, male or female, single or married, a partnership, association, fiduciary corporation, or political subdivision or public or government unit or any other corporation or legal entity. Savings accounts shall be represented only by the account of each savings account holder on the books of the association, and shall be transferable only on the books of the association and upon proper application by the transferee and upon acceptance of the transferee as a savings account holder upon terms approved by the board of directors. The association may treat the holder of record of a savings account as the owner for all purposes without being affected by any notice to the contrary unless the association has acknowledged in writing notice of a pledge of the savings account.

2. *Minors.* An association and a federal savings and loan association may issue a savings account to any minor as the sole and absolute owner of the account, and pay withdrawals and act with respect to the account on the order of the minor. Any payment or delivery of rights to any minor, or a receipt of acquittance signed by a minor, who holds a savings account, shall be a valid and sufficient release and discharge of the institution for any payment so made or delivery of right to the minor. In the case of a minor, the receipt, acquittance or other action required by the institution to be taken by the minor shall be binding upon the minor with like effect as if the minor were of full age and legal capacity. The parent or guardian of a minor shall not in the capacity of parent or guardian have the power to attach or in any manner to transfer any savings account issued to or in the name of the minor, provided, however, that in the event of the death of the minor the receipt of acquittance of either parent or of a person standing in loco parentis to the minor shall be a valid and sufficient discharge of the institution for any sum or sums not exceeding one thousand dollars in the aggregate unless the minor previously has given written notice to the institution not to accept the signature of the parent or person.

3. *Joint accounts.* When a savings account is opened in any association or federal savings and loan association in the name of two or more persons, whether minor or adult, in such form that the moneys in the account are payable to either or the survivor or survivors then the account and all additions thereto shall be the property of those

persons as joint tenants. The moneys in the account may be paid to or on the order of any one of them during their lifetimes or to or on the order of any one of the survivors of them after the death of any one or more of them upon presentation of the pass or account book or other evidence of ownership as required by the articles or bylaws of the association. The opening of the account in such form shall, in the absence of fraud or undue influence, be conclusive evidence in any act or proceedings to which either the association or the surviving party or parties is a party, of the intention of all of the parties to the account to vest title to the account and the additions thereto in the survivor or survivors. By written instructions given to the institution by all the parties to the account, the signatures of more than one of the persons during their lifetime or of more than one of the survivors after the death of any one of them may be required on any check, receipt or withdrawal order, in which case the institution shall pay the moneys in the account only in accordance with the instructions, but instructions of the parties shall not in any event limit the right of the survivor or survivors to receive the moneys in the account.

Payment of all or any of the moneys in an account as provided in the preceding paragraph of this subsection shall discharge the institution from liability with respect to the moneys so paid, prior to receipt by the institution of a written notice from any one of the parties directing the institution not to permit withdrawals in accordance with the terms of the account or the instructions. After receipt of such a notice an institution may refuse without liability to honor any check, receipt, or withdrawal order on the account pending determination of the rights of the parties. An institution paying any survivor in accordance with the provisions of this subsection shall not be liable as a result of that action for any estate, inheritance or succession taxes which may be due this state.

4. *Pledge to association of savings account in joint tenancy.* The pledge to any association or federal savings and loan association of all or part of a savings account in joint tenancy signed by that person or those persons who are authorized in writing to make withdrawals from the account shall, unless the terms of the savings account provide specifically to the contrary, be a valid pledge and transfer to the association of that part of the account pledged, and shall not operate to sever or terminate the joint and survivorship ownership of all or any part of the account.

5. *Accounts of administrators, executors, guardians, custodians, trustees and other fiduciaries.* Any association or federal savings and loan association may accept savings accounts in the name of any administrator, custodian, executor, guardian, trustee, or other fiduciary in trust for a named beneficiary or beneficiaries, or other fiduciary in trust for a specified class of unnamed beneficiaries. The fiduciary shall have power to vote

as a member as if the membership were held absolutely, to open and to make additions to, and to withdraw the account in whole or in part. The withdrawal value of the accounts, and dividends thereon, or other rights relating thereto may be paid or delivered, in whole or in part to the fiduciary without regard to any notice to the contrary as long as the fiduciary is living. The payment or delivery to the fiduciary or a receipt or acquittance signed by the fiduciary to whom payment or delivery of rights is made shall be a valid and sufficient release and discharge of the institution for the payment or delivery so made. Whenever a person holding an account in a fiduciary capacity dies and no written notice of the revocation or termination of the fiduciary relationship has been given to an institution and the institution has no notice of any other disposition of the beneficial estate, the withdrawal value of the account and dividends on the account, or other rights relating to the account may, at the option of an institution, be paid or delivered, in whole or in part, to the beneficiary or beneficiaries. Whenever an account is opened by any person, describing the person in opening the account as trustee for another, and no other or further notice of the existence and terms of a legal and valid trust than that description has been given in writing to the association, in the event of the death of the person so described as trustee, the withdrawal value of the account or any part thereof, together with the dividends or interest on the account, may be paid to the person for whom the account was thus stated to have been opened, and the account and all additions shall be the property of that person. The payment or delivery to that person, or a receipt or acquittance signed by that person for any payment or delivery shall be a valid and sufficient release and discharge of the institution for the payment or delivery so made. An institution paying a fiduciary or beneficiary in accordance with the provisions of this subsection shall not be liable as a result of that action for any estate, inheritance or succession taxes which may be due this state.

6. *Pay on death accounts.* Any association and any federal savings and loan association may issue savings accounts in the name of one or more persons with the provision that upon the death of the owner or owners the proceeds shall be the property of the person or persons designated by the owner or owners and shown by the record of the association. After payment by the institution, the proceeds shall remain subject to the debts of the decedent and the payment of Iowa inheritance tax, if any. An institution paying the person or persons designated shall not be liable as a result of that action for any debts of the decedent or for any estate, inheritance, or succession taxes which may be due this state.

7. *Powers of attorney on savings account.* Any association or federal savings and loan association may continue to recognize the authority of

an attorney authorized in writing to manage or to make withdrawals either in whole or in part from a savings account until it receives written notice or is on clear actual notice of the revocation of the attorney's authority. For the purpose of this subsection, written notice of the death or adjudication of incompetency of the savings account holder constitutes written notice of revocation of the authority of the attorney. An institution shall not be liable for damages, penalty or tax by reason of any payment made pursuant to this subsection.

8. *Savings accounts as legal investments.* Administrators, executors, custodians, guardians, trustees, and other fiduciaries of every kind and nature, insurance companies, business and manufacturing companies, banks, credit unions and all other types of financial institutions, charitable, educational, eleemosynary and public corporations and organizations, and municipalities and other public corporations and bodies, and public officials are authorized to invest funds held by them without any order of any court in share or deposit accounts or time certificates of deposit of insured savings associations which are under state supervision, or federal savings and loan associations organized under the laws of the United States and under federal supervision, and the investment shall be deemed and held to be a legal investment of the funds.

Whenever, under the laws of this state or otherwise, a deposit of securities is required for any purpose, the securities made legal investments by this subsection shall be acceptable for that deposit, and whenever, under the laws of this state or otherwise, a bond is required with security the bond may be furnished, and the securities made legal investments by this subsection in the amount of the bond, when deposited, shall be acceptable as security without other security.

The provisions of this subsection are supplemental to any and all other laws relating to and declaring what shall be legal investments for the persons, corporations, organizations, and officials referred to in this subsection and the laws relating to the deposit of securities and the making and filing of bonds for any purpose.

2007 Acts, ch 88, §29  
Subsections 2 and 3 stricken and former subsections 4 – 10 renumbered as 2 – 8

#### **534.401 Superintendent of savings and loan associations.**

1. *Superintendent of savings and loan associations.* The superintendent of savings and loan associations is the superintendent of banking.

2. *General supervisory power.* The superintendent has general supervision over all supervised organizations.

The superintendent may appoint examiners and assistants necessary to properly execute the duties of the office.

The superintendent may adopt further rules

deemed necessary to enable savings and loan associations to properly carry on the activities authorized under this chapter.

3. *Duties.* The superintendent shall, at least once every two years, cause examination and audit to be made of the affairs of every association subject to this chapter. If an association is insured under the federal deposit insurance corporation's deposit insurance fund, the superintendent may, in lieu of examination and audit, accept an examination or audit made by the federal office of thrift supervision. When, in the judgment of the superintendent, the condition of an association renders it necessary or expedient to make an extra examination or audit or to devote extraordinary attention to its affairs, the superintendent shall cause such work to be done. A copy of every examination or audit report shall be furnished to the association examined, exclusive of confidential comments made by the examiner, and a copy of every report and comments and any other information pertaining to an association may be furnished to the federal housing finance board, federal home loan bank, and federal office of thrift supervision. A copy of an examination or audit report shall be presented to the board of directors at its next regular or special meeting, their action on it shall be recorded in the minutes, and two certified copies of the minutes shall be transmitted to the superintendent.

2007 Acts, ch 88, §30  
Section amended

#### **534.403 Examinations.**

1. *Superintendent's authority — examinations.* The superintendent and examiners shall have full access to all books and papers of an association which relate to its business, and to books, records, and papers kept by an officer, director, agent, or employee relating to, or upon which any record of its business is kept, and may summon witnesses and administer oaths or affirmations in the examination of the directors, officers, agents, or employees of an association, or any other person, in relation to its affairs, transactions, and condition, and may require and compel the production of records, books, papers, contracts, or other documents by court order, if not voluntarily produced.

2. *Record required.* A record of all examinations, reports, and related information shall be kept in the superintendent's office in accordance with the superintendent's record retention policies, showing in detail as to each association all matters connected with the conduct of its business, its financial standing, and everything touching its solvency, plan of business, and integrity.

The examinations, reports, and information shall be kept confidential in the office of the superintendent, and are not subject to publication or disclosure to others except as provided in this chapter. However, the superintendent may fur-



nish any examination, report, or information to the United States department of the treasury, federal deposit insurance corporation, federal housing finance board, federal home loan bank, national credit union administration, or financial institution regulatory authorities of any state. Any evidence of felonious acts on the part of the officers, directors, or employees of an association may be referred by the superintendent to proper authorities. Members of associations, other than their officers and directors, are not entitled to inspection of any such records or information, and are not entitled to any information relative to the names of the members of an association, or the amounts invested by them, as disclosed in the superintendent's office, or in the records of an association.

3. *Revocation of authority.* If an association refuses to submit to examination, the superintendent shall revoke its certificate of authority.

2007 Acts, ch 88, §31  
Section amended

#### **534.404 Access to and release of information.**

##### 1. *Exclusiveness of access.*

a. A member may inspect the books and records of an association as they pertain to the member's loan or savings investment. Otherwise, the right of inspection and examination of the books and records is limited to the following:

(1) The superintendent or a duly authorized representative.

(2) Persons duly authorized to act for the association.

(3) A federal instrumentality or agency authorized to inspect or examine the books and records of an insured association.

b. The accounts and loans of members shall be kept confidential by the association, its directors, officers and employees, and by the superintendent and the superintendent's examiners and representatives. However, the association may, upon receipt of the written consent of a member, furnish information concerning that member's loans and savings investments to a person who the association has reason to believe intends to use the information in connection with a credit transaction involving the member on whom the information is to be furnished and involving the extension of credit to, or review or collection of an account of, the member. However, written consent of a member is not required for the release of information concerning the member's loans to any of the following:

- (1) Another association.
- (2) A federal association.
- (3) A bank.
- (4) A credit union.
- (5) An industrial loan company.
- (6) A bona fide credit bureau.

(7) A real estate broker seeking the information in connection with the closing of a loan involving a member.

(8) A person acting in a fiduciary capacity as an agent for the member.

c. A member or any other person shall not have access to the books and records except upon express action and authority of the board of directors.

d. An association shall compile prior to its annual meeting, and shall make available to any member upon request of the member, a list by name of the aggregate remuneration paid by the association during the preceding fiscal year to each of the association's five highest paid officers and to each director of the association.

2. *Communication with members.* In the event, however, that any member or members desire to communicate with other members of the association with reference to any question pending or to be presented for consideration at a meeting of the members, the association shall furnish upon request a statement of the approximate number of members of the association at the time of such request, and an estimate of the cost of forwarding such communication. The requesting member or members shall then submit the communication to the superintendent who, if the superintendent finds it to be appropriate, truthful and in the best interests of the association and all its members, shall execute a certificate setting out such findings, forward the certificate together with the communications to the association, and direct that the communication be prepared and mailed by the association to the members upon the requesting member's or members' payment to it of the expenses of such preparation and mailing.

3. *Applicability of section to federal associations.* Insofar as the provisions of this section are not inconsistent with federal law, such provisions shall apply to federal savings and loan associations whose home offices are located in this state, and to the members thereof except that the communication provided for in subsection 2 shall be submitted to the federal office of thrift supervision in the case of a federal savings and loan association and forwarded only upon the federal office of thrift supervision's certificate and direction.

2007 Acts, ch 88, §32, 33  
Subsection 1, paragraph a, subparagraph (3) amended  
Subsection 3 amended

#### **534.405 Conservatorship — operation — termination.**

1. If the superintendent, as a result of any examination or from a report made to the superintendent finds that a savings and loan association is violating a provision of its certificate of incorporation, or bylaws, or the laws of this state, or of the United States, or a lawful order of the superintendent, or is conducting its business in an unsafe manner, the superintendent may by an order direct discontinuance of the violation or unsafe practice, and conformance with all requirements of law. A conservator shall not be appointed for a sol-

vent association if a violation or unsafe practice can be corrected otherwise.

2. *a.* If an association refuses or neglects to comply with the order within the time specified in it, or if it appears to the superintendent that an association is in an unsafe condition or is conducting its business in an unsafe manner, or if the superintendent finds that an impairment of capital exists to such extent that it threatens loss to the members, or if an association refuses to submit its books, papers, and accounts to the inspection of the superintendent or the superintendent's representative, the superintendent, by written order signed by the superintendent, may appoint a conservator to take charge of the association and manage its business until the superintendent permits the board of directors to resume management of the business or reorganizes the association, or until a receiver is appointed to liquidate its affairs.

*b.* A conservator so appointed has, subject to approval of the superintendent, all the rights, powers, and privileges possessed by the officers, board of directors, and members of the association. The conservator shall not retain special counsel or other experts, or incur any expenses other than normal operating expenses, or liquidate assets, except in the ordinary course of operations. The directors and officers shall remain in office and the employees shall remain in their respective positions, but the superintendent may remove any director, officer, or employee. While the association is in the charge of a conservator, members of the association shall continue to make payments to the association in accordance with the terms of their contracts and the conservator, in the conservator's discretion, may permit members to withdraw in the ordinary course of business, or under and subject to rules the superintendent may prescribe.

*c.* The conservator may accept savings but savings received by the conservator may be segregated if the superintendent so orders in writing and if so ordered such savings are not subject to offset and shall not be used to liquidate an indebtedness of the association existing at the time the conservator was appointed for it, or any subsequent indebtedness incurred for the purpose of liquidating the indebtedness of the association existing at the time a conservator was appointed. All expenses of the association during conservatorship shall be paid by the association.

*d.* The appointment of a conservator shall be evidenced by the superintendent issuing a certificate, signed by the superintendent, delivered to the president, or the vice president, or to at least three members of the board of directors of the association, certifying that a conservator has been appointed pursuant to this section. Within six months from the date upon which the conservator takes charge of an association, the superintendent shall determine whether to restore the manage-

ment of the association to the board of directors. The determination shall be evidenced by the superintendent's certificate under the seal of the office, delivered to the president, or vice president, or to the board of directors of the association, that the conservator is redelivering the management of the association to the board of directors of the association then in office.

3. After the management of the association has been redelivered to the board of directors of an association, the association shall be managed and operated as though no conservator had been appointed. At any time prior to the redelivery of the management to the board of directors, the superintendent shall determine whether the association shall be required to reorganize. That determination shall be evidenced by a certificate, signed by the superintendent, under the seal of the office, delivered to an executive officer of the association, stating that unless the association reorganizes under the laws of this state within a period of sixty days from the date of the certificate, or within such further time as the superintendent approves, the superintendent shall liquidate the association.

4. If the association has the insurance protection provided by the federal deposit insurance corporation's deposit insurance fund, a signed and sealed copy of each order and certificate mentioned in this section shall be promptly sent by the superintendent by registered mail to the federal office of thrift supervision, Washington, D.C. and to the federal deposit insurance corporation. The superintendent may name the federal deposit insurance corporation as receiver if the superintendent has determined the need for a receivership in accordance with the provisions of this section.

5. Actions taken by the superintendent under this section are not subject to section 17A.18, subsection 3.

2007 Acts, ch 88, §34

Former unnumbered paragraph 1 divided and designated editorially as subsection 1 and subsection 2, paragraph a

Former unnumbered paragraphs 2 - 4 designated editorially as paragraphs b - d of subsection 2

Former unnumbered paragraph 5 designated editorially as subsection 3

Former unnumbered paragraph 6 amended and designated editorially as subsection 4

Former unnumbered paragraph 7 designated editorially as subsection 5

### 534.406 Receivership.

If a state savings and loan association is conducting its business illegally, or in violation of its articles of incorporation or bylaws, or is practicing deception upon its members or the public, or is pursuing a plan of business that is injurious to the interest of its members, or if its affairs are in an unsafe condition, the superintendent shall notify the directors of the association, and, if they fail to put its affairs upon a safe basis, the superintendent shall apply to the district court for the county in which the savings and loan association is located to be appointed as receiver for the savings and

loan association. The district court shall appoint the superintendent as receiver unless the superintendent has tendered the appointment to the federal deposit insurance corporation, in which case the district court shall appoint the federal deposit insurance corporation as receiver. The proceedings shall be the exclusive liquidation or insolvency proceeding and a receiver shall not be appointed in any other proceedings.

2007 Acts, ch 88, §35  
Section amended

#### 534.408 Supervisory fees.

1. A state association subject to examination, supervision, and regulation by the superintendent shall pay to the superintendent fees, established by the superintendent, based on the costs and expenses incurred in the discharge of the duties imposed upon the superintendent by this chapter. The fees shall include but are not limited to costs and expenses for salaries, expenses and travel for employees, office facilities, supplies, and equipment.

2. Failure to pay the amount of the fees to the superintendent within ten days after the date of billing shall subject the state association or any affiliate of a state association to an additional charge equal to five percent of the amount of the fees for each day the payment is delinquent.

2007 Acts, ch 88, §36  
Section stricken and rewritten

#### 534.507 Name.

The name of an association shall contain the words "savings bank" or the words "savings and loan association". An association shall not advertise or hold itself out to the public as a commercial bank. A federal savings association shall not use the word "state" in its name, trademark, or logo.

2007 Acts, ch 88, §37  
Section amended

#### 534.509 Conversions.

1. *Types authorized.* The following types of conversions are authorized:

- a. Mutual association to stock association.
- b. Stock association to mutual association.
- c. Mutual association or stock association to federal mutual association or federal stock association.
- d. Federal mutual association or federal stock association to mutual association or stock association.
- e. Stock association to a bank chartered under chapter 524.

2. *Insurance.* The organization must be either an insured association, a federal association, or an insured bank after any conversion.

3. *Plan of conversion.* The board of directors shall approve a plan of conversion by a majority vote of all directors then serving. The plan shall

include the following:

- a. The proposed restated articles of incorporation.
- b. The proposed restated bylaws.
- c. The effect of the conversion on each type of member or each class of stockholders.
- d. Other information the superintendent of savings and loan associations requires.
- e. If the conversion is to a bank, information required by the superintendent of banking.

4. *Superintendent of savings and loan associations' approval.* The plan of conversion shall be submitted to the superintendent for approval. The superintendent shall reject the plan based on any of the following determinations:

- a. The plan is inconsistent with applicable statutes or regulations.
- b. The plan does not contain all required information.
- c. The plan is inequitable to a class of members or shareholders.

The superintendent shall notify the organization which submitted the plan of the superintendent's decision, and the reasons for rejection if the plan is rejected.

5. *Superintendent of banking's approval.* The plan of conversion shall be submitted to the superintendent of banking for approval if the conversion is to a bank. The superintendent of banking shall reject the plan based on any of the following determinations:

- a. The plan is inconsistent with applicable statutes or regulations.
- b. The plan does not contain all required information.

c. The character and fitness of the members of the initial board of directors is not such as to command the confidence of the community and to warrant the belief that the organization's business will be honestly and efficiently conducted.

d. The capital structure of the organization is not adequate in relation to its anticipated business.

e. The organization will not have sufficient personnel with adequate knowledge and experience to conduct its business and administer any fiduciary accounts which it proposes to handle.

f. The plan does not provide for the closing or sale of all of the offices which must be discontinued in order for the organization to have only those home and branch offices which a bank is allowed to have under chapter 524.

The superintendent of banking shall notify the organization which submitted the plan of the superintendent's decision, and the reasons for rejection if the plan is rejected. The organization may amend and resubmit the plan in response to a notification of rejection.

6. *Member or stockholder approval.* The plan of conversion must be approved at an annual

meeting of members or stockholders, or at a special meeting called to consider the plan, by a majority vote of the members represented in person or by proxy if a mutual association or federal mutual association, or a majority vote of each class of voting stock represented in person or by proxy if a stock association or federal stock association.

If the proposed conversion is the conversion of a mutual association to a stock association, the board of directors shall cause written notice of the date, time and purpose of the meeting at which the members will be asked to vote on the proposal to be mailed by first class mail, postage prepaid, to each member of the association not less than thirty days prior to the date of the meeting, and the board shall cause a copy of this notice to be posted in a conspicuous location in each of the association's offices from the date of mailing until the date of the meeting. The notice to be mailed to members and posted also shall give notice, in a form and manner to be prescribed by rule of the superintendent, the rights of a member to have access to and communicate with other members as provided in section 534.404, subsection 2 and the procedures that are to be followed under that provision. The mailed notice may be included in an envelope containing a periodic statement of account to the member. The superintendent may require that the date for the meeting of members be postponed to a date certain, not more than thirty days after the date originally prescribed, if the superintendent determines that such additional time is necessary to enable members who have requested to communicate with other members under section 534.404, subsection 2, to properly exercise that right.

If the proposed conversion is the conversion of a stock association to any other type of entity, the board of directors shall cause written notice of the proposed conversion and the earliest date when the proposed conversion might become effective to be posted in a conspicuous location in each of the association's offices commencing thirty days prior to the date of the shareholder's meeting at which the proposal will be voted upon and until thirty days after that date.

If the plan of conversion is approved, a copy of the minutes of the meeting, certified and acknowledged by the secretary or assistant secretary, shall be filed with the superintendent.

7. *Conversion to association.* If a state association results from the plan of conversion, the superintendent shall issue a certificate of incorporation when all of the following have occurred:

a. The superintendent has received adequate assurance that the association will be an insured association upon issuance of the certificate of incorporation.

b. The superintendent has approved the plan of conversion.

c. The superintendent has received the certified minutes of approval under subsection 6.

The proposed articles of incorporation and bylaws as contained in the plan of conversion shall become effective upon the issuance of the certificate of incorporation.

8. *Conversion to federal association.* If a federal association results from the plan of conversion, the association shall cease to be an association and shall no longer be subject to the supervision and control of the superintendent when all of the following have occurred:

a. The superintendent has received a copy of the charter issued to a converting association by the federal office of thrift supervision or a certificate showing the organization of such association as a federal savings and loan association, certified by the federal office of thrift supervision.

b. The superintendent has approved the plan of conversion.

c. The superintendent has received the certified minutes of approval under subsection 6.

9. *Conversion to a bank.* If a bank results from the plan of conversion, the association shall cease to be an association and shall no longer be subject to the supervision and control of the superintendent when all of the following have occurred:

a. The superintendent has received from the superintendent of banking a certificate showing that the organization is chartered as a bank.

b. The superintendent has approved the plan of conversion.

c. The superintendent has received the certified minutes of approval under subsection 6.

10. *Certification.* The superintendent shall prepare a certificate of conversion upon the occurrence of all of the events stated in subsection 7, 8, or 9. This certificate shall include the name of the corporation which adopted the plan of conversion, the name of the corporation after the conversion, and the effective date of conversion. The original certificate shall be filed with the secretary of state. The superintendent shall provide a certified copy of the certificate to any person upon payment of a five dollar fee. A certified copy of this certificate shall be sufficient proof of that conversion for purposes of establishing the liability for debts or the ownership of assets as provided in section 534.510, subsections 2 and 3.

11. *Competition preserved.* A conversion of an association to a bank under this section shall not prevent the subsequent incorporation of another bank in the same community, and the superintendent of banking shall not find the existence of the bank resulting from the conversion to be grounds for disapproving the incorporation of another bank in the same community under section 524.305, subsection 1, paragraph "b" or "c". A conversion of an association to a bank under this section shall not prevent the subsequent incorpora-

tion of another association in the same community, and the superintendent of savings and loan associations shall not find the existence of the bank resulting from the conversion to be grounds for disapproving the incorporation of another association in the same community under this chapter.

2007 Acts, ch 88, §38  
Subsection 8, paragraph a amended

### 534.511 Merger.

1. *Merger defined.* As used in this section, the terms “merger” or “merge” means any plan by which the assets and liabilities of an entity are combined with those of one or more other entities, including transactions in which one of the corporate entities survives and transactions in which a new corporate entity is created.

2. *Types authorized.* An association may merge only with one or more other state associations, federal associations, association holding companies, bank holding companies, or banks.

3. *Plan of merger.* The board of directors of each merging entity shall approve an identical plan of merger by a majority vote of all directors then serving. The plan shall include the following:

- a. The proposed name of the surviving organization.
- b. The proposed articles of incorporation of the surviving organization.
- c. The proposed bylaws of the surviving organization.
- d. The effect of the merger on each type of member or each class of stockholders.
- e. Other information required by the superintendent.

4. *Superintendent of savings and loan associations’ approval.* The plan of merger shall be submitted to the superintendent of savings and loan associations for approval. The superintendent shall reject the plan based on any of the following determinations:

- a. The plan is inconsistent with applicable statutes or regulations.
- b. The plan does not contain all required information.
- c. The plan is inequitable to a class of members or stockholders.

The superintendent shall notify the organizations which submitted the plan of the superintendent’s decision, and the reasons for rejection if the plan is rejected.

5. a. *Superintendent of banking’s approval.* The plan of merger shall be submitted to the superintendent of banking for approval if the proposed merger is with or into a bank or bank holding company. The superintendent of banking shall reject the plan based on any of the following determinations:

- (1) The plan is inconsistent with applicable statutes or regulations.

(2) The plan does not contain all required information.

(3) The capital structure of the resulting organization will not be adequate in relation to its anticipated business.

b. The superintendent of banking shall notify the organization which submitted the plan of the superintendent of banking’s decision, and the reasons for rejection if the plan is rejected. The organization may amend and resubmit the plan in response to a notification of rejection.

6. *Member or stockholder approval.* The plan of merger must be approved at an annual meeting of members or stockholders, or at a special meeting called to consider the plan, by a majority vote of the members represented in person or by proxy of each of the mutual associations or federal mutual associations included in the plan, or a majority vote of each class of voting stock represented in person or by proxy of each of the stock associations, federal stock associations, bank holding companies or banks included in the plan. If so approved, a copy of the minutes of the meeting, certified and acknowledged by the secretary or assistant secretary, shall be filed with the superintendent.

7. *Receivership.* If a receiver has been appointed for any association included in the plan of merger, the receiver shall act in place of the board of directors and the members or stockholders, and the plan must also be approved by the court by which the receiver was appointed.

8. *Certification.* The superintendent shall prepare a certificate of merger upon the occurrence of all of the events stated in subsections 3, 4, 5, 6, and 7. This certificate shall include the name of the surviving association, federal association, or bank and the effective date of the merger. The original certificate shall be filed with the secretary of state. The superintendent shall provide a certified copy of the certificate to any person upon payment of a fee established by the superintendent. A certified copy of this certificate is sufficient proof of the merger for purposes of establishing liability for debts or the ownership of assets as provided in section 534.512, subsections 1 and 2. An association involved in a merger may transfer assets or receive assets under the plan of merger only after the certificate of merger has been issued by the superintendent.

9. *Competition preserved.* A merger under this section shall not prevent the subsequent incorporation of another bank in the community in which the merged association is located, and the superintendent of banking shall not find the merger to be grounds for disapproving the incorporation of another bank in the same community under section 524.305, subsection 1, paragraph “b” or “c”. A merger under this section shall not prevent the subsequent incorporation of another association

in the community in which the merged association is located, and the superintendent of savings and loan associations shall not find the merger to be grounds for disapproving the incorporation of another association in the same community under this chapter.

10. *Limitations.* Nothing contained in this chapter shall be construed to authorize an association to merge with or be acquired wholly or in part by a foreign institution unless all applicable laws and regulations of the United States would specifically authorize a merger with or acquisition by a foreign institution. For purposes of this subsection the term “foreign institution” means a federal association whose home office is located in another state, a bank whose home office is located in another state, or a bank holding company which is with respect to the state of Iowa an “out-of-state bank holding company” as defined or referred to in 12 U.S.C. § 1842(d), and for purposes of this subsection the words “acquire” or “acquisition” mean to directly or indirectly acquire ownership or control of more than twenty-five percent of the voting shares of any association or the power to control in any manner the election of a majority of the directors of any association.

2007 Acts, ch 88, §39, 40  
 Subsection 5, former unnumbered paragraph 1, paragraphs a – d, and unnumbered paragraph 2, editorially redesignated as paragraph a, unnumbered paragraph 1 and subparagraphs (1) – (4), and paragraph b respectively

Subsection 5, paragraph a, subparagraph (4) stricken  
 Subsection 8 amended

### 534.513 Liquidation.

1. *Voluntary liquidation.* State associations, by a vote of three-fourths of the members of such association represented in person or by proxy, may go into voluntary liquidation upon such plan as shall be determined upon by the members at their meeting.

2. *Reorganization — liquidation.* Any savings and loan association, including one in receivership, may reorganize under any plan approved by its board of directors and by the superintendent. Such reorganization may include reduction of savings credits of its member, not pledged as security for real estate loans, and may also include segregation of assets of uncertain or doubtful value by transfer thereof to trustees for management and liquidation or by transfer to a separate fund within the association, to be managed and liquidated by the association for the benefit of the members whose savings credits have been reduced in connection with such segregation.

3. *Supervision during liquidation.* During the period of voluntary liquidation of any such association, the superintendent shall have substantially the same powers and duties as to supervision as before such liquidation, and the persons in charge of such voluntary liquidation shall furnish and deposit with the superintendent such bonds as the superintendent shall require and approve,

and shall semiannually, or more often if required by the superintendent, report fully as to their doings and progress, and as to the financial condition of the association. Upon completion of such liquidation they shall file with the superintendent a verified final report of such liquidation and disbursement of proceeds and upon approval of such report the superintendent shall issue a written order discharging the liquidators, and their duties shall thereupon cease.

4. *Transfer of mortgages — maturity.* In case any such association resolves to go into voluntary liquidation, it shall have power after crediting the mortgages given by the borrowing member with the full book value of the stock, to sell and assign such mortgages to a similar association, or to any other parties who will hold the same upon the terms under which such mortgage was given to the association. In that event the said mortgage shall be held to become due, if no other time can be agreed upon between the mortgagor and the association, within three years after the assignment thereof.

2007 Acts, ch 88, §41, 42  
 Subsections 1 and 4 amended

**534.515 Unincorporated associations.** Repealed by 2007 Acts, ch 88, § 48.

**534.519 Mutual holding companies.** Repealed by 2007 Acts, ch 88, § 49.

### 534.606 Criminal offenses.

If any officer, director, or agent of any savings and loan association shall knowingly and willfully swear falsely to any statement in regard to any matter in this chapter required to be made under oath, the person shall be guilty of perjury. If any director of any such association shall vote to declare a dividend greater than has been earned; or if any officer or director or any agent or employee of any such association shall issue, utter, or offer to utter, any warrant, check, order, or promise to pay of such association, or shall sign, transfer, cancel, or surrender any note, bond, draft, mortgage, or other evidence of indebtedness belonging to such association, or shall demand, collect, or receive any money from any member or other person in the name of such association without being authorized to do so by the board of directors in pursuance of its lawful power, the person shall be guilty of a fraudulent practice; or if any such officer, director, agent, or employee shall embezzle or convert to the person's own use, or shall use or pledge for the person's own benefit or purpose, any moneys, securities, credits, or other property belonging to the association, the person shall be guilty of theft; or if the person shall knowingly do or attempt to do business for such association that has not procured and does not hold the certificate

of authority therefor as in this chapter provided, the person shall be guilty of a serious misdemeanor; or if the person shall knowingly make or cause to be made any false entries in the books of the association, or shall, with the intent to deceive any person making an examination in this chapter required to be made, exhibit to the person making the examination any false entry, paper, or state-

ment, the person shall be guilty of a fraudulent practice; or if the person shall knowingly do or solicit business for any savings and loan association which has not procured the required certificate therefor, the person shall be guilty of a serious misdemeanor.

2007 Acts, ch 88, §43  
Section amended

## CHAPTER 535B

### MORTGAGE BANKERS AND BROKERS

#### 535B.4 General licensing requirements.

1. A person shall not act as a mortgage banker or mortgage broker in this state or use the title "mortgage banker" or "mortgage broker" without first obtaining a license from the administrator.

2. License applicants shall submit to the administrator an application on forms provided by the administrator. The forms shall include, at a minimum, all addresses at which business is to be conducted, the names and titles of each director and principal officers of the business, and a description of the activities of the applicant in such detail as the administrator may require.

3. The applicant shall also submit a recently prepared certified financial statement.

4. The applicant for an initial license shall submit a fee in the amount of five hundred dollars.

5. Licenses granted under this chapter are not assignable.

6. Licenses granted under this chapter expire on the next June 30 after their issuance.

7. Applications for renewals of licenses and individual registrations under this chapter must be filed with the administrator before June 1 of the year of expiration on forms prescribed by the administrator. A renewal application must be accompanied by a fee of two hundred dollars for a license to transact business solely as a mortgage broker, and four hundred dollars for a license to transact business as a mortgage banker. The fee to renew an individual registration shall be the fee determined pursuant to section 535B.4A. The administrator may assess a late fee of ten dollars per day for applications or registrations accepted for processing after June 1.

8. A licensee shall not conduct business under any other name than that given in the license. A fictitious name may be used, but a licensee shall conduct business only under one name at a time. However, the administrator may issue more than one license to the same person to conduct business under different names at the same time upon compliance for each such additional license with all of the provisions of this chapter governing an origi-

nal issuance of a license.

2007 Acts, ch 22, §95  
Subsection 7 amended

#### 535B.11 Servicing mortgages and pay-offs.

A licensee or other mortgagee who services mortgages on residential real estate located in this state shall do all of the following:

1. Disburse required funds paid by the mortgagor and held in escrow for the payment of real estate taxes and insurance payments no later than their final due date.

2. Pay penalties incurred by the mortgagor due to the licensee's or mortgagee's failure to meet the due dates referred to in subsection 1 unless the licensee or mortgagee can show that the failure was due solely to the fact that the mortgagor received a statement of the amount due more than fifteen days before the due date and has failed to remit it to the licensee or mortgagee.

3. *a.* Perform a complete escrow analysis yearly. A clear and legible copy of the yearly analysis shall be promptly mailed to the mortgagor. If there is a change in the payment amount, the analysis shall be mailed at least twenty days before the effective date of the change. The summary shall contain all of the following information:

(1) The name and address of the mortgagee.

(2) The name and address of the mortgagor.

(3) A summary of escrow account activity during the year which includes all of the following:

(a) The balance of the escrow account at the beginning of the year.

(b) The aggregate amount of deposits to the escrow account during the year.

(c) The aggregate amount of withdrawals from the escrow account for each of the following categories:

(i) Payments against loan principal.

(ii) Payments against interest.

(iii) Payments against real estate taxes.

(iv) Payments for real property insurance premiums.

- (v) All other withdrawals.
- (d) A summary of loan principal for the year as follows:
  - (i) The amount of principal outstanding at the beginning of the year.
  - (ii) The aggregate amount of payments against principal during the year.
  - (iii) The amount of principal outstanding at the end of the year.
- b. Compliance with sections 524.905, 533.315, 534.206, and 536A.20 shall constitute compliance with this subsection.

4. Answer in writing, within ten business days of receipt, any written request for payoff information received from a mortgagor or the mortgagor's designated representative.

5. Execute and deliver a release after payoff and within forty-five days after receipt of correct payment. If the licensee or mortgagee fails to execute and deliver a release of lien to the mortgagor or the mortgagor's designated representative, the mortgagor or the mortgagor's designated representative may notify in writing the administrator and any other official to whom the mortgagee is primarily subject. The administrator shall promptly mail by certified mail to the licensee or mortgagee a notice stating that the licensee or mortgagee must both release the mortgage and deliver the release to the administrator within fifteen days of receipt of said notice or face a penalty as provided in this section. If the licensee or mortgagee fails to make the release and deliver it to the administrator, the administrator may assess a penalty not to exceed fifty dollars for each day of delinquency after the fifteen days. The administrator may waive the penalty if the administrator finds the failure was not intentional and resulted from bona fide error notwithstanding the maintenance of procedures reasonably adapted to avoid error.

6. If a person in connection with a mortgage loan has possession of an abstract of title and fails to deliver the abstract to the borrower within twenty calendar days of the borrower's request made by certified mail return receipt requested in connection with a proposed sale of the property, then the borrower may authorize the preparation of a new abstract of title to the property and the person failing to deliver the original abstract shall pay to the borrower the reasonable costs of preparation. If the borrower brings an action against the person failing to deliver to recover the payment and in the action recovers the payment, then the borrower shall also be entitled to recover attorney fees and court costs incurred in the action.

7. When the servicing of a mortgage loan is transferred, sold, purchased, or accepted by a licensee or registrant, the licensee or registrant who is transferring or selling the servicing shall issue to the mortgagor, within fifteen calendar days prior to the effective date of the transfer, a notice which shall include at a minimum:

- a. The name and address of the licensee or registrant transferring or selling the servicing.
- b. The name and address of the licensee or registrant accepting or purchasing the servicing.
- c. The effective date of the transfer.
- d. A statement concerning the effect of the transfer on the terms and conditions of the mortgage.
- e. The address where payments are to be submitted for at least the next three months.
- f. The name and address of the licensee or registrant to whom questions related to the mortgage may be addressed.

2007 Acts, ch 174, §94

Subsection 3, unnumbered paragraph 1 and paragraphs a and b redesignated editorially as paragraph a, unnumbered paragraph 1 and subparagraphs (1) and (2) respectively

Subsection 3, former paragraph c redesignated editorially as subparagraph (3) of paragraph a and former subparagraphs (1) – (3), subparagraph subdivisions (a) – (e), subparagraph (4), and subparagraph subdivisions (a) – (c), redesignated editorially as subparagraph subdivisions (a) – (c), subparagraph subdivision parts (i) – (v), subparagraph subdivision (d), and subparagraph subdivision parts (i) – (iii) respectively of paragraph a, subparagraph (3)

Subsection 3, former unnumbered paragraph 2 amended and redesignated editorially as paragraph b

**535B.14 Rulemaking authority.**

The administrator may adopt, amend, or repeal rules to aid in the administration and enforcement of this chapter, including rules providing the grounds for denial of an individual registration based on information received as a result of a background check, character and fitness grounds, and any other grounds for which an individual registrant or licensee may be disciplined.

2007 Acts, ch 170, §5

Section amended

**535B.17 Powers and duties of the administrator — waiver authority.**

In addition to any other duties imposed upon the administrator by law, the administrator may participate in a multistate automated licensing system for mortgage bankers, mortgage brokers, and individual registrants. For this purpose, the administrator may establish by rule or order new requirements as necessary, including but not limited to requirements that license applicants and individual registrants submit to fingerprinting and criminal history checks, and pay fees therefor.

2007 Acts, ch 22, §96

Section amended



## CHAPTER 536

## REGULATED LOANS

**536.13 Loan classifications, interest rates, and charges — report, penalty, and consumer credit code applicability.**

1. The superintendent may investigate the conditions and find the facts with reference to the business of making regulated loans, as described in section 536.1, and after making the investigation, report in writing any findings to the next regular session of the general assembly, and upon the basis of the facts:

*a.* Classify regulated loans by a rule according to a system of differentiation which will reasonably distinguish the classes of loans for the purposes of this chapter.

*b.* Determine and fix by a rule the maximum rate of interest or charges upon each class of regulated loans which will induce efficiently managed commercial capital to enter the business in sufficient amounts to make available adequate credit facilities to individuals. The maximum rate of interest or charge shall be stated by the superintendent as an annual percentage rate calculated according to the actuarial method and applied to the unpaid balances of the amount financed.

2. Except as provided in subsection 7, the superintendent may redetermine and refix by rule, in accordance with subsection 1, any maximum rate of interest or charges previously fixed by it, but the changed maximum rates shall not affect pre-existing loan contracts lawfully entered into between a licensee and a borrower. All rules which the superintendent may make respecting rates of interest or charges shall state the effective date of the rules, which shall not be earlier than thirty days after notice to each licensee by mailing the notice to each licensed place of business.

3. Before fixing any classification of regulated loans or any maximum rate of interest or charges, or changing a classification or rate under authority of this section, the superintendent shall give reasonable notice of the superintendent's intention to consider doing so to all licensees and a reasonable opportunity to be heard and to introduce evidence with respect to the change or classification.

4. Beginning July 4, 1965, and until such time as a different rate is fixed by the superintendent, the maximum rate of interest or charges upon the class or classes of regulated loans is as follows:

*a.* Three percent per month on any part of the unpaid principal balance of the loan not exceeding one hundred fifty dollars.

*b.* Two percent per month on any part of the loan in excess of one hundred fifty dollars, but not exceeding three hundred dollars.

*c.* One and one-half percent per month on any

part of the unpaid principal balance of the loan in excess of three hundred dollars, but not exceeding seven hundred dollars.

*d.* One percent per month on any part of the unpaid principal balance of the loan in excess of seven hundred dollars.

5. A licensee under this chapter may lend any sum of money not exceeding twenty-five thousand dollars in amount and may charge, contract for, and receive on the loan interest or charges at a rate not exceeding the maximum rate of interest or charges determined and fixed by the superintendent under authority of this section or pursuant to subsection 7 for those amounts in excess of ten thousand dollars.

6. If any interest or charge on a loan regulated by this chapter in excess of those permitted by this chapter is charged, contracted for, or received, the contract of loan is void as to interest and charges and the licensee has no right to collect or receive any interest or charges. In addition, the licensee shall forfeit the right to collect the lesser of two thousand dollars of principal of the loan or the total amount of the principal of the loan.

7. *a.* The superintendent may establish the maximum rate of interest or charges as permitted under this chapter for those loans with an unpaid principal balance of ten thousand dollars or less. For those loans with an unpaid principal balance of over ten thousand dollars, the maximum rate of interest or charges which a licensee may charge shall be the greater of the rate permitted by chapter 535 or the rate authorized for supervised financial organizations by chapter 537.

*b.* The Iowa consumer credit code, chapter 537, applies to a consumer loan in which the licensee participates or engages, and a violation of the Iowa consumer credit code, chapter 537, is a violation of this chapter.

*c.* Article 2, parts 3, 5, and 6 of chapter 537, and article 3 of chapter 537, sections 537.3203, 537.3206, 537.3209, 537.3304, 537.3305, and 537.3306, apply to any credit transaction, as defined in section 537.1301, in which a licensee participates or engages, and any violation of those parts or sections is a violation of this chapter. For the purpose of applying the Iowa consumer credit code, chapter 537, to those credit transactions, "consumer loan" includes a loan for a business purpose.

*d.* A provision of the Iowa consumer credit code, chapter 537, applicable to loans regulated by this chapter supersedes a conflicting provision of this chapter.

2007 Acts, ch 22, §97  
Subsection 1, unnumbered paragraph 1 amended

**536.14 Rights of borrower — payments.**

Every licensee, in addition to complying with requirements of the Iowa consumer credit code, chapter 537, respecting consumer loans, shall:

1. Permit payment to be made in advance in any amount on any contract of loan at any time, but the licensee may apply such payment first to all interest or charges up to the date of such payment.

2. Upon repayment of the loan in full, mark indelibly every obligation and security other than a

mortgage\* signed by the borrower with the word “paid” or “canceled”, and release any security interest which no longer secures a loan to the licensee, restore any collateral, return any note and any assignment given to the licensee by the borrower.

3. Display prominently in each licensed place of business an accurate schedule, to be approved by the superintendent, of the charges currently to be made upon all loans.

\*Security interest, see §554.1201, subsection 2, paragraph a  
Section not amended; footnote revised

**CHAPTER 536A****INDUSTRIAL LOANS****536A.22 Thrift certificates.**

1. Licensed industrial loan companies shall not sell senior debt to the general public in the form of thrift certificates, installment thrift certificates, certificates of indebtedness, promissory notes, or similar evidences of indebtedness.

2. *a.* Licensees selling debt instruments on January 1, 1996, may continue to do so until there is a change of control of the licensee which occurs on or after January 1, 1996. If there is a change of control of a licensee on or after January 1, 1996, and the licensee has sold senior debt instruments that remain outstanding at the time of the change of control, such outstanding senior debt instruments that do not have a stated maturity date shall be redeemed within six months of the date of the change of control. Such outstanding senior debt instruments with stated maturity dates shall be redeemed on their stated maturity dates.

*b.* The total amount of such thrift certificates, installment thrift certificates, certificates of in-

debtedness, promissory notes, or similar evidences of indebtedness outstanding and in the hands of the general public shall not at any time exceed ten times the total amount of capital, surplus, undivided profits, and subordinated debt that gives priority to such securities of the issuing industrial loan company. The sale of such securities is subject to the provisions of chapter 502 and rules adopted by the superintendent of banking pursuant to chapter 17A, except that the sale of thrift certificates or installment thrift certificates which are redeemable by the holder either upon demand or within a period not in excess of five years are exempt from sections 502.301 and 502.504.

2007 Acts, ch 170, §6  
Unnumbered paragraph 1 amended and editorially divided into subsection 1 and subsection 2, paragraph a  
Former unnumbered paragraph 2 editorially designated as paragraph b of subsection 2

**536A.32 through 536A.34** Repealed by 2007 Acts, ch 170, § 8.

**CHAPTER 537****CONSUMER CREDIT CODE****537.2305 Examinations and investigations.**

1. For the purpose of discovering violations of this chapter or securing information lawfully required, the licensing authority shall examine periodically at intervals the licensing authority deems appropriate, but not less frequently than is required for other examinations of the licensee by section 524.217, 533.113, 534.401, 536.10, or 536A.15, whichever is applicable, the loans, business, and records of every licensee, except a licensee which has no office physically located in this state and engages in no face-to-face solicitation in this state. In addition, the licensing authority may at any time investigate the loans, business,

and records of any lender. For these purposes the licensing authority shall be given free and reasonable access to the offices, places of business, and records of the lender.

2. If the lender's records are located outside this state, the lender at the lender's option shall make them available to the licensing authority at a convenient location within this state, or pay the reasonable and necessary expenses for the licensing authority or the licensing authority's representative to examine them at the place where they are maintained. The licensing authority may designate representatives, including comparable officials of the state in which the records are located, to inspect them on the licensing authority's behalf.

3. For the purposes of this section, the licensing authority may administer oaths or affirmations, and upon the licensing authority's own motion or upon request of any party may subpoena witnesses, compel their attendance, adduce evidence, and require the production of any matter which is relevant to the investigation, including the existence, description, nature, custody, condition, and location of any books, documents, or other tangible things and the identity and location of persons having knowledge of relevant facts, or any other matter reasonably calculated to lead to the discovery of admissible evidence.

4. Upon failure without lawful excuse to obey a subpoena or to give testimony and upon reasonable notice to all persons affected thereby, the licensing authority may apply to the district court for an order compelling compliance.

2007 Acts, ch 174, §95  
Subsection 1 amended

**537.2401 Finance charge for consumer loans not pursuant to open-end credit.**

1. Except as provided with respect to a finance charge for loans pursuant to open-end credit under section 537.2402 and loans secured by a certificate of title of a motor vehicle under section 537.2403, a lender may contract for and receive a finance charge not exceeding the maximum charge permitted by the laws of this state or of the United States for similar lenders, and, in addition, with respect to a consumer loan, a supervised financial organization or a mortgage lender may contract for and receive a finance charge, calculated according to the actuarial method, not exceeding twenty-one percent per year on the unpaid balance of the amount financed. Except as provided in section 537.2403, this subsection does not prohibit a lender from contracting for and receiving a finance charge exceeding twenty-one percent per year on the unpaid balance of the amount financed on consumer loans if authorized by other provisions of the law.

2. This section does not limit or restrict the manner of calculating the finance charge, whether by way of add-on, discount, or otherwise, so long as the rate of the finance charge does not exceed that permitted by this section or the laws of this state or of the United States. The finance charge permitted by this section or the laws of this state or of the United States may be calculated by determining the single annual percentage rate as required to be disclosed to the consumer pursuant to section 537.3201 which, when applied according to the actuarial method to the unpaid balances of the amount financed, will yield the finance charge for that transaction which would result from applying any graduated rates permitted by this section or the laws of this state or of the United States to the transaction on the assumption that all scheduled payments will be made when due. If the loan is a precomputed consumer credit transaction, the fi-

nance charge may be calculated on the assumption that all scheduled payments will be made when due, and the effect of prepayment is governed by section 537.2510.

3. Except as provided in subsection 5, the term of a loan for the purposes of this section commences on the date the loan is made. Any month may be counted as one-twelfth of a year but a day is counted as one-three hundred sixty-fifth of a year. Subject to classifications and differentiations the lender may reasonably establish, a part of a month in excess of fifteen days may be treated as a full month if periods of fifteen days or less are disregarded and that procedure is not consistently used to obtain a greater yield than would otherwise be permitted. The administrator may adopt rules not inconsistent with the Truth in Lending Act with respect to treating as regular other minor irregularities in amount or time.

4. Subject to classifications and differentiations the lender may reasonably establish, the lender may make the same finance charge on all amounts financed within a specified range. A finance charge so made does not violate subsection 1, if both of the following are applicable:

a. When applied to the median amount within each range, it does not exceed the maximum permitted by that subsection.

b. When applied to the lowest amount within each range, it does not produce a rate of finance charge exceeding the rate calculated according to paragraph "a" by more than eight percent of the rate calculated according to paragraph "a".

5. With respect to an insurance premium loan, the term of the loan commences on the earliest inception date of a policy or contract of insurance for which the premium is financed.

2007 Acts, ch 26, §1  
Subsection 1 amended

**537.2402 Finance charge for consumer loans pursuant to open-end credit.**

1. If authorized to make supervised loans, a creditor may contract for and receive a finance charge without limitation as to amount or rate with respect to a loan pursuant to open-end credit as permitted in this section except as provided in section 537.2403.

2. For each billing cycle, a charge may be made which is a percentage of an amount not exceeding the greatest of the following:

a. The average daily balance of the open-end account in the billing cycle for which the charge is made, which is the sum of the amount unpaid each day during that cycle, divided by the number of days in that cycle. The amount unpaid on a day is determined by adding to the balance, if any, unpaid as of the beginning of that day all purchases and other debits and deducting all payments and other credits made or received as of that day.

b. The balance of the open-end account at the beginning of the first day of the billing cycle, after

deducting all payments and credits made in the cycle except credits attributable to purchases charged to the account during the cycle.

c. The median amount within a specified range including the balance of the open-end account not exceeding that permitted by paragraph “a” or “b”. A charge may be made pursuant to this paragraph only if the organization, subject to classifications and differentiations it may reasonably establish, makes the same charge on all balances within the specified range and if the percentage when applied to the median amount within the range does not produce a charge exceeding the charge resulting from applying that percentage to the lowest amount within the range by more than eight percent of the charge on the median amount.

2007 Acts, ch 26, §2  
Subsection 1 amended

### **537.2403 Finance charge for consumer loans secured by a motor vehicle.**

1. A lender shall not contract for or receive a finance charge exceeding twenty-one percent per year on the unpaid balance of the amount financed for a loan of money secured by a certificate of title to a motor vehicle used for personal, family, or household purpose except as authorized under chapter 536 or 536A. A consumer who is charged a finance charge in excess of the limitation in this section may seek any remedies available pursuant to this chapter for an excess charge.

2. It shall be a violation of this section and an unlawful practice under section 714.16 to attempt to avoid application of this section by structuring a loan of money secured by a certificate of title to a motor vehicle as a sale, sale and repurchase, sale and lease, pawn, rental purchase, lease, or other type of transaction with the intent to avoid application of this section or any other applicable provision of this chapter.

2007 Acts, ch 26, §3  
NEW section

### **537.2501 Additional charges.**

1. In addition to the finance charge permitted by parts 2 and 4, a creditor may contract for and receive the following additional charges:

- a. Official fees and taxes.
- b. Charges for insurance as described in subsection 2.
- c. Amounts actually paid or to be paid by the creditor for registration, certificate of title or license fees.
- d. Annual charges, payable in advance, for the privilege of using a credit card which entitles the cardholder to purchase or lease goods or services from at least one hundred persons not related to the card issuer, under an arrangement pursuant to which the debts resulting from the purchases or leases are payable to the card issuer.
- e. With respect to a debt secured by an interest in land, the following “closing costs,” provided they

are bona fide, reasonable in amount, and not for the purpose of circumvention or evasion of this chapter:

(1) Fees or premiums for title examination, abstract of title, title insurance, or similar purposes including surveys.

(2) Fees for preparation of a deed, settlement statement, or other documents, if not paid to the creditor or a person related to the creditor.

(3) Escrows for future payments of taxes, including assessments for improvements, insurance and water, sewer and land rents.

(4) Fees for notarizing deeds and other documents, if not paid to the creditor or a person related to the creditor.

f. With respect to open-end credit pursuant to a credit card issued by the creditor which entitles the cardholder to purchase or lease goods or services from at least one hundred persons not related to the card issuer, the parties may contract for an over-limit charge up to fifteen dollars if the balance of the account exceeds the credit limit established pursuant to the agreement. The over-limit charge under this paragraph shall not be assessed again in a subsequent billing cycle unless in a subsequent billing cycle the account balance has been reduced below the credit limit.

If the differential treatment of this subsection based on the number of persons honoring a credit card is found to be unconstitutional, the parties may contract for the over-limit charge as described in this paragraph in any consumer credit transaction pursuant to open-end credit, and the other conditions relating to the over-limit charge shall remain in effect.

g. A surcharge of not more than five percent of the amount of the face value of the payment instrument or twenty dollars, whichever is greater, for each dishonored payment instrument provided that the fee is clearly and conspicuously disclosed in the cardholder agreement. However, the amount of the surcharge shall not exceed twenty dollars unless the check, draft, or order was presented twice or the maker does not have an account with the drawee. If the check, draft, or order was presented twice or the maker does not have an account with the drawee, the amount of the surcharge shall not exceed fifty dollars. The surcharge shall not be assessed against the maker if the reason for the dishonor of the instrument is that the maker has stopped payment pursuant to section 554.4403.

h. Charges for other benefits, including insurance, conferred on the consumer, if the benefits are of value to the consumer and if the charges are reasonable in relation to the benefits, are of a type which is not for credit, and are authorized as permissible additional charges by rule adopted by the administrator.

i. A reasonable annual account maintenance fee, payable in advance, for the privilege of main-

taining a demand deposit account with a line of credit that may be accessed by the account holder writing a check.

*j.* For a consumer loan where the amount financed does not exceed three thousand dollars and the term of the loan does not exceed twelve months, a bank, savings bank, savings and loan association, or credit union incorporated pursuant to state or federal law may charge an additional application fee not to exceed the lesser of ten percent of the amount financed or thirty dollars. If the loan is not approved, the application fee shall not exceed the lesser of ten percent of the amount applied for by the applicant or thirty dollars. The fee permitted pursuant to this paragraph shall not be charged in connection with a loan used for the purchase of a motor vehicle, or for a loan where the borrower's dwelling is used as security.

2. An additional charge may be made for insurance written in connection with the transaction, as follows:

*a.* With respect to insurance against loss of or damage to property, or against liability arising out of the ownership or use of property, if the creditor furnishes a clear, conspicuous and specific statement in writing to the consumer setting forth the cost of the insurance if obtained from or through the creditor and stating that the consumer may choose the person through whom the insurance is to be obtained.

*b.* With respect to consumer credit insurance providing life, accident, health, or unemployment coverage, if the insurance coverage is not required by the creditor, and this fact is clearly and conspicuously disclosed in writing to the consumer, and if, in order to obtain the insurance in connection with the extension of credit, the consumer gives specific dated and separately signed affirmative written indication of the consumer's desire to do so after written disclosure to the consumer of the cost. However, credit unemployment insurance shall be permitted under this paragraph if all of the following conditions have been met:

(1) The insurance provides coverage beginning with the first day of unemployment. However, the policy may include a waiting period before the consumer may file a claim.

(2) The insurance shall be sold separately and shall be separately priced from any other insurance offered or sold at the same time. The credit unemployment insurance need not be sold separately or separately priced from other insurance offered if it is included as part of an insurance offering by a credit card issuer to its credit cardholders.

(3) The premium rates have been affirmatively approved by the insurance division of the department of commerce. In approving or establishing the rates, the division shall review the insurance company's actuarial data to assure that the rates are fair and reasonable. The insurance com-

missioner shall either hire or contract with a qualified actuary to review the data. The insurance division shall obtain reimbursement from the insurance company for the cost of the actuarial review prior to approving the rates. In addition, the rates shall be made in accordance with the following provisions:

(a) Rates shall not be excessive, inadequate or unfairly discriminatory.

(b) Due consideration shall be given to all relevant factors within and outside this state but rates shall be deemed to be reasonable under this section if they reasonably may be expected to produce a ratio of fifty percent by dividing claims incurred by premiums earned.

3. With respect to open-end credit obtained pursuant to a credit card issued by the creditor which entitles the cardholder to purchase or lease goods or services from at least one hundred persons not related to the card issuer, the creditor may contract for and receive any charge lawfully contained in a prior agreement between the consumer and a prior creditor from whom the creditor currently issuing the credit card acquired the credit card account, if the account was acquired in an arm's-length for-value sale from a nonrelated or nonaffiliated creditor. The creditor may charge any charge on new open-end credit accounts lawfully permitted in a prior agreement between a consumer and a prior creditor from whom the creditor currently issuing the credit card acquired the credit card accounts.

2007 Acts, ch 118, §2  
Subsection 1, NEW paragraph j

### **537.3603 Exclusions.**

This part does not apply to, and an agreement which complies with this part is not governed by, the provisions regarding:

1. A consumer credit sale as defined in section 537.1301, subsection 13.

2. A consumer lease as defined in section 537.1301, subsection 14.

3. A consumer loan as defined in section 537.1301, subsection 15.

4. A lease or agreement which constitutes a "credit sale" as defined in 12 C.F.R. § 226.2(a16), and the Truth in Lending Act, 15 U.S.C. § 1602(g), or an agreement which constitutes a "sale of goods" under section 537.1301, subsection 38.

5. A lease which constitutes a consumer lease as defined in 12 C.F.R. § 213.2(a6).

6. A lease or agreement which constitutes a security interest as defined in section 554.1201, subsection 2.

2007 Acts, ch 41, §41  
Subsection 6 amended

### **537.5301 Willful violations.**

1. A person who willfully and knowingly makes charges in excess of those permitted by the provisions of article 2, part 4, applying to super-

vised loans, is guilty of a serious misdemeanor.

2. A person who, in violation of the provisions of this Act applying to authority to make supervised loans under section 537.2301, willfully and knowingly engages without a license in the business of making supervised loans, or of taking assignments of and undertaking direct collection of payments from and enforcement of rights against consumers arising from supervised loans, is guilty of a serious misdemeanor.

3. A person, other than a lessor in a consumer rental purchase agreement, who willfully and knowingly engages in the business of entering into consumer credit transactions, or of taking assignments of rights against consumers arising therefrom and undertaking direct collection of payments or enforcement of these rights, without complying with the provisions of this chapter concerning notification under section 537.6202 or payment of fees under section 537.6203, is guilty of a simple misdemeanor.

4. A person who willfully and knowingly violates the provisions of section 537.7103 is guilty of a serious misdemeanor. However, this subsection is not applicable to a violation of section 537.7103, subsection 7.

2007 Acts, ch 128, §3  
Subsection 4 amended

#### **537.6203 Fees.**

1. A person required to file notification shall pay to the administrator an annual fee of ten dollars. The fee shall be paid with the filing of the first notification and on or before January 31 of each succeeding year.

2. A person required to file notification who is a seller, lessor, or lender and who is not an assignee shall pay an additional fee at the time and in the manner stated in subsection 1 of ten dollars for each one hundred thousand dollars, or part thereof exceeding ten thousand dollars, of the average unpaid balances, including unpaid scheduled periodic payments under consumer leases, of obligations arising from consumer credit transactions entered into or modified by the person in this state and held on the last day of each calendar month during the preceding calendar year and held either by the seller, lessor, or lender, or by an immediate or remote assignee who has not filed notification. The unpaid balances of assigned obligations held by an assignee who has not filed notifications are presumed to be the unpaid balances of the assigned obligations at the time of their assignment by the seller, lessor, or lender.

3. A person required to file notification who is an assignee shall pay an additional fee at the time and in the manner stated in subsection 1 of ten dollars for each one hundred thousand dollars, or part thereof exceeding ten thousand dollars, of the average unpaid balances including unpaid scheduled periodic payments payable by lessees, of obligations arising from consumer credit transactions

entered into or modified in this state, taken by the person by assignment and held by the person on the last day of each calendar month during the preceding calendar year.

4. In addition to the penalties provided by section 537.6113, subsection 3, the administrator may collect a charge, established by rule, not exceeding twenty-five dollars from each person required to pay fees under this section who fails to pay the fees in full within thirty days after they are due.

5. Moneys collected under this section shall be deposited in a consumer credit administration fund in the state treasury and shall be used for the administration of this chapter. The moneys are subject to warrant upon certification of the administrator and are appropriated for these purposes. Notwithstanding section 8.33, the moneys in the fund do not revert at the end of a fiscal period.

2007 Acts, ch 22, §98  
Subsection 5 amended

#### **537.7103 Prohibited practices.**

1. A debt collector shall not collect or attempt to collect a debt by means of an illegal threat, coercion or attempt to coerce. The conduct described in each of the following paragraphs is an illegal threat, coercion or attempt to coerce within the meaning of this subsection:

*a.* The use, or express or implicit threat of use, of force, violence or other criminal means, to cause harm to a person or to property of a person.

*b.* The false accusation or threat to falsely accuse a person of fraud or any other crime.

*c.* False accusations made to a person, including a credit reporting agency, or the threat to falsely accuse, that a debtor is willfully refusing to pay a just debt. However, a failure to reply to requests for payment and a failure to negotiate disputes in good faith are deemed willful refusal.

*d.* The threat to sell or assign to another an obligation of the debtor with an attending representation or implication that the result of the sale or assignment will be to subject the debtor to harsh, vindictive or abusive collection attempts.

*e.* The false threat that nonpayment of a debt may result in the arrest of a person or the seizure, garnishment, attachment or sale of property or wages of that person.

*f.* An action or threat to take an action prohibited by this chapter or any other law.

2. A debt collector shall not oppress, harass or abuse a person in connection with the collection or attempted collection of a debt of that person or another person. The following conduct is oppressive, harassing or abusive within the meaning of this subsection:

*a.* The use of profane or obscene language or language that is intended to abuse the hearer or reader and which by its utterance would tend to incite an immediate breach of the peace.

*b.* The placement of telephone calls to the

debtor without disclosure of the name of the business or company the debt collector represents.

c. Causing expense to a person in the form of long distance telephone tolls, telegram fees or other charges incurred by a medium of communication by attempting to deceive or mislead persons as to the true purpose of the notice, letter, message or communication.

d. Causing a telephone to ring or engaging a person in telephone conversation repeatedly or continuously or at unusual hours or times known to be inconvenient, with intent to annoy, harass or threaten a person.

3. A debt collector shall not disseminate information relating to a debt or debtor as follows:

a. The communication or threat to communicate or imply the fact of a debt to a person other than the debtor or a person who might reasonably be expected to be liable for the debt, except with the written permission of the debtor given after default. For the purposes of this paragraph, the use of language on envelopes indicating that the communication relates to the collection of a debt is a communication of the debt. However, this paragraph does not prohibit a debt collector from any of the following:

(1) Notifying a debtor of the fact that the debt collector may report a debt to a credit bureau or engage an agent or an attorney for the purpose of collecting the debt.

(2) Reporting a debt to a credit reporting agency or any other person reasonably believed to have a legitimate business need for the information.

(3) Engaging an agent or attorney for the purpose of collecting a debt.

(4) Attempting to locate a debtor whom the debt collector has reasonable grounds to believe has moved from the debtor's residence, where the purpose of the communication is to trace the debtor, and the content of the communication is restricted to requesting information on the debtor's location.

(5) Communicating with the debtor's employer or credit union not more than once during any three-month period when the purpose of the communication is to obtain an employer's or credit union's debt counseling services for the debtor. In the event no response is received by the debt collector from a communication to the debtor's employer or credit union the debt collector may make one inquiry as to whether the communication was received. In addition a debt collector may respond to any communications by a debtor's employer or credit union.

(6) Communicating with the debtor's employer once during any one-month period, if the purpose of the communication is to verify with an employer the fact of the debtor's employment and if the debt collector does not disclose, except as permitted in subparagraph (5), information other than the fact that a debt exists. This subparagraph does not authorize a debt collector to dis-

close to an employer the fact that a debt is in default.

(7) Communicating the fact of the debt not more than once in any three-month period, with the parents of a minor debtor, or with any trustee of any property of the debtor, conservator of the debtor or the debtor's property, or guardian of the debtor. In addition, a debt collector may respond to inquiry from a parent, trustee, conservator or guardian.

(8) Communicating with the debtor's spouse with the consent of the debtor, or responding to inquiry from the debtor's spouse.

b. The disclosure, publication, or communication of information relating to a person's indebtedness to another person, by publishing or posting a list of indebted persons, commonly known as "deadbeat lists", or by advertising for sale a claim to enforce payment of a debt when the advertisement names the debtor.

c. The use of a form of communication to the debtor, except a telegram, an original notice or other court process, or an envelope displaying only the name and address of a debtor and the return address of the debt collector, intended or so designed as to display or convey information about the debt to another person other than the name, address, and phone number of the debt collector.

4. A debt collector shall not use a fraudulent, deceptive, or misleading representation or means to collect or attempt to collect a debt or to obtain information concerning debtors. The following conduct is fraudulent, deceptive, or misleading within the meaning of this subsection:

a. The use of a business, company or organization name while engaged in the collection of debts, other than the true name of the debt collector's business, company, or organization or the name of the business or company the debt collector represents.

b. The failure to disclose in the initial written communication with the debtor and, in addition, if the initial communication with the debtor is oral, in that initial oral communication, that the debt collector is attempting to collect a debt and that information obtained will be used for that purpose, and the failure to disclose in subsequent communications that the communication is from a debt collector, except that this paragraph does not apply to either of the following:

(1) A formal pleading made in connection with a legal action.

(2) Communications issued directly by a state bank as defined in section 524.103 or its affiliate, a state bank chartered under the laws of any other state or its affiliate, a national banking association or its affiliate, a trust company, a federally chartered savings and loan association or savings bank or its affiliate, an out-of-state chartered savings and loan association or savings bank or its affiliate, a financial institution chartered by the federal home loan bank board, an association incorpo-

rated or authorized to do business under chapter 534, a state or federally chartered credit union, a credit union service organization, or a company or association organized or authorized to do business under chapter 515, 518, 518A, or 520, or an officer, employee, or agent of such company or association, provided the communication does not deceptively conceal its origin or its purpose.

c. A false representation that the debt collector has information in the debt collector's possession or something of value for the debtor, which is made to solicit or discover information about the debtor.

d. The failure to clearly disclose the name and full business address of the person to whom the claim has been assigned at the time of making a demand for money.

e. An intentional misrepresentation, or a representation which tends to create a false impression of the character, extent or amount of a debt, or of its status in a legal proceeding.

f. A false representation, or a representation which tends to create a false impression, that a debt collector is vouched for, bonded by, affiliated with, or an instrumentality, agency or official of the state or an agency of federal, state or local government.

g. The use or distribution or sale of a written communication which simulates or is falsely represented to be a document authorized, issued or approved by a court, an official or other legally constituted or authorized authority, or which tends to create a false impression about its source, authorization or approval.

h. A representation that an existing obligation of the debtor may be increased by the addition of attorney's fees, investigation fees, service fees or other fees or charges, when in fact such fees or charges may not legally be added to the existing obligation.

i. A false representation, or a representation which tends to create a false impression, about the status or true nature of, or services rendered by, the debt collector or the debt collector's business.

5. A debt collector shall not engage in the following conduct to collect or attempt to collect a debt:

a. The seeking or obtaining of a written statement or acknowledgment in any form that specifies that a debtor's obligation is one chargeable upon the property of either husband or wife or both, under section 597.14, when the original obli-

gation was not in fact so chargeable.

b. The seeking or obtaining of a written statement or acknowledgment in any form containing an affirmation of an obligation which has been discharged in bankruptcy, without clearly disclosing the nature and consequences of the affirmation and the fact that the debtor is not legally obligated to make the affirmation. However, this subsection does not prohibit the accepting of promises to pay that are voluntarily written and offered by a bankrupt debtor.

c. The collection of or the attempt to collect from the debtor a part or all of the debt collector's fee for services rendered, unless both of the following are applicable:

(1) The fee is reasonably related to the actions taken by the debt collector.

(2) The debt collector is legally entitled to collect the fee from the debtor.

d. The collection of or the attempt to collect interest or other charge, fee or expense incidental to the principal obligation unless the interest or incidental charge, fee, or expense is expressly authorized by the agreement creating the obligation and is legally chargeable to the debtor, or is otherwise legally chargeable.

e. A communication with a debtor when the debt collector knows that the debtor is represented by an attorney and the attorney's name and address are known, or could be easily ascertained, unless the attorney fails to answer correspondence, return phone calls or discuss the obligation in question, within a reasonable time, or prior approval is obtained from the debtor's attorney or when the communication is a response in the ordinary course of business to the debtor's inquiry.

6. A debt collector shall not use or distribute, sell or prepare for use, a written communication that violates or fails to conform to United States postal laws and regulations.

7. A debt collector shall not collect or attempt to collect charges from an employee or an employee's dependents for treatment rendered the employee by any health service provider, after receiving actual notice that a contested case proceeding for determination of liability of workers' compensation benefits is pending as provided in section 85.27, subsection 6.

2007 Acts, ch 128, §4  
Penalties, see §537.5301  
NEW subsection 7



## CHAPTER 543B

### REAL ESTATE BROKERS AND SALESPERSONS

#### 543B.2 Individual licenses necessary.

A partnership, association, corporation, professional corporation, or professional limited liability company shall not be granted a license, unless every member or officer of the partnership, association, corporation, professional corporation, or professional limited liability company who actively participates in the brokerage business of the partnership, association, corporation, professional corporation, or professional limited liability company holds a license as a real estate broker or salesperson, and unless every employee who acts as a salesperson for the partnership, association, corporation, professional corporation, or professional limited liability company holds a license as a real estate broker or salesperson. At least one member or officer of each partnership, association, corporation, professional corporation, or professional limited liability company shall be a real estate broker.

2007 Acts, ch 13, §3  
Section amended

#### 543B.5 Other definitions.

As used in this chapter, unless the context otherwise requires:

1. “*Agency*” means a relationship in which a real estate broker acts for or represents another by the other person’s express authority in a transaction.
2. “*Agency agreement*” means a written agreement between a broker and a client which identifies the party the broker represents in a transaction.
3. “*Appointed agent*” means that affiliated licensee who is appointed by the designated broker of the affiliated licensee’s real estate brokerage agency to act solely for a client of that brokerage agency to the exclusion of other affiliated licensees of that brokerage agency.
4. “*Branch office*” means a real estate broker’s office other than a principal place of business.
5. “*Broker associate*” means a person who has a broker’s license but is licensed under, and employed by or otherwise associated with, another broker as a salesperson.
6. “*Brokerage*” means the business or occupation of a real estate broker.
7. “*Brokerage agreement*” means a contract between a broker and a client which establishes the relationship between the parties as to the brokerage services to be performed and contains the provisions required in section 543B.56A.
8. “*Brokerage services*” means those activities identified in sections 543B.3 and 543B.6.
9. “*Client*” means a party to a transaction who

has an agency agreement with a broker for brokerage services.

10. “*Customer*” means a consumer who is not being represented by a licensee but for whom the licensee may perform ministerial acts.

11. “*Designated broker*” means a licensee designated by a real estate brokerage agency to act for the agency in conducting real estate brokerage services.

12. “*Inactive license*” means either a broker or salesperson license certificate that is on file with the real estate commission in the commission office and during which time the licensee is precluded from engaging in any of the acts of this chapter.

13. “*Licensee*” means a broker or a salesperson licensed pursuant to this chapter.

14. “*Listing*” is an agreement between a property owner and another person in which that person holds or advertises the property to the public as being available for sale or lease.

15. “*Material adverse fact*” means an adverse fact that a party indicates is of such significance, or that is generally recognized by a competent licensee as being of such significance to a reasonable party, that it affects or would affect the party’s decision to enter into a contract or agreement concerning a transaction, or affects or would affect the party’s decision about the terms of the contract or agreement.

For purposes of this subsection, “*adverse fact*” means a condition or occurrence that is generally recognized by a competent licensee as resulting in any of the following:

- a. Significantly and adversely affecting the value of the property.
- b. Significantly reducing the structural integrity of improvement to real estate.
- c. Presenting a significant health risk to occupants of the property.

16. “*Negotiate*” means to act as an intermediary between the parties to a transaction, and includes any of the following acts:

- a. Participating in the parties’ discussion of the terms of a contract or agreement concerning a transaction.
- b. Completing, when requested by a party, appropriate forms or other written record to document the party’s proposal in a manner consistent with the party’s intent.
- c. Presenting to a party the proposals of other parties to the transaction and informing the party receiving a proposal of the advantages and disadvantages of the proposal.

17. “*Party*” means a person seeking to sell, exchange, buy, or rent an interest in real estate, a

business, or a business opportunity. "Party" includes a person who seeks to grant or accept an option to buy, sell, or rent an interest in real estate.

18. "Person" means an individual, partnership, association, corporation, professional corporation, or professional limited liability company.

19. "Regular employee" means a person whose compensation is fixed in advance, who does not receive a commission, who works exclusively for the owner, and whose total compensation is subject to state and federal withholding.

20. "Salesperson" means a person who is licensed under, and employed by or otherwise associated with, a real estate broker, as a selling, renting, or listing agent or representative of the broker.

21. "Transaction" means the sale, exchange, purchase, or rental of, or the granting or acceptance of an option to sell, exchange, purchase, or rent an interest in real estate.

2007 Acts, ch 13, §4  
Subsection 18 amended

#### 543B.15 Qualifications.

1. Except as provided in section 543B.20 an applicant for a real estate broker's or salesperson's license must be a person whose application has not been rejected for licensure in this or any other state within twelve months prior to the date of application, and whose real estate license has not been revoked in this or any other state within two years prior to date of application.

2. To qualify for a license as a real estate broker or salesperson a person shall be eighteen years of age or over. However, an applicant is not ineligible because of citizenship, sex, race, religion, marital status, or national origin, although the application form may require citizenship information.

3. *a.* An applicant for a real estate broker's or salesperson's license who has been convicted of an offense specified in this subsection shall not be considered for licensure until the following time periods have elapsed following completion of any applicable period of incarceration, or payment of a fine or fulfillment of any other type of sentence:

(1) For an offense which is classified as a felony, two years.

(2) Notwithstanding subparagraph (1), for offenses including or involving forgery, embezzlement, obtaining money under false pretenses, theft, arson, extortion, conspiracy to defraud, or other offense involving a criminal breach of fiduciary duty, five years.

*b.* After expiration of the time periods specified in paragraph "a", an application shall be considered by the commission pursuant to subsection 7 and may be denied on the grounds of the conviction. An applicant may request a hearing pursuant to section 543B.19 in the event of a denial.

*c.* For purposes of this section, "convicted" means a guilty plea, deferred judgment from the

time of entry of the deferred judgment until the time the defendant is discharged by the court without entry of judgment, or other finding of guilt by a court of competent jurisdiction in this state, or in any other state, territory, or district of the United States, or in any foreign jurisdiction.

4. An applicant for a real estate broker's or salesperson's license who has had a professional license of any kind revoked or suspended or who has had any other form of discipline imposed, in this or any other jurisdiction, may be denied a license by the commission on the grounds of the revocation, suspension, or other discipline.

5. A person who makes a false statement of material fact on an application for a real estate broker's or salesperson's license, or who causes to be submitted, or has been a party to preparing or submitting any false application for such license, may be denied a license by the commission on the grounds of the false statement or submission. A licensee found to have made such a statement or who caused to be submitted, or was a party to preparing or submitting any false application for a real estate broker's or salesperson's license, may have the license suspended or revoked by the commission on the grounds of the false statement or submission.

6. A licensed real estate broker or salesperson shall notify the commission of the licensee's conviction of an offense included in subsection 3 within ten days of the conviction. Notification of a conviction for an offense which is classified as a felony shall result in the immediate suspension of a license pending the outcome of a hearing conducted pursuant to section 543B.35. The failure of the licensee to notify the commission of the conviction within ten days of the date of the conviction is sufficient grounds for revocation of the license.

7. The commission, when considering the denial or revocation of a license pursuant to this section, shall consider the nature of the offense; any aggravating or extenuating circumstances which are documented; the time lapsed since the revocation, conduct, or conviction; the rehabilitation, treatment, or restitution performed by the applicant or licensee; and any other factors the commission deems relevant. Character references may be required but shall not be obtained from licensed real estate brokers or salespersons.

8. To qualify for a license as a real estate broker, a person shall complete at least sixty contact hours of commission approved real estate education within twenty-four months prior to taking the broker examination. This education shall be in addition to the required salesperson prelicense course. The applicant shall have been a licensed real estate salesperson actively engaged in real estate for a period of at least twenty-four months preceding the date of application, or shall have had experience substantially equal to that which a licensed real estate salesperson would ordinarily

receive during a period of twenty-four months, whether as a former broker or salesperson, a manager of real estate, or otherwise.

9. A qualified applicant for a license as a real estate salesperson shall complete a commission approved short course in real estate education of at least thirty hours during the twelve months prior to taking the salesperson examination.

10. An applicant for an initial real estate broker's or salesperson's license shall be subject to a national criminal history check through the federal bureau of investigation. The commission shall request the criminal history check and shall provide the applicant's fingerprints to the department of public safety for submission through the state criminal history repository to the federal bureau of investigation. The applicant shall authorize release of the results of the criminal history check to the real estate commission. The applicant shall pay the actual cost of the fingerprinting and criminal history check, if any. Unless the criminal history check was completed within the ninety calendar days prior to the date the license application is received by the real estate commission, the commission shall reject and return the application to the applicant. The results of a criminal history check conducted pursuant to this subsection shall not be considered a public record under chapter 22.

2007 Acts, ch 187, §1, 2  
Subsection 3 stricken and rewritten  
Subsection 6 amended

#### **543B.31 Place of business.**

Every real estate broker, except as provided in section 543B.22, shall maintain a place of business in this state. If the real estate broker maintains more than one place of business within the state, a duplicate license shall be issued to such broker for each branch office maintained. Provided, that if such broker be a copartnership, association, corporation, professional corporation, or professional limited liability company a duplicate shall be issued to the members or officers thereof, and a fee determined by the real estate commission in each case shall be paid for each duplicate license.

2007 Acts, ch 13, §5  
Section amended

#### **543B.46 Trust accounts.**

1. Each real estate broker shall maintain a common trust account in a bank, a savings and loan association, savings bank, or credit union for the deposit of all down payments, earnest money deposits, or other trust funds received by the broker or the broker's salespersons on behalf of the broker's principal, except that a broker acting as a salesperson shall deposit these funds in the common trust account of the broker for whom the broker acts as salesperson. The account shall be an interest-bearing account. The interest on the ac-

count shall be transferred quarterly to the treasurer of state and transferred to the department of economic development for deposit in the local housing assistance program fund established in section 15.354 unless there is a written agreement between the buyer and seller to the contrary. The broker shall not benefit from interest received on funds of others in the broker's possession.

2. Each broker shall notify the real estate commission of the name of each bank or savings and loan association in which a trust account is maintained and also the name of the account on forms provided therefor.

3. Each broker shall authorize the real estate commission to examine each trust account and shall obtain the certification of the bank or savings and loan association attesting to each trust account and consenting to the examination and audit of each account by a duly authorized representative of the commission. The certification and consent shall be furnished on forms prescribed by the commission. This subsection does not apply to an individual farm account maintained in the name of the owner or owners for the purpose of conducting ongoing farm business whether it is conducted by the farm owner or by an agent or farm manager when the account is part of a farm management agreement between the owner and agent or manager. This subsection also does not apply to an individual property management account maintained in the name of the owner or owners for the purpose of conducting ongoing property management whether it is conducted by the property owner or by an agent or manager when the account is part of a property management agreement between the owner and agent or manager.

4. Each broker shall only deposit trust funds received on real estate or business opportunity transactions as defined in section 543B.6 in the common trust account and shall not commingle the broker's personal funds or other funds in the trust account with the exception that a broker may deposit and keep a sum not to exceed five hundred dollars in the account from the broker's personal funds, which sum shall be specifically identified and deposited to cover bank service charges relating to the trust account.

5. A broker may maintain more than one trust account provided the commission is advised of said account as specified in subsections 2 and 3 above.

6. The commission shall verify on a test basis, a random sampling of the brokers, corporations, professional corporations, professional limited liability companies, and partnerships for their trust account compliance. The commission may upon reasonable cause, or as a part of or after an investigation, request or order a special report.

7. The examination of a trust account shall be conducted by the commission or the commission's authorized representative.

8. The commission shall adopt rules to ensure

implementation of this section.

2007 Acts, ch 13, §6  
Subsection 6 amended

**543B.54 Real estate education fund.**

1. The Iowa real estate education fund is created as a financial assurance mechanism to assist in the establishment and maintenance of college credit real estate education programs at Iowa community colleges and other Iowa colleges and universities, and to assist the real estate commission in providing an education director. The fund is created as a separate fund in the state treasury, and any funds remaining in the fund at the end of each fiscal year shall not revert to the general fund, but shall remain in the Iowa real estate education fund.

2. Twenty-five dollars per license from fees deposited for each real estate salesperson's license and each broker's license shall be distributed and are appropriated to the real estate commission for the purpose of establishing and maintaining a program to provide grants to community colleges and other colleges and universities in the state providing programs under this section and using the curriculum maintained by the commission. Grants shall be awarded by a grant committee established by the real estate commission. The committee shall consist of seven members: two members of the commission, four members of the Iowa association of realtors, and one member of the general public. The commission shall promulgate rules relating to the organization and operation of the committee, which shall include the term of membership, and establishing standards for awarding grants. The members of the committee may be reimbursed for actual and necessary expenses incurred in the performance of their duties but shall not receive a per diem payment.

3. The remaining moneys in the fund shall be distributed and are appropriated to the professional licensing and regulation bureau of the banking division of the department of commerce for the purpose of hiring and compensating a real estate education director and regulatory compliance personnel.

2007 Acts, ch 206, §27, 29; 2007 Acts, ch 215, §261  
Section amended

**543B.60A Prohibited practices — business referral disclosures.**

1. A licensee shall not request a referral fee after a bona fide offer to purchase is accepted.

2. A licensee shall not request a referral fee af-

ter a bona fide listing agreement has been signed.

3. A licensee shall not offer, promote, perform, provide, or otherwise participate in any marketing plan that requires a consumer to receive brokerage services, including referral services, from two or more licensees in a single real estate transaction, as a required condition for the consumer to receive either of the following:

a. Brokerage services from one or more of such licensees.

b. A rebate, prize, or other inducement from one or more such licensees.

4. For purposes of this section, "consumer" shall include parties or prospective parties to a real estate transaction, clients or prospective clients of a licensee, or customers or prospective customers of a licensee.

5. This section does not address relationships between a broker and the broker associates or salespersons licensed under, employed by, or otherwise associated with the broker in a real estate brokerage agency.

6. A violation of this section is deemed a violation of section 543B.29, subsection 3.

7. The purpose of this section is to prohibit licensee practices that interfere with contractual arrangements, place improper restrictions on consumer choice, compromise a licensee's fiduciary obligations, and create conflicts of interest.

8. An Iowa licensee is prohibited from participating in any marketing plan or arrangement prohibited by this section with a person who is licensed or otherwise authorized to engage in the real estate business in another state or foreign country. This subsection shall not be interpreted to impact or alter a referral fee structure which otherwise complies with the requirements of this section.

9. A licensee or person licensed in another state or foreign country who conducts business in this state or refers business to a licensee in this state shall disclose in writing to the consumer and to the licensee to whom they are referring business, the name of the consumer being referred, the name of the referring company, and the amount of compensation they are receiving for the referral. This subsection shall not affect or restrict business practices relating to payment methods between listing and selling brokerages, and shall be applicable strictly to properties containing at least one but not more than four dwelling units.

2007 Acts, ch 153, §1, 2  
NEW subsections 8 and 9

## CHAPTER 543D

### REAL ESTATE APPRAISALS AND APPRAISERS

#### 543D.3 Purposes.

1. The purpose of this chapter is to establish standards for real estate appraisals and a procedure for the voluntary certification of real estate appraisers and the mandatory registration of associate real estate appraisers.

2. A person who is not a certified real estate appraiser under this chapter may appraise real estate for compensation if certification is not required by this chapter or by federal or state law, rule, or policy. However, an employee of the state department of transportation whose duties include appraisals of property pursuant to chapter 6B must be a certified real estate appraiser under this chapter or a registered associate real estate appraiser acting under the direct supervision of a certified real estate appraiser.

2007 Acts, ch 72, §1  
Section amended and editorially numbered

#### 543D.9 Education and experience requirement.

The board shall determine what real estate appraisal or real estate appraisal review experience and what education shall be required to provide appropriate assurance that an applicant for certification is competent to perform the certified appraisal work which is within the scope of practice defined by the board. All experience required for initial certification shall be performed as a registered associate real estate appraiser acting under the direct supervision of a certified real estate appraiser, except as the board may provide by rule. The board shall prescribe a required minimum number of tested hours of education relating to the provisions of this chapter, the uniform appraisal standards, and other rules issued in accordance with this chapter.

2007 Acts, ch 72, §2  
Section amended

#### 543D.18 Standards of practice.

1. A certified real estate appraiser shall comply with the uniform appraisal standards adopted under this chapter. The reliance of the public in general and of the financial business community in particular on sound, reliable real estate appraisal practices imposes on persons engaged in the practice of real estate appraising as certified real estate appraisers or as registered associate real estate appraisers certain obligations both to their clients and to the public. These obligations include the obligation to maintain independence in thought and action, to adhere to the uniform ap-

praisal standards adopted under this chapter, and to maintain high standards of personal conduct in all matters impacting one's fitness to practice real estate appraising. A certified real estate appraiser and a registered associate real estate appraiser acting under the direct supervision of a certified real estate appraiser shall perform all appraisal assignments in an honest, disinterested and impartial manner, with objectivity and independence, and without accommodation to the personal interests or objectives of the appraiser, the client, or any third person.

2. A certified real estate appraiser shall not accept an appraisal assignment or a fee for an appraisal assignment if the employment itself is contingent upon the appraiser reporting a predetermined estimate, analysis, or opinion or if the fee to be paid is contingent upon the opinion, conclusion, or valuation reached, or upon the consequences resulting from the appraisal assignment.

3. A certified real estate appraiser may provide specialized services to facilitate the client's or employer's objectives. Specialized services shall not be communicated as a certified appraisal or as a certified appraisal report. Regardless of the intention of the client or employer, if the appraiser would be perceived by third parties or the public as acting as a disinterested third party in rendering an unbiased analysis or opinion or conclusion, the work is an appraisal assignment rather than an assignment for specialized services. Communication of a valuation under oath is an appraisal assignment.

4. A certified real estate appraiser who enters into an agreement to perform specialized services may be paid a fixed fee or a fee that is contingent on the results achieved by the specialized services.

5. If a certified real estate appraiser enters into an agreement to perform specialized services for a contingent fee, this fact shall be clearly stated in each written and oral report. In each written report, this fact shall be clearly stated in a prominent location in the report, each letter of transmittal, and the certification statement made by the appraiser in the report.

6. A certified real estate appraiser making a significant contribution to the valuation or analysis process in completing an appraisal assignment shall sign the final written report or acknowledge the appraiser's contribution in a verbal report.

7. A certified real estate appraiser who receives significant real property appraisal assistance in the development or reporting of an appraisal assignment shall disclose such assistance in accordance with the uniform appraisal stan-

standards adopted under this chapter.

2007 Acts, ch 72, §3, 4  
Subsection 1 amended  
NEW subsection 7

**543D.18A Penalties for improper influence of an appraisal assignment.**

1. A mortgage lender, mortgage broker or originator, real estate broker or salesperson, client, party, appraiser, or any other person with an interest in a real estate transaction or the financing of any loan secured by real estate involving an appraisal assignment shall not improperly influence or attempt to improperly influence the development, reporting, result, or review of a real estate appraisal through coercion, extortion, or bribery, or by the withholding or threatened withholding of payment for an appraisal fee, or the conditioning of the payment of an appraisal fee upon the opinion, conclusion, or valuation to be reached, or a request that the appraiser report a predetermined opinion, conclusion, or valuation, or the desired valuation of any person, or by any other act or practice that impairs or attempts to impair an appraiser's independence, objectivity, and impartiality, as required by section 543D.18, subsections 1 and 2.

2. A violation of this section is an unlawful practice under section 714.16, subsection 2, paragraph "a".

3. A violation of this section is a ground for discipline against any person holding a certificate of registration under this chapter or another license issued under the laws of the state of Iowa, as license is defined in section 17A.2, subsection 6, if the practice of the profession, occupation, or business regulated by the license relates to real estate transactions or the financing of loans secured by real estate.

4. A person does not violate this section solely by asking an appraiser to consider additional, appropriate property information, or to provide further detail, substantiation, or explanation for the appraiser's value conclusion, or to correct errors in the appraisal report, or by withholding payment of an appraisal fee based on a bona fide dispute regarding the appraiser's compliance with the appraisal standards adopted by the board under this chapter. A person does not violate this section solely by retaining appraisers from panels or lists on a rotating basis, or by supplying an appraiser with information the appraiser is required to analyze under the appraisal standards adopted by the board under this chapter, such as agreements of sale, options, or listings of the property to be valued.

2007 Acts, ch 72, §5  
NEW section

**543D.20 Registration of associate real estate appraisers.**

1. A person shall not assist a certified real es-

tate appraiser in the development or reporting of an appraisal assignment that is required by this chapter, or by federal or state law, rule, or policy to be performed by a certified real estate appraiser, unless the person meets one or more of the following conditions:

a. The person is certified under this chapter.

b. The person is registered as an associate real estate appraiser and is acting under the direct supervision of a certified real estate appraiser.

c. The person is solely providing administrative services, such as taking photographs, preparing charts, or typing reports, and is not providing real estate appraisal assistance in developing the analysis, valuation, opinions, or conclusions associated with the appraisal assignment.

d. The person is providing professional consultation that does not constitute real property appraisal assistance, such as the assistance of a professional engineer or certified public accountant.

2. The board shall establish by rule the terms and conditions of the registration of associate real estate appraisers, including the educational and other prerequisites to registration, the fees for registration and the renewal of registration, and the continuing education requirements for renewal of registration. The board shall consider and may incorporate any guidelines recommended by the appraisal qualifications board of the appraisal foundation relating to associate real estate appraisers.

3. The board shall adopt rules governing the manner in which certified real estate appraisers shall directly supervise associate real estate appraisers, the standards of conduct for associate real estate appraisers, and the grounds for imposing discipline against an associate real estate appraiser which shall include all of the grounds provided in section 543D.17.

4. Associate real estate appraisers shall be bound by the uniform appraisal standards adopted by the board under this chapter.

5. Persons who appraise real estate where certification is not required by this chapter or by federal or state law, rule, or policy, and who are not assisting a certified real estate appraiser in the development or reporting of an appraisal assignment that is required by this chapter, or by federal or state law, rule, or policy to be performed by a certified real estate appraiser, are not required to register with the board.

2007 Acts, ch 72, §6  
NEW section

**543D.21 Violations — injunctions — civil penalties.**

1. If, as the result of a complaint or otherwise, the board believes that a person has engaged, or is about to engage, in an act or practice that constitutes or will constitute a violation of this chapter, the board may make application to the district court for an order enjoining such act or practice.

Upon a showing by the board that such person has engaged, or is about to engage, in any such act or practice, an injunction, restraining order, or other order as may be appropriate shall be granted by the district court.

2. The board may investigate complaints or initiate complaints against persons who are not certified or registered under this chapter solely to determine whether grounds exist to make application to the district court pursuant to subsection 1 or to issue an order pursuant to subsection 3, and in connection with such complaints or investigations may issue subpoenas to compel witnesses to testify or persons to produce evidence consistent with the provisions of section 272C.6, subsection 3, as needed to determine whether probable cause exists to initiate proceedings under this section or to make application to the district court for an order enjoining violations of this chapter.

3. In addition to or as an alternative to making application to the district court for an injunction, the board may issue an order to a person who is not certified or registered under this chapter to require compliance with this chapter and may impose a civil penalty against such person for any violation of subsection 4 in an amount up to one thousand dollars for each violation. All civil penalties collected pursuant to this subsection shall be deposited in the housing trust fund created in section 16.181. An order issued pursuant to this section may prohibit a person from applying for certification or registration under this chapter.

4. The board may impose civil penalties

against a person who is not certified or registered under this chapter for any of the following acts:

- a. A violation of section 543D.15.
- b. A violation of section 543D.18A, subsection 1.
- c. A violation of section 543D.20, subsection 1.
- d. Fraud, deceit, or deception, through act or omission, in connection with an application for certification or registration under this chapter.

5. The board, before issuing an order under this section, shall provide the person written notice and the opportunity to request a hearing. The hearing must be requested within thirty days after receipt of the notice and shall be conducted in the same manner as provided for disciplinary proceedings involving a licensee under this chapter.

6. A person aggrieved by the imposition of a civil penalty under this section may seek judicial review pursuant to section 17A.19.

7. If a person fails to pay a civil penalty within thirty days after entry of an order imposing the civil penalty, or if the order is stayed pending an appeal, within ten days after the court enters a final judgment in favor of the board, the board shall notify the attorney general. The attorney general may commence an action to recover the amount of the penalty, including reasonable attorney fees and costs.

8. An action to enforce an order under this section may be joined with an action for an injunction.

2007 Acts, ch 72, §7  
NEW section

## CHAPTER 544A

### REGISTERED ARCHITECTS

#### **544A.17 When not applicable.**

The provisions of this chapter shall not apply to:

1. Professional engineers licensed under chapter 542B.

2. Persons acting under the instruction, control or supervision of, and those executing the plans of, a registered architect or a professional engineer licensed under chapter 542B, provided that such unregistered or unlicensed persons shall not be placed in responsible charge of architectural or professional engineering work.

3. Superintendents, inspectors, supervisors and building trades craftspersons while performing their customary duties.

2007 Acts, ch 126, §95  
Subsections 1 and 2 amended

#### **544A.18 Exceptions.**

Notwithstanding the other provisions of this chapter, persons who are not registered architects may perform planning and design services in con-

nection with any of the following:

1. Detached residential buildings containing twelve or fewer family dwelling units of not more than three stories and outbuildings in connection with the buildings.

2. Buildings used primarily for agricultural purposes including grain elevators and feed mills.

3. Nonstructural alterations to existing buildings which do not change the use of a building:

a. From any other use to a place of assembly of people or public gathering.

b. From any other use to a place of residence not exempted by subsection 1.

c. From an industrial or warehouse use to a commercial or office use not exempted by subsection 4.

4. Warehouses and commercial buildings not more than one story in height, and not exceeding ten thousand square feet in gross floor area; commercial buildings not more than two stories in height and not exceeding six thousand square feet

in gross floor area and light industrial buildings.

5. Factory built buildings which are not more than two stories in height and not exceeding twenty thousand square feet in gross floor area or which are certified by a professional engineer licensed under chapter 542B.

6. Churches and accessory buildings, whether attached or separate, not more than two stories in height and not exceeding two thousand square feet in gross floor area.

2007 Acts, ch 126, §96  
Subsection 5 amended

## CHAPTER 544B

### LANDSCAPE ARCHITECTS

#### 544B.12 Seal.

Every professional landscape architect shall have a seal, approved by the board, which shall contain the name of the landscape architect and the words "Professional Landscape Architect, State of Iowa", and such other words or figures as the board may deem necessary. All landscape architectural plans and specifications, prepared by such professional landscape architect or under the supervision of such professional landscape architect, shall be dated and bear the legible seal of such professional landscape architect. Nothing contained in this section shall be construed to permit the seal of a professional landscape architect to serve as a substitute for the seal of a registered architect, a licensed professional engineer, or a licensed land surveyor whenever the seal of an architect, engineer, or land surveyor is required under the laws of this state.

2007 Acts, ch 126, §97  
Section amended

#### 544B.20 Scope of chapter.

Nothing contained in this chapter shall be construed:

1. To apply to a professional engineer duly licensed under the laws of this state.

2. To apply to an architect registered under the laws of this state.

3. To prevent a registered architect or licensed professional engineer from doing landscape planning and designing.

4. To affect or prevent the practice of land surveying by a land surveyor registered under the laws of this state.

5. To apply to the business conducted in this state by any planner, agriculturist, soil conservationist, horticulturist, tree expert, arborist, forester, nursery or landscape nursery person, gardener, landscape gardener, landscape contractor, garden or lawn caretaker, tiling contractor, grader or cultivator of land, golf course designer or contractor, or similar business. However, such person shall not use the designation landscape architect or any title or device indicating or representing that such person is a professional landscape architect or is practicing landscape architecture unless such person is licensed under the provisions of section 544B.11.

2007 Acts, ch 126, §98  
Subsections 1 and 3 amended

## CHAPTER 546

### DEPARTMENT OF COMMERCE

#### 546.2 Department of commerce.

1. A department of commerce is created to coordinate and administer the various regulatory, service, and licensing functions of the state relating to the conducting of business or commerce in the state.

2. The chief administrative officer of the department is the director. The director shall be appointed by the governor from among those individuals who serve as heads of the divisions within the department. A division head appointed to be the director shall fulfill the responsibilities and duties of the director in addition to the individual's responsibilities and duties as the head of a division. The director shall serve at the pleasure of the governor. If the office of director becomes vacant, the

vacancy shall be filled in the same manner as the original appointment was made.

3. The department is administratively organized into the following divisions:

- a. Banking.
- b. Credit union.
- c. Utilities.
- d. Insurance.
- e. Alcoholic beverages.

4. The director shall have the following responsibilities:

a. To establish general operating policies for the department to provide general uniformity among the divisions while providing for necessary flexibility.

b. To assemble a department structure and



strategic plan that will provide optimal decentralization of responsibilities and authorities with sufficient coordination for appropriate growth and development.

*c.* To coordinate personnel services and shared administrative support services to assure maximum support and assistance to the divisions.

*d.* To coordinate the development of an annual budget which quantifies the operational plans of the divisions.

*e.* To identify and, with the chief administrative officers of each division, facilitate the opportunities for consolidation and efficiencies within the department.

*f.* To maintain monitoring and control systems, procedures, and policies which will permit each level of responsibility to quickly and precisely measure its results with its plan and standards.

5. The chief administrative officer of each division shall have the following responsibilities:

*a.* To make rules pursuant to chapter 17A except to the extent that rulemaking authority is vested in a policymaking commission.

*b.* To hire, allocate, develop, and supervise employees of the division necessary to perform duties assigned to the division by law.

*c.* To supervise and direct personnel and other resources to accomplish duties assigned to the division by law.

*d.* To establish fees assessed to the regulated industry except to the extent this power is vested in a policymaking commission.

6. Each division is responsible for policymaking and enforcement duties assigned to the division under the law. Except as provided in section 546.10, subsection 3:

*a.* Each division shall adopt rules pursuant to chapter 17A to implement its duties.

*b.* Decisions by the divisions are final agency actions pursuant to chapter 17A.

2007 Acts, ch 88, §44  
Subsection 3, paragraph c stricken and former paragraphs d – f redesignated as c – e

### 546.3 Banking division.

1. The banking division shall regulate and supervise banks under chapter 524, debt management licensees under chapter 533A, money services under chapter 533C, delayed deposit services under chapter 533D, savings and loan associations under chapter 534, mortgage bankers and brokers under chapter 535B, regulated loan companies under chapter 536, and industrial loan companies under chapter 536A, and shall perform other duties assigned to the division by law. The division is headed by the superintendent of banking who is appointed pursuant to section 524.201. The state banking council shall render advice within the division when requested by the superintendent.

2. The banking division shall administer and manage the professional licensing and regulation

bureau within the division. The division shall separately account for funds of the bureau. However, the division may allocate costs for administrative, technical, support, and other shared services across the entire division.

2007 Acts, ch 88, §45  
Subsection 1 amended

### 546.4 Credit union division.

1. The credit union division created by section 533.103 shall regulate and supervise credit unions under chapter 533.

2. The division is headed by the superintendent of credit unions who shall be appointed pursuant to section 533.104.

3. The credit union review board shall perform duties within the division as prescribed in chapter 533.

2007 Acts, ch 174, §96  
Section amended

**546.5 Savings and loan division.** Repealed by 2007 Acts, ch 88, § 50.

### 546.10 Professional licensing and regulation bureau — superintendent of banking.

1. The professional licensing and regulation bureau of the banking division shall administer and coordinate the licensing and regulation of several professions by bringing together the following licensing boards:

*a.* The engineering and land surveying examining board created pursuant to chapter 542B.

*b.* The Iowa accountancy examining board created pursuant to chapter 542.

*c.* The real estate commission created pursuant to chapter 543B.

*d.* The architectural examining board created pursuant to chapter 544A.

*e.* The landscape architectural examining board created pursuant to chapter 544B.

*f.* The real estate appraiser examining board created pursuant to section 543D.4.

*g.* The interior design examining board created pursuant to chapter 544C.

2. The bureau is headed by the administrator of professional licensing and regulation who shall be the superintendent of banking. The administrator shall appoint and supervise staff and shall coordinate activities for the licensing boards within the bureau.

3. The licensing and regulation examining boards included in the bureau pursuant to subsection 1 retain the powers granted them pursuant to the chapters in which they are created, except for budgetary and personnel matters which shall be handled by the administrator. Each licensing board shall adopt rules pursuant to chapter 17A. Decisions by a licensing board are final agency actions for purposes of chapter 17A.

Notwithstanding subsection 5, eighty-five percent of the funds received annually resulting from

an increase in licensing fees implemented on or after April 1, 2002, by a licensing board or commission listed in subsection 1, is appropriated to the professional licensing and regulation bureau to be allocated to the board or commission for the fiscal year beginning July 1, 2002, and succeeding fiscal years, for purposes related to the duties of the board or commission, including but not limited to additional full-time equivalent positions. The director of the department of administrative services shall draw warrants upon the treasurer of state from the funds appropriated as provided in this section and shall make the funds available to the professional licensing and regulation bureau on a monthly basis during each fiscal year.

4. The professional licensing and regulation bureau of the banking division of the department of commerce may expend additional funds, including funds for additional personnel, if those additional expenditures are directly the cause of actual examination expenses exceeding funds budgeted for examinations. Before the bureau expends or encumbers an amount in excess of the funds budgeted for examinations, the director of the department of management shall approve the expenditure or encumbrance. Before approval is given, the director of the department of management shall determine that the examination expenses exceed the funds budgeted by the general assembly to the bureau and the bureau does not have other funds from which the expenses can be paid. Upon approval of the director of the department of management, the bureau may expend and encumber funds for excess examination expenses. The amounts necessary to fund the examination expenses shall be collected as fees from additional examination applicants and shall be treated as repayment receipts as defined in section 8.2, subsection 8.

5. Fees collected under chapters 542, 542B, 543B, 543D, 544A, 544B, and 544C shall be paid to the treasurer of state and credited to the general fund of the state. All expenses required in the discharge of the duties and responsibilities imposed upon the professional licensing and regulation bureau of the banking division of the department of commerce, the administrator, and the licensing boards by the laws of this state shall be paid from moneys appropriated by the general assembly for

those purposes. All fees deposited into the general fund of the state, as provided in this subsection, shall be subject to the requirements of section 8.60.

6. The licensing boards included in the bureau pursuant to subsection 1 may refuse to issue or renew a license to practice a profession to any person otherwise qualified upon any of the grounds for which a license may be revoked or suspended or a licensee may otherwise be disciplined, or upon any other grounds set out in the chapter governing the respective board.

7. The licensing boards included in the bureau pursuant to subsection 1 may suspend, revoke, or refuse to issue or renew a license, or may discipline a licensee based upon a suspension, revocation, or other disciplinary action taken by a licensing authority in this or another state, territory, or country. For purposes of this subsection, “disciplinary action” includes the voluntary surrender of a license to resolve a pending disciplinary investigation or proceeding. A certified copy of the record or order of suspension, revocation, voluntary surrender, or other disciplinary action is prima facie evidence of such fact.

8. Notwithstanding any other provision of law to the contrary, the licensing boards included within the bureau pursuant to subsection 1 may by rule establish the conditions under which an individual licensed in a different jurisdiction may be issued a reciprocal or comity license, if, in the board’s discretion, the applicant’s qualifications for licensure are substantially equivalent to those required of applicants for initial licensure in this state.

9. Notwithstanding section 272C.6, the licensing boards included within the bureau pursuant to subsection 1 may by rule establish the conditions under which the board may supply to a licensee who is the subject of a disciplinary complaint or investigation, prior to the initiation of a disciplinary proceeding, all or such parts of a disciplinary complaint, disciplinary or investigatory file, report, or other information, as the board in its sole discretion believes would aid the investigation or resolution of the matter.

2007 Acts, ch 170, §7  
Confirmation, see §2.32  
NEW subsections 6 – 9

## CHAPTER 553

### IOWA COMPETITION LAW

#### 553.19 Antitrust fund.

1. An antitrust fund is created as a separate fund in the state treasury to be administered by the attorney general. Moneys credited to the fund shall include amounts received as a result of a

state or federal civil antitrust judgment or settlement which are based on damages sustained by the state, civil penalties, costs, or attorney fees, and amounts which are specifically directed to the credit of the fund by the judgment or settlement,

and amounts which are designated by the judgment or settlement for use by the attorney general for antitrust enforcement or education. Amounts based upon damages sustained by individuals or entities outside of state government not designated for antitrust enforcement purposes or amounts based upon actual damages awarded to the state which would not otherwise be deposited in the general fund of the state shall not be credited to the fund.

2. For each fiscal year, not more than five hundred thousand dollars is appropriated from the

fund to the department of justice to be used for enforcement of this chapter and chapter 551, and for enforcement of federal antitrust laws and for public education about state and federal antitrust laws.

3. Notwithstanding section 8.33, moneys credited to the fund shall not revert to any other fund. Notwithstanding section 12C.7, interest or earnings on the moneys in the fund shall be credited to the fund.

2007 Acts, ch 213, §23  
NEW section

## CHAPTER 554

### UNIFORM COMMERCIAL CODE

#### ARTICLE 1

#### GENERAL PROVISIONS

#### PART 1

#### GENERAL PROVISIONS

##### **554.1101 Short titles.**

1. This chapter may be cited as the Uniform Commercial Code.

2. This Article may be cited as Uniform Commercial Code — General Provisions.

2007 Acts, ch 41, §1  
Section amended

##### **554.1102 Scope of Article.**

This Article applies to a transaction to the extent that it is governed by another Article of this chapter.

2007 Acts, ch 41, §2, 57  
Former §554.1102 repealed by 2007 Acts, ch 41, §58; see §554.1103, 554.1106, 554.1302  
NEW section

##### **554.1103 Construction of this chapter to promote its purposes and policies — applicability of supplemental principles of law.**

1. This chapter must be liberally construed and applied to promote its underlying purposes and policies, which are:

- a. to simplify, clarify, and modernize the law governing commercial transactions;
- b. to permit the continued expansion of commercial practices through custom, usage, and agreement of the parties; and
- c. to make uniform the law among the various jurisdictions.

2. Unless displaced by the particular provisions of this chapter, the principles of law and equity, including the law merchant and the law relative to capacity to contract, principal and agent,

estoppel, fraud, misrepresentation, duress, coercion, mistake, bankruptcy, and other validating or invalidating cause supplement its provisions.

2007 Acts, ch 41, §3  
Section amended

##### **554.1104 Construction against implied repeal.**

This chapter being a general Act intended as a unified coverage of its subject matter, no part of it shall be deemed to be impliedly repealed by subsequent legislation if such construction can reasonably be avoided.

2007 Acts, ch 41, §4  
Section amended

##### **554.1105 Severability.**

If any provision or clause of this chapter or its application to any person or circumstance is held invalid, the invalidity does not affect other provisions or applications of this chapter which can be given effect without the invalid provision or application, and to this end the provisions of this chapter are severable.

2007 Acts, ch 41, §9, 48  
Former §554.1105 transferred to §554.1301; 2007 Acts, ch 41, §45  
Section transferred from §554.1108 in Code Supplement 2007 pursuant to directive in 2007 Acts, ch 41, §48  
Section amended

##### **554.1106 Use of singular and plural — gender.**

In this chapter, unless the statutory context otherwise requires:

1. words in the singular number include the plural, and those in the plural include the singular; and
2. words of any gender also refer to any other gender.

2007 Acts, ch 41, §7, 57  
Former §554.1106 transferred to §554.1305; 2007 Acts, ch 41, §46  
NEW section

**554.1107 Section captions.**

Section captions are parts of this chapter.

2007 Acts, ch 41, §49

Former §554.1107 transferred to §554.1306; 2007 Acts, ch 41, §47

Section transferred from §554.1109 in Code Supplement 2007 pursuant to directive in 2007 Acts, ch 41, §49

**554.1108 Relation to Electronic Signatures in Global and National Commerce Act.**

This Article modifies, limits, and supersedes the federal Electronic Signatures in Global and National Commerce Act, 15 U.S.C. § 7001 et seq., except that nothing in this Article modifies, limits, or supersedes § 7001(c) of that Act or authorizes electronic delivery of any of the notices described in § 7003(b) of that Act.

2007 Acts, ch 41, §10, 57

Former §554.1108 transferred to §554.1105; 2007 Acts, ch 41, §48

NEW section

**554.1109 Section captions.** Transferred to § 554.1107; 2007 Acts, ch 41, § 49.

## PART 2

GENERAL DEFINITIONS AND PRINCIPLES  
OF INTERPRETATION**554.1201 General definitions.**

1. Unless the context otherwise requires, words or phrases defined in this section, or in the additional definitions contained in other Articles of this chapter that apply to particular Articles or Parts thereof, have the meanings stated.

2. Subject to definitions contained in other Articles of this chapter that apply to particular Articles or Parts thereof:

a. *“Action”* in the sense of a judicial proceeding, includes recoupment, counterclaim, setoff, suit in equity, and any other proceedings in which rights are determined.

b. *“Aggrieved party”* means a party entitled to pursue a remedy.

c. *“Agreement”*, as distinguished from “contract”, means the bargain of the parties in fact, as found in their language or inferred from other circumstances, including course of performance, course of dealing, or usage of trade as provided in section 554.1303.

d. *“Bank”* means a person engaged in the business of banking and includes a savings bank, savings and loan association, credit union, and trust company.

e. *“Bearer”* means a person in control of a negotiable electronic document of title or a person in possession of a negotiable instrument, negotiable tangible document of title, or certificated security that is payable to bearer or indorsed in blank.

f. *“Bill of lading”* means a document of title evidencing the receipt of goods for shipment issued by a person engaged in the business of directly or indirectly transporting or forwarding goods. The

term does not include a warehouse receipt.

g. *“Branch”* includes a separately incorporated foreign branch of a bank.

h. *“Burden of establishing”* a fact means the burden of persuading the trier of fact that the existence of the fact is more probable than its nonexistence.

i. *“Buyer in ordinary course of business”* means a person that buys goods in good faith, without knowledge that the sale violates the rights of another person in the goods, and in the ordinary course from a person, other than a pawnbroker, in the business of selling goods of that kind. A person buys goods in the ordinary course if the sale to the person comports with the usual or customary practices in the kind of business in which the seller is engaged or with the seller’s own usual or customary practices. A person that sells oil, gas, or other minerals at the wellhead or minehead is a person in the business of selling goods of that kind. A buyer in ordinary course of business may buy for cash, by exchange of other property, or on secured or unsecured credit, and may acquire goods or documents of title under a preexisting contract for sale. Only a buyer that takes possession of the goods or has a right to recover the goods from the seller under Article 2 may be a buyer in ordinary course of business. *“Buyer in ordinary course of business”* does not include a person that acquires goods in a transfer in bulk or as security for or in total or partial satisfaction of a money debt.

j. *“Conspicuous”*, with reference to a term, means so written, displayed, or presented that a reasonable person against which it is to operate ought to have noticed it. Whether a term is *“conspicuous”* or not is a decision for the court. Conspicuous terms include the following:

(1) a heading in capitals equal to or greater in size than the surrounding text, or in contrasting type, font, or color to the surrounding text of the same or lesser size; and

(2) language in the body of a record or display in larger type than the surrounding text, or in contrasting type, font, or color to the surrounding text of the same size, or set off from surrounding text of the same size by symbols or other marks that call attention to the language.

k. *“Consumer”* means an individual who enters into a transaction primarily for personal, family, or household purposes.

l. *“Contract”*, as distinguished from “agreement”, means the total legal obligation that results from the parties’ agreement as determined by this chapter as supplemented by any other applicable laws.

m. *“Creditor”* includes a general creditor, a secured creditor, a lien creditor, and any representative of creditors, including an assignee for the benefit of creditors, a trustee in bankruptcy, a receiver in equity, and an executor or administrator of an

insolvent debtor's or assignor's estate.

*n.* "Defendant" includes a person in the position of defendant in a counterclaim, cross-claim, or third-party claim.

*o.* "Delivery", with respect to an electronic document of title means voluntary transfer of control and with respect to an instrument, a tangible document of title, or chattel paper, means voluntary transfer of possession.

*p.* "Document of title" means a record (i) that in the regular course of business or financing is treated as adequately evidencing that the person in possession or control of the record is entitled to receive, control, hold, and dispose of the record and the goods the record covers and (ii) that purports to be issued by or addressed to a bailee and to cover goods in the bailee's possession which are either identified or are fungible portions of an identified mass. The term includes a bill of lading, transport document, dock warrant, dock receipt, warehouse receipt, and order for delivery of goods. An electronic document of title means a document of title evidenced by a record consisting of information stored in an electronic medium. A tangible document of title means a document of title evidenced by a record consisting of information that is inscribed on a tangible medium.

*q.* "Fault" means a default, breach, or wrongful act or omission.

*r.* "Fungible goods" means:

- (1) goods of which any unit, by nature or usage of trade, is the equivalent of any other like unit; or
- (2) goods that by agreement are treated as equivalent.

*s.* "Genuine" means free of forgery or counterfeiting.

*t.* "Good faith", except as otherwise provided in Article 5, means honesty in fact and the observance of reasonable commercial standards of fair dealing.

*u.* "Holder" means:

- (1) the person in possession of a negotiable instrument that is payable either to bearer or to an identified person that is the person in possession;
- (2) the person in possession of a negotiable tangible document of title if the goods are deliverable either to bearer or to the order of the person in possession; or
- (3) the person in control of a negotiable electronic document of title.

*v.* "Insolvency proceeding" includes any assignment for the benefit of creditors or other proceeding intended to liquidate or rehabilitate the estate of the person involved.

*w.* "Insolvent" means:

- (1) having generally ceased to pay debts in the ordinary course of business other than as a result of a bona fide dispute;
- (2) being unable to pay debts as they become due; or

(3) being insolvent within the meaning of federal bankruptcy law.

*x.* "Money" means a medium of exchange currently authorized or adopted by a domestic or foreign government. The term includes a monetary unit of account established by an intergovernmental organization or by agreement between two or more countries.

*y.* "Organization" means a person other than an individual.

*z.* "Party", as distinguished from "third party", means a person that has engaged in a transaction or made an agreement subject to this chapter.

*aa.* "Person" means an individual, corporation, business trust, estate, trust, partnership, limited liability company, association, joint venture, government, governmental subdivision, agency, or instrumentality, public corporation, or any other legal or commercial entity.

*ab.* "Present value" means the amount as of a date certain of one or more sums payable in the future, discounted to the date certain by use of either an interest rate specified by the parties if that rate is not manifestly unreasonable at the time the transaction is entered into or, if an interest rate is not so specified, a commercially reasonable rate that takes into account the facts and circumstances at the time the transaction is entered into.

*ac.* "Purchase" means taking by sale, lease, discount, negotiation, mortgage, pledge, lien, security interest, issue or reissue, gift, or any other voluntary transaction creating an interest in property.

*ad.* "Purchaser" means a person who takes by purchase.

*ae.* "Record" means information that is inscribed on a tangible medium or that is stored in an electronic or other medium and is retrievable in perceivable form.

*af.* "Remedy" means any remedial right to which an aggrieved party is entitled with or without resort to a tribunal.

*ag.* "Representative" means a person empowered to act for another, including an agent, an officer of a corporation or association, and a trustee, executor, or administrator of an estate.

*ah.* "Right" includes remedy.

*ai.* "Security interest" means an interest in personal property or fixtures which secures payment or performance of an obligation. "Security interest" includes any interest of a consignor and a buyer of accounts, chattel paper, a payment intangible, or a promissory note in a transaction that is subject to Article 9. "Security interest" does not include the special property interest of a buyer of goods on identification of those goods to a contract for sale under section 554.2401, but a buyer may also acquire a "security interest" by complying with Article 9. Except as otherwise provided in section 554.2505, the right of a seller or lessor of

goods under Article 2 or 13 to retain or acquire possession of the goods is not a “*security interest*”, but a seller or lessor may also acquire a “*security interest*” by complying with Article 9. The retention or reservation of title by a seller of goods notwithstanding shipment or delivery to the buyer under section 554.2401 is limited in effect to a reservation of a “*security interest*”. Whether a transaction in the form of a lease creates a “*security interest*” is determined pursuant to section 554.1203.

*aj.* “*Send*” in connection with a writing, record, or notice means:

(1) to deposit in the mail or deliver for transmission by any other usual means of communication with postage or cost of transmission provided for and properly addressed and, in the case of an instrument, to an address specified thereon or otherwise agreed, or if there be none to any address reasonable under the circumstances; or

(2) in any other way to cause to be received any record or notice within the time it would have arrived if properly sent.

*ak.* “*Signed*” includes using any symbol executed or adopted with present intention to adopt or accept a writing.

*al.* “*State*” means a state of the United States, the District of Columbia, Puerto Rico, the United States Virgin Islands, or any territory or insular possession subject to the jurisdiction of the United States.

*am.* “*Surety*” includes a guarantor or other secondary obligor.

*an.* “*Term*” means that portion of an agreement that relates to a particular matter.

*ao.* “*Unauthorized signature*” means a signature made without actual, implied, or apparent authority. The term includes a forgery.

*ap.* “*Warehouse receipt*” means a document of title issued by a person engaged in the business of storing goods for hire.

*aq.* “*Writing*” includes printing, typewriting, or any other intentional reduction to tangible form. “*Written*” has a corresponding meaning.

2007 Acts, ch 30, §45–47; 2007 Acts, ch 41, §11, 43, 44; 2007 Acts, ch 215, §262

See Code editor’s note  
Section amended

#### 554.1202 Notice — knowledge.

1. Subject to subsection 6, a person has “*notice*” of a fact if the person:

- a. has actual knowledge of it;
- b. has received a notice or notification of it; or
- c. from all the facts and circumstances known to the person at the time in question, has reason to know that it exists.

2. “*Knowledge*” means actual knowledge. “*Knows*” has a corresponding meaning.

3. “*Discover*”, “*learn*”, or words of similar import refer to knowledge rather than to reason to know.

4. A person “*notifies*” or “*gives*” a notice or noti-

fication to another person by taking such steps as may be reasonably required to inform the other person in ordinary course, whether or not the other person actually comes to know of it.

5. Subject to subsection 6, a person “*receives*” a notice or notification when:

a. it comes to that person’s attention; or

b. it is duly delivered in a form reasonable under the circumstances at the place of business through which the contract was made or at another location held out by that person as the place for receipt of such communications.

6. Notice, knowledge, or a notice or notification received by an organization is effective for a particular transaction from the time it is brought to the attention of the individual conducting that transaction and, in any event, from the time it would have been brought to the individual’s attention if the organization had exercised due diligence. An organization exercises due diligence if it maintains reasonable routines for communicating significant information to the person conducting the transaction and there is reasonable compliance with the routines. Due diligence does not require an individual acting for the organization to communicate information unless the communication is part of the individual’s regular duties or the individual has reason to know of the transaction and that the transaction would be materially affected by the information.

2007 Acts, ch 41, §13, 57

Former §554.1202 transferred to §554.1307; 2007 Acts, ch 41, §50  
NEW section

#### 554.1203 Lease distinguished from security interest.

1. Whether a transaction in the form of a lease creates a lease or security interest is determined by the facts of each case.

2. A transaction in the form of a lease creates a security interest if the consideration that the lessee is to pay the lessor for the right to possession and use of the goods is an obligation for the term of the lease and is not subject to termination by the lessee, and:

a. the original term of the lease is equal to or greater than the remaining economic life of the goods;

b. the lessee is bound to renew the lease for the remaining economic life of the goods or is bound to become the owner of the goods;

c. the lessee has an option to renew the lease for the remaining economic life of the goods for no additional consideration or for nominal additional consideration upon compliance with the lease agreement; or

d. the lessee has an option to become the owner of the goods for no additional consideration or for nominal additional consideration upon compliance with the lease agreement.

3. A transaction in the form of a lease does not create a security interest merely because:

a. the present value of the consideration the lessee is obligated to pay the lessor for the right to possession and use of the goods is substantially equal to or is greater than the fair market value of the goods at the time the lease is entered into;

b. the lessee assumes risk of loss of the goods;

c. the lessee agrees to pay, with respect to the goods, taxes, insurance, filing, recording, or registration fees, or service or maintenance costs;

d. the lessee has an option to renew the lease or to become the owner of the goods;

e. the lessee has an option to renew the lease for a fixed rent that is equal to or greater than the reasonably predictable fair market rent for the use of the goods for the term of the renewal at the time the option is to be performed; or

f. the lessee has an option to become the owner of the goods for a fixed price that is equal to or greater than the reasonably predictable fair market value of the goods at the time the option is to be performed.

4. Additional consideration is nominal if it is less than the lessee's reasonably predictable cost of performing under the lease agreement if the option is not exercised. Additional consideration is not nominal if:

a. when the option to renew the lease is granted to the lessee, the rent is stated to be the fair market rent for the use of the goods for the term of the renewal determined at the time the option is to be performed; or

b. when the option to become the owner of the goods is granted to the lessee, the price is stated to be the fair market value of the goods determined at the time the option is to be performed.

5. The "remaining economic life of the goods" and "reasonably predictable" fair market rent, fair market value, or cost of performing under the lease agreement must be determined with reference to the facts and circumstances at the time the transaction is entered into.

2007 Acts, ch 41, §14, 57

Former §554.1203 transferred to §554.1304; 2007 Acts, ch 41, §51

NEW section

#### 554.1204 Value.

Except as otherwise provided in Articles 3, 4, and 5, a person gives value for rights if the person acquires them:

1. in return for a binding commitment to extend credit or for the extension of immediately available credit, whether or not drawn upon and whether or not a charge-back is provided for in the event of difficulties in collection;

2. as security for, or in total or partial satisfaction of, a preexisting claim;

3. by accepting delivery under a preexisting contract for purchase; or

4. in return for any consideration sufficient to support a simple contract.

2007 Acts, ch 41, §14, 57

Former §554.1204 transferred to §554.1205; 2007 Acts, ch 41, §52

NEW section

#### 554.1205 Reasonable time — seasonableness.

1. Whether a time for taking an action required by this chapter is reasonable depends on the nature, purpose, and circumstances of the action.

2. An action is taken seasonably if it is taken at or within the time agreed or, if no time is agreed, at or within a reasonable time.

2007 Acts, ch 41, §15, 52

Former §554.1205 transferred to §554.1303; 2007 Acts, ch 41, §53

Section transferred from §554.1204 in Code Supplement 2007 pursuant to directive in 2007 Acts, ch 41, §52

Section amended

#### 554.1206 Presumptions.

Whenever this chapter creates a "presumption" with respect to a fact, or provides that a fact is "presumed", the trier of fact must find the existence of the fact unless and until evidence is introduced that supports a finding of its nonexistence.

2007 Acts, ch 41, §18, 57

Former §554.1206 repealed by 2007 Acts, ch 41, §59

NEW section

**554.1207 Performance or acceptance under reservation of rights.** Transferred to § 554.1308; 2007 Acts, ch 41, § 54.

**554.1208 Option to accelerate at will.** Transferred to § 554.1309; 2007 Acts, ch 41, § 55.

**554.1209 Subordinated obligations.** Transferred to § 554.1310; 2007 Acts, ch 41, § 56.

### PART 3

#### TERRITORIAL APPLICABILITY AND GENERAL RULES

#### 554.1301 Territorial applicability — parties' power to choose applicable law.

1. Except as otherwise provided in this section, when a transaction bears a reasonable relation to this state and also to another state or nation the parties may agree that the law either of this state or of such other state or nation shall govern their rights and duties.

2. In the absence of an agreement effective under subsection 1, and except as provided in subsection 3, this chapter applies to transactions bearing an appropriate relation to this state.

3. If one of the following provisions of this chapter specifies the applicable law, that provision governs and a contrary agreement is effective only to the extent permitted by the law so specified:

a. Section 554.2402;

b. Section 554.4102;

c. Section 554.5116;

d. Section 554.8110;

e. Sections 554.9301 through 554.9307;

f. Section 554.12507;

g. Sections 554.13105 and 554.13106.

2007 Acts, ch 41, §5, 45  
Section transferred from §554.1105 in Code Supplement 2007 pursuant to directive in 2007 Acts, ch 41, §45  
Section stricken and rewritten

#### **554.1302 Variation by agreement.**

1. Except as otherwise provided in subsection 2 or elsewhere in this chapter, the effect of provisions of this chapter may be varied by agreement.

2. The obligations of good faith, diligence, reasonableness, and care prescribed by this chapter may not be disclaimed by agreement. The parties, by agreement, may determine the standards by which the performance of those obligations is to be measured if those standards are not manifestly unreasonable. Whenever this chapter requires an action to be taken within a reasonable time, a time that is not manifestly unreasonable may be fixed by agreement.

3. The presence in certain provisions of this chapter of the phrase “unless otherwise agreed”, or words of similar import, does not imply that the effect of other provisions may not be varied by agreement under this section.

2007 Acts, ch 41, §22  
NEW section

#### **554.1303 Course of performance, course of dealing, and usage of trade.**

1. A “*course of performance*” is a sequence of conduct between the parties to a particular transaction that exists if:

a. the agreement of the parties with respect to the transaction involves repeated occasions for performance by a party; and

b. the other party, with knowledge of the nature of the performance and opportunity for objection to it, accepts the performance or acquiesces in it without objection.

2. A “*course of dealing*” is a sequence of conduct concerning previous transactions between the parties to a particular transaction that is fairly to be regarded as establishing a common basis of understanding for interpreting their expressions and other conduct.

3. A “*usage of trade*” is any practice or method of dealing having such regularity of observance in a place, vocation, or trade as to justify an expectation that it will be observed with respect to the transaction in question. The existence and scope of such a usage must be proved as facts. If it is established that such a usage is embodied in a trade code or similar record, the interpretation of the record is a question of law.

4. A course of performance or course of dealing between the parties or usage of trade in the vocation or trade in which they are engaged or of which they are or should be aware is relevant in ascertaining the meaning of the parties’ agreement, may give particular meaning to specific terms of the agreement, and may supplement or qualify the terms of the agreement. A usage of trade applica-

ble in the place in which part of the performance under the agreement is to occur may be so utilized as to that part of the performance.

5. Except as otherwise provided in subsection 6, the express terms of an agreement and any applicable course of dealing, or usage of trade must be construed wherever reasonable as consistent with each other. If such a construction is unreasonable:

a. express terms prevail over course of performance, course of dealing, and usage of trade;

b. course of performance prevails over course of dealing and usage of trade; and

c. course of dealing prevails over usage of trade.

6. Subject to section 554.2209, a course of performance is relevant to show a waiver or modification of any term inconsistent with the course of performance.

7. Evidence of a relevant usage of trade offered by one party is not admissible unless that party has given the other party notice that the court finds sufficient to prevent unfair surprise to the other party.

2007 Acts, ch 41, §17, 53  
Section transferred from §554.1205 in Code Supplement 2007 pursuant to directive in 2007 Acts, ch 41, §53  
Section amended

#### **554.1304 Obligation of good faith.**

Every contract or duty within this chapter imposes an obligation of good faith in its performance or enforcement.

2007 Acts, ch 41, §51  
Section transferred from §554.1203 in Code Supplement 2007 pursuant to directive in 2007 Acts, ch 41, §51

#### **554.1305 Remedies to be liberally administered.**

1. The remedies provided by this chapter must be liberally administered to the end that the aggrieved party may be put in as good a position as if the other party had fully performed but neither consequential or special damages nor penal damages may be had except as specifically provided in this chapter or by other rule of law.

2. Any right or obligation declared by this chapter is enforceable by action unless the provision declaring it specifies a different and limited effect.

2007 Acts, ch 41, §6, 46  
Section transferred from §554.1106 in Code Supplement 2007 pursuant to directive in 2007 Acts, ch 41, §46  
Subsection 1 amended

#### **554.1306 Waiver or renunciation of claim or right after breach.**

A claim or right arising out of an alleged breach may be discharged in whole or in part without consideration by agreement of the aggrieved party in an authenticated record.

2007 Acts, ch 41, §8, 47  
Section transferred from §554.1107 in Code Supplement 2007 pursuant to directive in 2007 Acts, ch 41, §47  
Section amended



### 554.1307 Prima facie evidence by third-party documents.

A document in due form purporting to be a bill of lading, policy or certificate of insurance, official weigher's or inspector's certificate, consular invoice, or any other document authorized or required by the contract to be issued by a third party is prima facie evidence of its own authenticity and genuineness and of the facts stated in the document by the third party.

2007 Acts, ch 41, §12, 50  
Section transferred from §554.1202 in Code Supplement 2007 pursuant to directive in 2007 Acts, ch 41, §50  
Section amended

### 554.1308 Performance or acceptance under reservation of rights.

1. A party that with explicit reservation of rights performs or promises performance or assents to performance in a manner demanded or offered by the other party does not thereby prejudice the rights reserved. Such words as "without prejudice", "under protest", or the like are sufficient.

2. Subsection 1 does not apply to an accord and satisfaction.

2007 Acts, ch 41, §19, 54  
Section transferred from §554.1207 in Code Supplement 2007 pursuant to directive in 2007 Acts, ch 41, §54  
Subsection 1 amended

### 554.1309 Option to accelerate at will.

A term providing that one party or that party's successor in interest may accelerate payment or performance or require collateral or additional collateral "at will" or when the party "deems itself insecure" or words of similar import, means that that party has power to do so only if that party in good faith believes that the prospect of payment or performance is impaired. The burden of establishing lack of good faith is on the party against which the power has been exercised.

2007 Acts, ch 41, §20, 55  
Section transferred from §554.1208 in Code Supplement 2007 pursuant to directive in 2007 Acts, ch 41, §55  
Section amended

### 554.1310 Subordinated obligations.

An obligation may be issued as subordinated to performance of another obligation of the person obligated, or a creditor may subordinate its right to performance of an obligation by agreement with either the person obligated or another creditor of the person obligated. Subordination does not create a security interest as against either the common debtor or a subordinated creditor.

2007 Acts, ch 41, §21, 56  
Section transferred from §554.1209 in Code Supplement 2007 pursuant to directive in 2007 Acts, ch 41, §56  
Section amended

### 554.2103 Definitions and index of definitions.

1. In this Article unless the context otherwise requires

a. "Buyer" means a person who buys or contracts to buy goods.

b. Reserved.

c. "Receipt" of goods means taking physical possession of them.

d. "Seller" means a person who sells or contracts to sell goods.

2. Other definitions applying to this Article or to specified Parts thereof, and the sections in which they appear are:

"Acceptance"	Section 554.2606
"Banker's credit"	Section 554.2325
"Between merchants"	Section 554.2104
"Cancellation"	Section 554.2106(4)
"Commercial unit"	Section 554.2105
"Confirmed credit"	Section 554.2325
"Conforming to contract"	Section 554.2106
"Contract for sale"	Section 554.2106
"Cover"	Section 554.2712
"Entrusting"	Section 554.2403
"Financing agency"	Section 554.2104
"Future goods"	Section 554.2105
"Goods"	Section 554.2105
"Identification"	Section 554.2501
"Installment contract"	Section 554.2612
"Letter of credit"	Section 554.2325
"Lot"	Section 554.2105
"Merchant"	Section 554.2104
"Overseas"	Section 554.2323
"Person in position of seller"	Section 554.2707
"Present sale"	Section 554.2106
"Sale"	Section 554.2106
"Sale on approval"	Section 554.2326
"Sale or return"	Section 554.2326
"Termination"	Section 554.2106

3. "Control" as provided in section 554.7106 and the following definitions in other Articles apply to this Article:

"Check"	Section 554.3104
"Consignee"	Section 554.7102
"Consignor"	Section 554.7102
"Consumer goods"	Section 554.9102
"Dishonor"	Section 554.3502
"Draft"	Section 554.3104

4. In addition Article 1 contains general definitions and principles of construction and interpretation applicable throughout this Article.

2007 Acts, ch 30, §45, 46, 48; 2007 Acts, ch 41, §23  
Subsection 1, paragraph b stricken  
Subsection 3 amended

### 554.2104 Definitions: "merchant" — "between merchants" — "financing agency".

1. "Merchant" means a person who deals in goods of the kind or otherwise by the person's occupation holds that person out as having knowledge or skill peculiar to the practices or goods involved in the transaction or to whom such knowledge or skill may be attributed by the person's employment of an agent or broker or other intermediary who by the intermediary's occupation holds

the intermediary out as having such knowledge or skill.

2. “*Financing agency*” means a bank, finance company or other person who in the ordinary course of business makes advances against goods or documents of title or who by arrangement with either the seller or the buyer intervenes in ordinary course to make or collect payment due or claimed under the contract for sale, as by purchasing or paying the seller’s draft or making advances against it or by merely taking it for collection whether or not documents of title accompany or are associated with the draft. “*Financing agency*” includes also a bank or other person who similarly intervenes between persons who are in the position of seller and buyer in respect to the goods (section 554.2707).

3. “*Between merchants*” means in any transaction with respect to which both parties are chargeable with the knowledge or skill of merchants.

2007 Acts, ch 30, §45, 46, 49  
Subsection 2 amended

**554.2202 Final written expression — parol or extrinsic evidence.**

Terms with respect to which the confirmatory memoranda of the parties agree or which are otherwise set forth in a writing intended by the parties as a final expression of their agreement with respect to such terms as are included therein may not be contradicted by evidence of any prior agreement or of a contemporaneous oral agreement but may be explained or supplemented

1. by course of performance, course of dealing, or usage of trade (section 554.1303); and

2. by evidence of consistent additional terms unless the court finds the writing to have been intended also as a complete and exclusive statement of the terms of the agreement.

2007 Acts, ch 41, §24  
Former paragraphs a and b editorially redesignated as subsections 1 and 2  
Subsection 1 amended

**554.2208 Course of performance or practical construction.** Repealed by 2007 Acts, ch 41, § 60. See § 554.1303.

**554.2310 Open time for payment or running of credit — authority to ship under reservation.**

Unless otherwise agreed

a. payment is due at the time and place at which the buyer is to receive the goods even though the place of shipment is the place of delivery; and

b. if the seller is authorized to send the goods the seller may ship them under reservation, and may tender the documents of title, but the buyer may inspect the goods after their arrival before payment is due unless such inspection is inconsistent with the terms of the contract (section

554.2513); and

c. if delivery is authorized and made by way of documents of title otherwise than by paragraph “b” then payment is due regardless of where the goods are to be received (i) at the time and place at which the buyer is to receive delivery of the tangible documents or (ii) at the time the buyer is to receive delivery of the electronic documents and at the seller’s place of business or if none, the seller’s residence; and

d. where the seller is required or authorized to ship the goods on credit the credit period runs from the time of shipment but post-dating the invoice or delaying its dispatch will correspondingly delay the starting of the credit period.

2007 Acts, ch 30, §45, 46, 50  
Section amended

**554.2323 Form of bill of lading required in overseas shipment — “overseas”.**

1. Where the contract contemplates overseas shipment and contains a term C.I.F. or C. & F. or F.O.B. vessel, the seller unless otherwise agreed must obtain a negotiable bill of lading stating that the goods have been loaded on board or, in the case of a term C.I.F. or C. & F., received for shipment.

2. Where in a case within subsection 1 a tangible bill of lading has been issued in a set of parts, unless otherwise agreed if the documents are not to be sent from abroad the buyer may demand tender of the full set; otherwise only one part of the bill of lading need be tendered. Even if the agreement expressly requires a full set,

a. due tender of a single part is acceptable within the provisions of this Article on cure of improper delivery (subsection 1 of section 554.2508); and

b. even though the full set is demanded, if the documents are sent from abroad the person tendering an incomplete set may nevertheless require payment upon furnishing an indemnity which the buyer in good faith deems adequate.

3. A shipment by water or by air or a contract contemplating such shipment is “overseas” insofar as by usage of trade or agreement it is subject to the commercial, financing or shipping practices characteristic of international deep water commerce.

2007 Acts, ch 30, §45, 46, 51  
Subsection 2, unnumbered paragraph 1 amended

**554.2401 Passing of title — reservation for security — limited application of this section.**

Each provision of this Article with regard to the rights, obligations and remedies of the seller, the buyer, purchasers or other third parties applies irrespective of title to the goods except where the provision refers to such title. Insofar as situations are not covered by the other provisions of this Article and matters concerning title become material the following rules apply:

1. Title to goods cannot pass under a contract for sale prior to their identification to the contract (section 554.2501), and unless otherwise explicitly agreed the buyer acquires by their identification a special property as limited by this chapter. Any retention or reservation by the seller of the title (property) in goods shipped or delivered to the buyer is limited in effect to a reservation of a security interest. Subject to these provisions and to the provisions of the Article on Secured Transactions (Article 9), title to goods passes from the seller to the buyer in any manner and on any conditions explicitly agreed on by the parties.

2. Unless otherwise explicitly agreed title passes to the buyer at the time and place at which the seller completes the seller's performance with reference to the physical delivery of the goods, despite any reservation of a security interest and even though a document of title is to be delivered at a different time or place; and in particular and despite any reservation of a security interest by the bill of lading

*a.* if the contract requires or authorizes the seller to send the goods to the buyer but does not require the seller to deliver them at destination, title passes to the buyer at the time and place of shipment; but

*b.* if the contract requires delivery at destination, title passes on tender there.

3. Unless otherwise explicitly agreed where delivery is to be made without moving the goods,

*a.* if the seller is to deliver a tangible document of title, title passes at the time when and the place where the seller delivers such documents and if the seller is to deliver an electronic document of title, title passes when the seller delivers the document; or

*b.* if the goods are at the time of contracting already identified and no documents of title are to be delivered, title passes at the time and place of contracting.

4. A rejection or other refusal by the buyer to receive or retain the goods, whether or not justified, or a justified revocation of acceptance revests title to the goods in the seller. Such revesting occurs by operation of law and is not a "sale".

2007 Acts, ch 30, §45, 46, 52  
Subsection 3, paragraphs a and b amended

#### **554.2503 Manner of seller's tender of delivery.**

1. Tender of delivery requires that the seller put and hold conforming goods at the buyer's disposition and give the buyer any notification reasonably necessary to enable the buyer to take delivery. The manner, time and place for tender are determined by the agreement and this Article, and in particular,

*a.* tender must be at a reasonable hour, and if it is of goods they must be kept available for the period reasonably necessary to enable the buyer to take possession; but

*b.* unless otherwise agreed the buyer must furnish facilities reasonably suited to the receipt of the goods.

2. Where the case is within the next section respecting shipment tender requires that the seller comply with its provisions.

3. Where the seller is required to deliver at a particular destination tender requires that the seller comply with subsection 1 and also in any appropriate case tender documents as described in subsections 4 and 5 of this section.

4. Where goods are in the possession of a bailee and are to be delivered without being moved,

*a.* tender requires that the seller either tender a negotiable document of title covering such goods or procure acknowledgment by the bailee of the buyer's right to possession of the goods; but

*b.* tender to the buyer of a nonnegotiable document of title or of a record directing the bailee to deliver is sufficient tender unless the buyer seasonably objects, and except as otherwise provided in Article 9 receipt by the bailee of notification of the buyer's rights fixes those rights as against the bailee and all third persons; but risk of loss of the goods and of any failure by the bailee to honor the nonnegotiable document of title or to obey the direction remains on the seller until the buyer has had a reasonable time to present the document or direction, and a refusal by the bailee to honor the document or to obey the direction defeats the tender.

5. Where the contract requires the seller to deliver documents,

*a.* the seller must tender all such documents in correct form except as provided in this Article with respect to bills of lading in a set (subsection 2 of section 554.2323); and

*b.* tender through customary banking channels is sufficient and dishonor of a draft accompanying or associated with the documents constitutes nonacceptance or rejection.

2007 Acts, ch 30, §45, 46, 53, 54  
Subsection 4, paragraph b amended  
Subsection 5, paragraph b amended

#### **554.2505 Seller's shipment under reservation.**

1. Where the seller has identified goods to the contract by or before shipment:

*a.* the seller's procurement of a negotiable bill of lading to the seller's own order or otherwise reserves in the seller a security interest in the goods. The seller's procurement of the bill to the order of a financing agency or of the buyer indicates in addition only the seller's expectation of transferring that interest to the person named.

*b.* a nonnegotiable bill of lading to the seller or the seller's nominee reserves possession of the goods as security, but except in a case of conditional delivery (subsection 2 of section 554.2507) a nonnegotiable bill of lading naming the buyer as consignee reserves no security interest even

though the seller retains possession or control of the bill of lading.

2. When shipment by the seller with reservation of a security interest is in violation of the contract for sale it constitutes an improper contract for transportation within the preceding section but impairs neither the rights given to the buyer by shipment and identification of the goods to the contract nor the seller's powers as a holder of a negotiable document of title.

2007 Acts, ch 30, §45, 46, 55, 56  
Subsection 1, paragraph b amended  
Subsection 2 amended

#### **554.2506 Rights of financing agency.**

1. A financing agency by paying or purchasing for value a draft which relates to a shipment of goods acquires to the extent of the payment or purchase and in addition to its own rights under the draft and any document of title securing it any rights of the shipper in the goods including the right to stop delivery and the shipper's right to have the draft honored by the buyer.

2. The right to reimbursement of a financing agency which has in good faith honored or purchased the draft under commitment to or authority from the buyer is not impaired by subsequent discovery of defects with reference to any relevant document which was apparently regular.

2007 Acts, ch 30, §45, 46, 57  
Subsection 2 amended

#### **554.2509 Risk of loss in the absence of breach.**

1. Where the contract requires or authorizes the seller to ship the goods by carrier:

*a.* if it does not require the seller to deliver them at a particular destination, the risk of loss passes to the buyer when the goods are duly delivered to the carrier even though the shipment is under reservation (section 554.2505); but

*b.* if it does require the seller to deliver them at a particular destination and the goods are there duly tendered while in the possession of the carrier, the risk of loss passes to the buyer when the goods are there duly so tendered as to enable the buyer to take delivery.

2. Where the goods are held by a bailee to be delivered without being moved, the risk of loss passes to the buyer:

*a.* on the buyer's receipt of possession or control of a negotiable document of title covering the goods; or

*b.* on acknowledgment by the bailee of the buyer's right to possession of the goods; or

*c.* after the buyer's receipt of possession or control of a nonnegotiable document of title or other direction to deliver in a record, as provided in section 554.2503, subsection 4, paragraph "b".

3. In any case not within subsection 1 or 2, the risk of loss passes to the buyer on the buyer's receipt of the goods if the seller is a merchant; other-

wise the risk passes to the buyer on tender of delivery.

4. The provisions of this section are subject to contrary agreement of the parties and to the provisions of this Article on sale on approval (section 554.2327) and on effect of breach on risk of loss (section 554.2510).

2007 Acts, ch 30, §45, 46, 58  
Subsection 2, paragraphs a and c amended

#### **554.2605 Waiver of buyer's objections by failure to particularize.**

1. The buyer's failure to state in connection with rejection a particular defect which is ascertainable by reasonable inspection precludes the buyer from relying on the unstated defect to justify rejection or to establish breach:

*a.* where the seller could have cured it if stated seasonably; or

*b.* between merchants when the seller has after rejection made a request in writing for a full and final written statement of all defects on which the buyer proposes to rely.

2. Payment against documents made without reservation of rights precludes recovery of the payment for defects apparent in the documents.

2007 Acts, ch 30, §45, 46, 59  
Subsection 2 amended

#### **554.2705 Seller's stoppage of delivery in transit or otherwise.**

1. The seller may stop delivery of goods in the possession of a carrier or other bailee when the seller discovers the buyer to be insolvent (section 554.2702) and may stop delivery of carload, truckload, planeload or larger shipments of express or freight when the buyer repudiates or fails to make a payment due before delivery or if for any other reason the seller has a right to withhold or reclaim the goods.

2. As against such buyer the seller may stop delivery until:

*a.* receipt of the goods by the buyer; or

*b.* acknowledgment to the buyer by any bailee of the goods except a carrier that the bailee holds the goods for the buyer; or

*c.* such acknowledgment to the buyer by a carrier by reshipment or as a warehouse; or

*d.* negotiation to the buyer of any negotiable document of title covering the goods.

3. *a.* To stop delivery the seller must so notify as to enable the bailee by reasonable diligence to prevent delivery of the goods.

*b.* After such notification the bailee must hold and deliver the goods according to the directions of the seller but the seller is liable to the bailee for any ensuing charges or damages.

*c.* If a negotiable document of title has been issued for goods the bailee is not obliged to obey a notification to stop until surrender of possession or control of the document.

*d.* A carrier who has issued a nonnegotiable bill of lading is not obliged to obey a notification to

stop received from a person other than the con-signor.

2007 Acts, ch 30, §45, 46, 60, 61  
Subsection 2, paragraph c amended  
Subsection 3, paragraph c amended

### 554.3103 Definitions.

1. In this Article:

a. “*Acceptor*” means a drawee who has accepted a draft.

b. “*Drawee*” means a person ordered in a draft to make payment.

c. “*Drawer*” means a person who signs or is identified in a draft as a person ordering payment.

d. Reserved.

e. “*Maker*” means a person who signs or is identified in a note as a person undertaking to pay.

f. “*Order*” means a written instruction to pay money signed by the person giving the instruction. The instruction may be addressed to any person, including the person giving the instruction, or to one or more persons jointly or in the alternative but not in succession. An authorization to pay is not an order unless the person authorized to pay is also instructed to pay.

g. “*Ordinary care*” in the case of a person engaged in business means observance of reasonable commercial standards, prevailing in the area in which the person is located, with respect to the business in which the person is engaged. In the case of a bank that takes an instrument for processing for collection or payment by automated means, reasonable commercial standards do not require the bank to examine the instrument if the failure to examine does not violate the bank’s prescribed procedures and the bank’s procedures do not vary unreasonably from general banking usage not disapproved by this Article or Article 4.

h. “*Party*” means a party to an instrument.

i. “*Promise*” means a written undertaking to pay money signed by the person undertaking to pay. An acknowledgment of an obligation by the obligor is not a promise unless the obligor also undertakes to pay the obligation.

j. “*Prove*” with respect to a fact means to meet the burden of establishing the fact (section 554.1201, subsection 2, paragraph “h”).

k. “*Remitter*” means a person who purchases an instrument from its issuer if the instrument is payable to an identified person other than the purchaser.

2. Other definitions applying to this Article and the sections in which they appear are:

a. “*Acceptance*” Section 554.3409.

b. “*Accommodated party*” Section 554.3419.

c. “*Accommodation party*” Section 554.3419.

d. “*Alteration*” Section 554.3407.

e. “*Anomalous endorsement*” Section 554.3205.

f. “*Blank endorsement*” Section 554.3205.

g. “*Cashier’s check*” Section 554.3104.

h. “*Certificate of deposit*” Section 554.3104.

i. “*Certified check*” Section 554.3409.

j. “*Check*” Section 554.3104.

k. “*Consideration*” Section 554.3303.

l. “*Demand draft*” Section 554.3104.

m. “*Draft*” Section 554.3104.

n. “*Holder in due course*” Section 554.3302.

o. “*Incomplete instrument*” Section 554.3115.

p. “*Endorsement*” Section 554.3204.

q. “*Endorser*” Section 554.3204.

r. “*Instrument*” Section 554.3104.

s. “*Issue*” Section 554.3105.

t. “*Issuer*” Section 554.3105.

u. “*Negotiable instrument*” Section 554.3104.

v. “*Negotiation*” Section 554.3201.

w. “*Note*” Section 554.3104.

x. “*Payable at a definite time*” Section 554.3108.

y. “*Payable on demand*” Section 554.3108.

z. “*Payable to bearer*” Section 554.3109.

aa. “*Payable to order*” Section 554.3109.

ab. “*Payment*” Section 554.3602.

ac. “*Person entitled to enforce*” Section 554.3301.

ad. “*Presentment*” Section 554.3501.

ae. “*Reacquisition*” Section 554.3207.

af. “*Special endorsement*” Section 554.3205.

ag. “*Teller’s check*” Section 554.3104.

ah. “*Transfer of instrument*” Section 554.3203.

ai. “*Traveler’s check*” Section 554.3104.

aj. “*Value*” Section 554.3303.

3. The following definitions in other Articles apply to this Article:

a. “*Bank*” Section 554.4105.

b. “*Banking day*” Section 554.4104.

c. “*Clearing house*” Section 554.4104.

d. “*Collecting bank*” Section 554.4105.

e. “*Depositary bank*” Section 554.4105.

f. “*Documentary draft*” Section 554.4104.

g. “*Intermediary bank*” Section 554.4105.

h. “*Item*” Section 554.4104.

i. “*Payor bank*” Section 554.4105.

j. “*Suspends payments*” Section 554.4104.

4. In addition, Article 1 contains general definitions and principles of construction and interpretation applicable throughout this Article.

2007 Acts, ch 41, §25, 26  
Subsection 1, paragraph d stricken  
Subsection 1, paragraph j amended

### 554.4104 Definitions and index of definitions.

1. In this Article, unless the context otherwise requires:

a. “*Account*” means any deposit or credit ac-

count with a bank, including a demand, time, savings, passbook, share draft, or like account, other than an account evidenced by a certificate of deposit.

b. “*Afternoon*” means the period of a day between noon and midnight.

c. “*Banking day*” means the part of a day on which a bank is open to the public for carrying on substantially all of its banking functions but for the purposes of determining a bank’s midnight deadline, shall not include Saturday, Sunday, or any holiday when the federal reserve banks are not performing check clearing functions.

d. “*Clearing house*” means an association of banks or other payors regularly clearing items.

e. “*Customer*” means a person having an account with a bank or for whom a bank has agreed to collect items, including a bank that maintains an account at another bank.

f. “*Documentary draft*” means a draft to be presented for acceptance or payment if specified documents, certificated securities (section 554.8102) or instructions for uncertificated securities (section 554.8102), or other certificates, statements, or the like are to be received by the drawee or other payor before acceptance or payment of the draft.

g. “*Draft*” means a draft as defined in section 554.3104 or an item, other than an instrument, that is an order.

h. “*Drawee*” means a person ordered in a draft to make payment.

i. “*Item*” means an instrument or a promise or order to pay money handled by a bank for collection or payment. The term does not include a payment order governed by Article 12 or a credit or debit card slip.

j. “*Midnight deadline*” with respect to a bank is midnight on its next banking day following the banking day on which it receives the relevant item or notice or from which the time for taking action commences to run, whichever is later.

k. “*Settle*” means to pay in cash, by clearing-house settlement, in a charge or credit or by remittance, or otherwise as agreed. A settlement may be either provisional or final.

l. “*Suspends payments*” with respect to a bank means that it has been closed by order of the supervisory authorities, that a public officer has been appointed to take it over, or that it ceases or refuses to make payments in the ordinary course of business.

2. Other definitions applying to this Article and the sections in which they appear are:

“Agreement for electronic presentation”	Section 554.4110
“Bank”	Section 554.4105
“Collecting bank”	Section 554.4105
“Depositary bank”	Section 554.4105
“Intermediary bank”	Section 554.4105
“Payor bank”	Section 554.4105
“Presenting bank”	Section 554.4105

“Presentment notice” Section 554.4110  
 3. “Control” as provided in section 554.7106 and the following definitions in other Articles apply to this Article:

“Acceptance”	Section 554.3409
“Alteration”	Section 554.3407
“Cashier’s check”	Section 554.3104
“Certificate of deposit”	Section 554.3104
“Certified check”	Section 554.3409
“Check”	Section 554.3104
“Holder in due course”	Section 554.3302
“Instrument”	Section 554.3104
“Notice of dishonor”	Section 554.3503
“Order”	Section 554.3103
“Ordinary care”	Section 554.3103
“Person entitled to enforce”	Section 554.3301
“Presentment”	Section 554.3501
“Promise”	Section 554.3103
“Prove”	Section 554.3103
“Teller’s check”	Section 554.3104
“Unauthorized signature”	Section 554.3403

4. In addition Article 1 contains general definitions and principles of construction and interpretation applicable throughout this Article.

2007 Acts, ch 30, §45, 46, 62; 2007 Acts, ch 41, §27  
 See Code editor’s note to §29A.28  
 Subsection 3 amended

**554.4210 Security interest of collecting bank in items, accompanying documents and proceeds.**

1. A collecting bank has a security interest in an item and any accompanying documents or the proceeds of either:

- a. in case of an item deposited in an account, to the extent to which credit given for the item has been withdrawn or applied;
- b. in case of an item for which it has given credit available for withdrawal as of right, to the extent of the credit given, whether or not the credit is drawn upon or there is a right of charge-back; or
- c. if it makes an advance on or against the item.

2. If credit given for several items received at one time or pursuant to a single agreement is withdrawn or applied in part, the security interest remains upon all the items, any accompanying documents or the proceeds of either. For the purpose of this section, credits first given are first withdrawn.

3. Receipt by a collecting bank of a final settlement for an item is a realization on its security interest in the item, accompanying documents, and proceeds. So long as the bank does not receive final settlement for the item or give up possession of the item or possession or control of the accompanying documents for purposes other than collection, the security interest continues to that extent and is subject to Article 9, but:

- a. no security agreement is necessary to make

the security interest enforceable (section 554.9203, subsection 2, paragraph “c”, subparagraph (1));

b. no filing is required to perfect the security interest; and

c. the security interest has priority over conflicting perfected security interests in the item, accompanying documents, or proceeds.

2007 Acts, ch 30, §45, 46, 63  
Subsection 3, unnumbered paragraph 1 amended

### 554.5103 Scope.

1. This Article applies to letters of credit and to certain rights and obligations arising out of transactions involving letters of credit.

2. The statement of a rule in this Article does not by itself require, imply, or negate application of the same or a different rule to a situation not provided for, or to a person not specified, in this Article.

3. With the exception of this subsection, subsections 1 and 4, section 554.5102, subsection 1, paragraphs “i” and “j”, section 554.5106, subsection 4, and section 554.5114, subsection 4, and except to the extent prohibited in section 554.1302 and section 554.5117, subsection 4, the effect of this Article may be varied by agreement or by a provision stated or incorporated by reference in an undertaking. A term in an agreement or undertaking generally excusing liability or generally limiting remedies for failure to perform obligations is not sufficient to vary obligations prescribed by this Article.

4. Rights and obligations of an issuer to a beneficiary or a nominated person under a letter of credit are independent of the existence, performance, or nonperformance of a contract or arrangement out of which the letter of credit arises or which underlies it, including contracts or arrangements between the issuer and the applicant and between the applicant and the beneficiary.

2007 Acts, ch 41, §28  
Subsection 3 amended

## ARTICLE 7

### WAREHOUSE RECEIPTS, BILLS OF LADING, AND OTHER DOCUMENTS OF TITLE

2007 amendments to this Article apply to a document of title issued or a bailment that arises on or after July 1, 2007; for law governing a document of title issued, a bailment that arose, or a cause of action that accrued prior to July 1, 2007, see Code 2007; 2007 Acts, ch 30, §45, 46

#### PART 1

#### GENERAL

### 554.7101 Short title.

This Article may be cited as Uniform Commercial Code — Documents of Title.

2007 Acts, ch 30, §1, 45, 46  
Section amended

### 554.7102 Definitions and index of definitions.

1. In this Article, unless the context otherwise requires:

a. “*Bailee*” means a person that by a warehouse receipt, bill of lading, or other document of title acknowledges possession of goods and contracts to deliver them.

b. “*Carrier*” means a person that issues a bill of lading.

c. “*Consignee*” means a person named in a bill of lading to which or to whose order the bill promises delivery.

d. “*Consignor*” means a person named in a bill of lading as the person from which the goods have been received for shipment.

e. “*Delivery order*” means a record that contains an order to deliver goods directed to a warehouse, carrier, or other person that in the ordinary course of business issues warehouse receipts or bills of lading.

f. “*Good faith*” means honesty in fact and the observance of reasonable commercial standards of fair dealing.

g. “*Goods*” means all things that are treated as movable for the purposes of a contract for storage or transportation.

h. “*Issuer*” means a bailee that issues a document of title or, in the case of an unaccepted delivery order, the person that orders the possessor of goods to deliver. The term includes a person for which an agent or employee purports to act in issuing a document if the agent or employee has real or apparent authority to issue documents, even if the issuer did not receive any goods, the goods were misdescribed, or in any other respect the agent or employee violated the issuer’s instructions.

i. “*Person entitled under the document*” means the holder, in the case of a negotiable document of title, or the person to which delivery of the goods is to be made by the terms of, or pursuant to instructions in a record under, a nonnegotiable document of title.

j. “*Record*” means information that is inscribed on a tangible medium or that is stored in an electronic or other medium and is retrievable in perceivable form.

k. “*Sign*” means, with present intent to authenticate or adopt a record:

- (1) to execute or adopt a tangible symbol; or
- (2) to attach to or logically associate with the record an electronic sound, symbol, or process.

l. “*Shipper*” means a person that enters into a contract of transportation with a carrier.

m. “*Warehouse*” means a person engaged in the business of storing goods for hire.

2. Definitions in other Articles applying to this Article and the sections in which they appear are:

- a. “*Contract for sale*” Section 554.2106

b. “Lessee in ordinary course of business” Section 554.13103

c. “Receipt” of goods Section 554.2103

3. In addition, Article 1 contains general definitions and principles of construction and interpretation applicable throughout this Article.

2007 Acts, ch 30, §2, 45, 46  
Section amended

**554.7103 Relation of Article to treaty or statute.**

1. This Article is subject to any treaty or statute of the United States or regulatory statute of this state to the extent that the treaty, statute, or regulatory statute is applicable.

2. This Article does not modify or repeal any law prescribing the form or content of a document of title or the services or facilities to be afforded by a bailee, or otherwise regulating a bailee’s business in respects not specifically treated in this Article. However, violation of such a law does not affect the status of a document of title that otherwise is within the definition of a document of title.

3. This Article modifies, limits, and supersedes the federal Electronic Signatures in Global and National Commerce Act (15 U.S.C. § 7001, et seq.) but does not modify, limit, or supersede § 101(c) of that Act (15 U.S.C. § 7001(c)) or authorize electronic delivery of any of the notices described in § 103(b) of that Act (15 U.S.C. § 7003(b)).

4. To the extent there is a conflict between chapter 554D, the Uniform Electronic Transactions Act, and this Article, this Article governs.

2007 Acts, ch 30, §3, 45, 46  
Section amended

**554.7104 Negotiable and nonnegotiable document of title.**

1. Except as otherwise provided in subsection 3, a document of title is negotiable if by its terms the goods are to be delivered to bearer or to the order of a named person.

2. A document of title other than the one described in subsection 1 is nonnegotiable. A bill of lading that states that the goods are consigned to a named person is not made negotiable by a provision that the goods are to be delivered only against an order in a record signed by the same or another named person.

3. A document of title is nonnegotiable if, at the time it is issued, the document has a conspicuous legend, however expressed, that it is nonnegotiable.

2007 Acts, ch 30, §4, 45, 46  
Section amended

**554.7105 Reissuance in alternative medium.**

1. Upon request of a person entitled under an electronic document of title, the issuer of the electronic document may issue a tangible document of

title as a substitute for the electronic document if:

a. the person entitled under the electronic document surrenders control of the document to the issuer; and

b. the tangible document when issued contains a statement that it is issued in substitution for the electronic document.

2. Upon issuance of a tangible document of title in substitution for an electronic document of title in accordance with subsection 1:

a. the electronic document ceases to have any effect or validity; and

b. the person that procured issuance of the tangible document warrants to all subsequent persons entitled under the tangible document that the warrantor was a person entitled under the electronic document when the warrantor surrendered control of the electronic document to the issuer.

3. Upon request of a person entitled under a tangible document of title, the issuer of the tangible document may issue an electronic document of title as a substitute for the tangible document if:

a. the person entitled under the tangible document surrenders possession of the document to the issuer; and

b. the electronic document when issued contains a statement that it is issued in substitution for the tangible document.

4. Upon issuance of an electronic document of title in substitution for a tangible document of title in accordance with subsection 3:

a. the tangible document ceases to have any effect or validity; and

b. the person that procured issuance of the electronic document warrants to all subsequent persons entitled under the electronic document that the warrantor was a person entitled under the tangible document when the warrantor surrendered possession of the tangible document to the issuer.

2007 Acts, ch 30, §5, 45, 46  
Section amended

**554.7106 Control of electronic document of title.**

1. A person has control of an electronic document of title if a system employed for evidencing the transfer of interests in the electronic document reliably establishes that person as the person to which the electronic document was issued or transferred.

2. A system satisfies subsection 1, and a person is deemed to have control of an electronic document of title, if the document is created, stored, and assigned in such a manner that:

a. a single authoritative copy of the document exists which is unique, identifiable, and, except as otherwise provided in paragraphs “d”, “e”, and “f”, unalterable;

b. the authoritative copy identifies the person asserting control as:



(1) the person to which the document was issued; or

(2) if the authoritative copy indicates that the document has been transferred, the person to which the document was most recently transferred;

c. the authoritative copy is communicated to and maintained by the person asserting control or its designated custodian;

d. copies or amendments that add or change an identified assignee of the authoritative copy can be made only with the consent of the person asserting control;

e. each copy of the authoritative copy and any copy of a copy is readily identifiable as a copy that is not the authoritative copy; and

f. any amendment of the authoritative copy is readily identifiable as authorized or unauthorized.

2007 Acts, ch 30, §6, 45, 46  
NEW section

## PART 2

### WAREHOUSE RECEIPTS: SPECIAL PROVISIONS

#### **554.7201 Person that may issue a warehouse receipt — storage under bond.**

1. A warehouse receipt may be issued by any warehouse.

2. If goods, including distilled spirits and agricultural commodities, are stored under a statute requiring a bond against withdrawal or a license for the issuance of receipts in the nature of warehouse receipts, a receipt issued for the goods is deemed to be a warehouse receipt even if issued by a person that is the owner of the goods and is not a warehouse.

2007 Acts, ch 30, §7, 45, 46  
Section amended

#### **554.7202 Form of warehouse receipt — effect of omission.**

1. A warehouse receipt need not be in any particular form.

2. Unless a warehouse receipt provides for each of the following, the warehouse is liable for damages caused to a person injured by its omission:

a. a statement of the location of the warehouse facility where the goods are stored;

b. the date of issue of the receipt;

c. the unique identification code of the receipt;

d. a statement whether the goods received will be delivered to the bearer, to a named person, or to a named person or its order;

e. the rate of storage and handling charges, unless goods are stored under a field warehousing arrangement, in which case a statement of that fact is sufficient on a nonnegotiable receipt;

f. a description of the goods or the packages

containing them;

g. the signature of the warehouse or its agent;

h. if the receipt is issued for goods that the warehouse owns, either solely, jointly, or in common with others, a statement of the fact of that ownership; and

i. a statement of the amount of advances made and of liabilities incurred for which the warehouse claims a lien or security interest, unless the precise amount of advances made or liabilities incurred, at the time of the issue of the receipt, is unknown to the warehouse or to its agent that issued the receipt, in which case a statement of the fact that advances have been made or liabilities incurred and the purpose of the advances or liabilities is sufficient.

3. A warehouse may insert in its receipt any terms that are not contrary to this chapter and do not impair its obligation of delivery under section 554.7403 or its duty of care under section 554.7204. Any contrary provision is ineffective.

2007 Acts, ch 30, §8, 45, 46  
Section amended

#### **554.7203 Liability for nonreceipt or misdescription.**

A party to or purchaser for value in good faith of a document of title, other than a bill of lading, that relies upon the description of the goods in the document may recover from the issuer damages caused by the nonreceipt or misdescription of the goods, except to the extent that:

1. the document conspicuously indicates that the issuer does not know whether all or part of the goods in fact were received or conform to the description, such as the case in which the description is in terms of marks or labels or kind, quantity, or condition, or the receipt or description is qualified by “contents, condition, and quality unknown”, “said to contain”, or words of similar import, if the indication is true; or

2. the party or purchaser otherwise has notice of the nonreceipt or misdescription.

2007 Acts, ch 30, §9, 45, 46  
Section amended

#### **554.7204 Duty of care — contractual limitation of warehouse’s liability.**

1. A warehouse is liable for damages for loss of or injury to the goods caused by its failure to exercise care with regard to the goods that a reasonably careful person would exercise under similar circumstances. Unless otherwise agreed, the warehouse is not liable for damages that could not have been avoided by the exercise of that care.

2. Damages may be limited by a term in the warehouse receipt or storage agreement limiting the amount of liability in case of loss or damage beyond which the warehouse is not liable. Such a limitation is not effective with respect to the warehouse’s liability for conversion to its own use. On request of the bailor in a record at the time of signing the storage agreement or within a reasonable

time after receipt of the warehouse receipt, the warehouse's liability may be increased on part or all of the goods covered by the storage agreement or the warehouse receipt. In this event, increased rates may be charged based on an increased valuation of the goods.

3. Reasonable provisions as to the time and manner of presenting claims and commencing actions based on the bailment may be included in the warehouse receipt or storage agreement.

4. This section does not modify or repeal any provision under chapter 203, 203C, or 203D.

2007 Acts, ch 30, §10, 45, 46  
Section amended

#### **554.7205 Title under warehouse receipt defeated in certain cases.**

A buyer in ordinary course of business of fungible goods sold and delivered by a warehouse that is also in the business of buying and selling such goods takes the goods free of any claim under a warehouse receipt even if the receipt is negotiable and has been duly negotiated.

2007 Acts, ch 30, §11, 45, 46  
Section amended

#### **554.7206 Termination of storage at warehouse's option.**

1. A warehouse, by giving notice to the person on whose account the goods are held and any other person known to claim an interest in the goods, may require payment of any charges and removal of the goods from the warehouse at the termination of the period of storage fixed by the document of title or, if a period is not fixed, within a stated period not less than thirty days after the warehouse gives notice. If the goods are not removed before the date specified in the notice, the warehouse may sell them pursuant to section 554.7210.

2. If a warehouse in good faith believes that goods are about to deteriorate or decline in value to less than the amount of its lien within the time provided in subsection 1 and section 554.7210, the warehouse may specify in the notice given under subsection 1 any reasonable shorter time for removal of the goods and, if the goods are not removed, may sell them at public sale held not less than one week after a single advertisement or posting.

3. If, as a result of a quality or condition of the goods of which the warehouse did not have notice at the time of deposit, the goods are a hazard to other property, the warehouse facilities, or other persons, the warehouse may sell the goods at public or private sale without advertisement or posting on reasonable notification to all persons known to claim an interest in the goods. If the warehouse, after a reasonable effort, is unable to sell the goods, it may dispose of them in any lawful manner and does not incur liability by reason of that disposition.

4. A warehouse shall deliver the goods to any

person entitled to them under this Article upon due demand made at any time before sale or other disposition under this section.

5. A warehouse may satisfy its lien from the proceeds of any sale or disposition under this section but shall hold the balance for delivery on the demand of any person to which the warehouse would have been bound to deliver the goods.

2007 Acts, ch 30, §12, 45, 46  
Section amended

#### **554.7207 Goods must be kept separate — fungible goods.**

1. Unless the warehouse receipt provides otherwise, a warehouse shall keep separate the goods covered by each receipt so as to permit at all times identification and delivery of those goods. However, different lots of fungible goods may be commingled.

2. If different lots of fungible goods are commingled, the goods are owned in common by the persons entitled thereto and the warehouse is severally liable to each owner for that owner's share. If, because of overissue, a mass of fungible goods is insufficient to meet all the receipts the warehouse has issued against it, the persons entitled include all holders to which overissued receipts have been duly negotiated.

2007 Acts, ch 30, §13, 45, 46  
Section amended

#### **554.7208 Altered warehouse receipts.**

If a blank in a negotiable tangible warehouse receipt has been filled in without authority, a good-faith purchaser for value and without notice of the lack of authority may treat the insertion as authorized. Any other unauthorized alteration leaves any tangible or electronic warehouse receipt enforceable against the issuer according to its original tenor.

2007 Acts, ch 30, §14, 45, 46  
Section amended

#### **554.7209 Lien of warehouse.**

1. A warehouse has a lien against the bailor on the goods covered by a warehouse receipt or storage agreement or on the proceeds thereof in its possession for charges for storage or transportation, including demurrage and terminal charges, insurance, labor, or other charges, present or future, in relation to the goods, and for expenses necessary for preservation of the goods or reasonably incurred in their sale pursuant to law. If the person on whose account the goods are held is liable for similar charges or expenses in relation to other goods whenever deposited and it is stated in the warehouse receipt or storage agreement that a lien is claimed for charges and expenses in relation to other goods, the warehouse also has a lien against the goods covered in the warehouse receipt or storage agreement or on the proceeds thereof in its possession for those charges and expenses, whether or not the other goods have been

delivered by the warehouse. However, as against a person to which a negotiable warehouse receipt is duly negotiated, a warehouse's lien is limited to charges in an amount or at a rate specified in the warehouse receipt or, if no charges are so specified, to a reasonable charge for storage of the specific goods covered by the receipt subsequent to the date of the receipt.

2. A warehouse may also reserve a security interest against the bailor for the maximum amount specified on the receipt for charges other than those specified in subsection 1, such as for money advanced and interest. The security interest is governed by Article 9.

3. A warehouse's lien for charges and expenses under subsection 1 or a security interest under subsection 2 is also effective against any person that so entrusted the bailor with possession of the goods that a pledge of them by the bailor to a good-faith purchaser for value would have been valid. However, the lien or security interest is not effective against a person that before issuance of a document of title had a legal interest or perfected security interest in the goods and that did not:

a. deliver or entrust the goods or any document of title covering the goods to the bailor or the bailor's nominee with:

(1) actual or apparent authority to ship, store, or sell;

(2) power to obtain delivery under section 554.7403; or

(3) power of disposition under section 554.2403, 554.9320, 554.9321, subsection 3, section 554.13304, subsection 2, or section 554.13305, subsection 2, or other statute or rule of law; or

b. acquiesce in the procurement by the bailor or its nominee of any document.

4. A warehouse's lien on household goods for charges and expenses in relation to the goods under subsection 1 is also effective against all persons if the depositor was the legal possessor of the goods at the time of deposit. In this subsection, "household goods" means furniture, furnishings, or personal effects used by the depositor in a dwelling.

5. A warehouse loses its lien on any goods that it voluntarily delivers or unjustifiably refuses to deliver.

2007 Acts, ch 30, §15, 45, 46  
Section amended

#### **554.7210 Enforcement of warehouse's lien.**

1. Except as otherwise provided in subsection 2, a warehouse's lien may be enforced by public or private sale of the goods, in bulk or in packages, at any time or place and on any terms that are commercially reasonable, after notifying all persons known to claim an interest in the goods. The notification must include a statement of the amount due, the nature of the proposed sale, and the time and place of any public sale. The fact that a better

price could have been obtained by a sale at a different time or in a method different from that selected by the warehouse is not of itself sufficient to establish that the sale was not made in a commercially reasonable manner. The warehouse sells in a commercially reasonable manner if the warehouse sells the goods in the usual manner in any recognized market therefor, sells at the price current in that market at the time of the sale, or otherwise sells in conformity with commercially reasonable practices among dealers in the type of goods sold. A sale of more goods than apparently necessary to be offered to ensure satisfaction of the obligation is not commercially reasonable, except in cases covered by the preceding sentence.

2. A warehouse may enforce its lien on goods, other than goods stored by a merchant in the course of its business, only if the following requirements are satisfied:

a. All persons known to claim an interest in the goods must be notified.

b. The notification must include an itemized statement of the claim, a description of the goods subject to the lien, a demand for payment within a specified time not less than ten days after receipt of the notification, and a conspicuous statement that unless the claim is paid within that time the goods will be advertised for sale and sold by auction at a specified time and place.

c. The sale must conform to the terms of the notification.

d. The sale must be held at the nearest suitable place to where the goods are held or stored.

e. After the expiration of the time given in the notification, an advertisement of the sale must be published once a week for two weeks consecutively in a newspaper of general circulation where the sale is to be held. The advertisement must include a description of the goods, the name of the person on whose account the goods are being held, and the time and place of the sale. The sale must take place at least fifteen days after the first publication. If there is no newspaper of general circulation where the sale is to be held, the advertisement must be posted at least ten days before the sale in not fewer than six conspicuous places in the neighborhood of the proposed sale.

3. Before any sale pursuant to this section, any person claiming a right in the goods may pay the amount necessary to satisfy the lien and the reasonable expenses incurred in complying with this section. In that event, the goods may not be sold but must be retained by the warehouse subject to the terms of the receipt and this Article.

4. A warehouse may buy at any public sale held pursuant to this section.

5. A purchaser in good faith of goods sold to enforce a warehouse's lien takes the goods free of any rights of persons against which the lien was valid, despite the warehouse's noncompliance with this section.

6. A warehouse may satisfy its lien from the

proceeds of any sale pursuant to this section but shall hold the balance, if any, for delivery on demand to any person to which the warehouse would have been bound to deliver the goods.

7. The rights provided by this section are in addition to all other rights allowed by law to a creditor against a debtor.

8. If a lien is on goods stored by a merchant in the course of its business, the lien may be enforced in accordance with subsection 1 or 2.

9. A warehouse is liable for damages caused by failure to comply with the requirements for sale under this section and, in case of willful violation, is liable for conversion.

2007 Acts, ch 30, §16, 45, 46  
Section amended

### PART 3

#### BILLS OF LADING: SPECIAL PROVISIONS

#### **554.7301 Liability for nonreceipt or misdescription — “said to contain” — “shipper’s weight, load, and count” — improper handling.**

1. A consignee of a nonnegotiable bill of lading which has given value in good faith, or a holder to which a negotiable bill has been duly negotiated, relying upon the description of the goods in the bill or upon the date shown in the bill, may recover from the issuer damages caused by the misdating of the bill or the nonreceipt or misdescription of the goods, except to the extent that the bill indicates that the issuer does not know whether any part or all of the goods in fact were received or conform to the description, such as in a case in which the description is in terms of marks or labels or kind, quantity, or condition or the receipt or description is qualified by “contents or condition of contents of packages unknown”, “said to contain”, “shipper’s weight, load, and count”, or words of similar import, if that indication is true.

2. If goods are loaded by the issuer of a bill of lading,

*a.* the issuer shall count the packages of goods if shipped in packages and ascertain the kind and quantity if shipped in bulk; and

*b.* words such as “shipper’s weight, load, and count”, or words of similar import indicating that the description was made by the shipper are ineffective except as to goods concealed in packages.

3. If bulk goods are loaded by a shipper that makes available to the issuer of a bill of lading adequate facilities for weighing those goods, the issuer shall ascertain the kind and quantity within a reasonable time after receiving the shipper’s request in a record to do so. In that case, “shipper’s weight” or words of similar import are ineffective.

4. The issuer of a bill of lading, by including in the bill the words “shipper’s weight, load, and

count”, or words of similar import, may indicate that the goods were loaded by the shipper, and, if that statement is true, the issuer is not liable for damages caused by the improper loading. However, omission of such words does not imply liability for damages caused by improper loading.

5. A shipper guarantees to an issuer the accuracy at the time of shipment of the description, marks, labels, number, kind, quantity, condition, and weight, as furnished by the shipper, and the shipper shall indemnify the issuer against damage caused by inaccuracies in those particulars. This right of indemnity does not limit the issuer’s responsibility or liability under the contract of carriage to any person other than the shipper.

2007 Acts, ch 30, §17, 45, 46  
Section amended

#### **554.7302 Through bills of lading and similar documents of title.**

1. The issuer of a through bill of lading, or other document of title embodying an undertaking to be performed in part by a person acting as its agent or by a performing carrier, is liable to any person entitled to recover on the bill or other document for any breach by the other person or the performing carrier of its obligation under the bill or other document. However, to the extent that the bill or other document covers an undertaking to be performed overseas or in territory not contiguous to the continental United States or an undertaking including matters other than transportation, this liability for breach by the other person or the performing carrier may be varied by agreement of the parties.

2. If goods covered by a through bill of lading or other document of title embodying an undertaking to be performed in part by a person other than the issuer are received by that person, the person is subject, with respect to its own performance while the goods are in its possession, to the obligation of the issuer. The person’s obligation is discharged by delivery of the goods to another person pursuant to the bill or other document and does not include liability for breach by any other person or by the issuer.

3. The issuer of a through bill of lading or other document of title described in subsection 1 is entitled to recover from the performing carrier, or other person in possession of the goods when the breach of the obligation under the bill or other document occurred:

*a.* the amount it may be required to pay to any person entitled to recover on the bill or other document for the breach, as may be evidenced by any receipt, judgment, or transcript of judgment; and

*b.* the amount of any expense reasonably incurred by the issuer in defending any action commenced by any person entitled to recover on the bill or other document for the breach.

2007 Acts, ch 30, §18, 45, 46  
Section amended

**554.7303 Diversion — reconsignment — change of instructions.**

1. Unless the bill of lading otherwise provides, a carrier may deliver the goods to a person or destination other than that stated in the bill or may otherwise dispose of the goods, without liability for misdelivery, on instructions from:

- a. the holder of a negotiable bill;
- b. the consignor on a nonnegotiable bill, even if the consignee has given contrary instructions;
- c. the consignee on a nonnegotiable bill in the absence of contrary instructions from the consignor, if the goods have arrived at the billed destination or if the consignee is in possession of the tangible bill or in control of the electronic bill; or
- d. the consignee on a nonnegotiable bill if the consignee is entitled as against the consignor to dispose of the goods.

2. Unless instructions described in subsection 1 are included in a negotiable bill of lading, a person to which the bill is duly negotiated may hold the bailee according to the original terms.

2007 Acts, ch 30, §19, 45, 46  
Section amended

**554.7304 Tangible bills of lading in a set.**

1. Except as customary in international transportation, a tangible bill of lading may not be issued in a set of parts. The issuer is liable for damages caused by violation of this subsection.

2. If a tangible bill of lading is lawfully issued in a set of parts, each of which contains an identification code and is expressed to be valid only if the goods have not been delivered against any other part, the whole of the parts constitutes one bill.

3. If a tangible negotiable bill of lading is lawfully issued in a set of parts and different parts are negotiated to different persons, the title of the holder to which the first due negotiation is made prevails as to both the document of title and the goods even if any later holder may have received the goods from the carrier in good faith and discharged the carrier's obligation by surrendering its part.

4. A person that negotiates or transfers a single part of a tangible bill of lading issued in a set is liable to holders of that part as if it were the whole set.

5. The bailee shall deliver in accordance with Part 4 against the first presented part of a tangible bill of lading lawfully issued in a set. Delivery in this manner discharges the bailee's obligation on the whole bill.

2007 Acts, ch 30, §20, 45, 46  
Section amended

**554.7305 Destination bills.**

1. Instead of issuing a bill of lading to the consignor at the place of shipment, a carrier, at the request of the consignor, may procure the bill to be

issued at destination or at any other place designated in the request.

2. Upon request of any person entitled as against a carrier to control the goods while in transit and on surrender of possession or control of any outstanding bill of lading or other receipt covering the goods, the issuer, subject to section 554.7105, may procure a substitute bill to be issued at any place designated in the request.

2007 Acts, ch 30, §21, 45, 46  
Section amended

**554.7307 Lien of carrier.**

1. A carrier has a lien on the goods covered by a bill of lading or on the proceeds thereof in its possession for charges after the date of the carrier's receipt of the goods for storage or transportation, including demurrage and terminal charges, and for expenses necessary for preservation of the goods incident to their transportation or reasonably incurred in their sale pursuant to law. However, against a purchaser for value of a negotiable bill of lading, a carrier's lien is limited to charges stated in the bill or the applicable tariffs or, if no charges are stated, a reasonable charge.

2. A lien for charges and expenses under subsection 1 on goods that the carrier was required by law to receive for transportation is effective against the consignor or any person entitled to the goods unless the carrier had notice that the consignor lacked authority to subject the goods to those charges and expenses. Any other lien under subsection 1 is effective against the consignor and any person that permitted the bailor to have control or possession of the goods unless the carrier had notice that the bailor lacked authority.

3. A carrier loses its lien on any goods that it voluntarily delivers or unjustifiably refuses to deliver.

2007 Acts, ch 30, §22, 45, 46  
Section amended

**554.7308 Enforcement of carrier's lien.**

1. A carrier's lien on goods may be enforced by public or private sale of the goods, in bulk or in packages, at any time or place and on any terms that are commercially reasonable, after notifying all persons known to claim an interest in the goods. The notification must include a statement of the amount due, the nature of the proposed sale, and the time and place of any public sale. The fact that a better price could have been obtained by a sale at a different time or in a method different from that selected by the carrier is not of itself sufficient to establish that the sale was not made in a commercially reasonable manner. The carrier sells goods in a commercially reasonable manner if the carrier sells the goods in the usual manner in any recognized market therefor, sells at the price current in that market at the time of the sale,

or otherwise sells in conformity with commercially reasonable practices among dealers in the type of goods sold. A sale of more goods than apparently necessary to be offered to ensure satisfaction of the obligation is not commercially reasonable, except in cases covered by the preceding sentence.

2. Before any sale pursuant to this section, any person claiming a right in the goods may pay the amount necessary to satisfy the lien and the reasonable expenses incurred in complying with this section. In that event, the goods may not be sold but must be retained by the carrier, subject to the terms of the bill of lading and this Article.

3. A carrier may buy at any public sale pursuant to this section.

4. A purchaser in good faith of goods sold to enforce a carrier's lien takes the goods free of any rights of persons against which the lien was valid, despite the carrier's noncompliance with this section.

5. A carrier may satisfy its lien from the proceeds of any sale pursuant to this section but shall hold the balance, if any, for delivery on demand to any person to which the carrier would have been bound to deliver the goods.

6. The rights provided by this section are in addition to all other rights allowed by law to a creditor against a debtor.

7. A carrier's lien may be enforced pursuant to either subsection 1 or the procedure set forth in section 554.7210, subsection 2.

8. A carrier is liable for damages caused by failure to comply with the requirements for sale under this section and, in case of willful violation, is liable for conversion.

2007 Acts, ch 30, §23, 45, 46  
Section amended

**554.7309 Duty of care — contractual limitation of carrier's liability.**

1. A carrier that issues a bill of lading, whether negotiable or nonnegotiable, shall exercise the degree of care in relation to the goods which a reasonably careful person would exercise under similar circumstances. This subsection does not affect any statute, regulation, or rule of law that imposes liability upon a common carrier for damages not caused by its negligence.

2. Damages may be limited by a term in the bill of lading or in a transportation agreement that the carrier's liability may not exceed a value stated in the bill or transportation agreement if the carrier's rates are dependent upon value and the consignor is afforded an opportunity to declare a higher value and the consignor is advised of the opportunity. However, such a limitation is not effective with respect to the carrier's liability for conversion to its own use.

3. Reasonable provisions as to the time and manner of presenting claims and commencing ac-

tions based on the shipment may be included in a bill of lading or a transportation agreement.

2007 Acts, ch 30, §24, 45, 46  
Section amended

PART 4

WAREHOUSE RECEIPTS AND  
BILLS OF LADING:  
GENERAL OBLIGATIONS

**554.7401 Irregularities in issue of receipt or bill of conduct of issuer.**

The obligations imposed by this Article on an issuer apply to a document of title even if:

1. the document does not comply with the requirements of this Article or of any other statute, rule, or regulation regarding its issuance, form, or content;

2. the issuer violated laws regulating the conduct of its business;

3. the goods covered by the document were owned by the bailee when the document was issued; or

4. the person issuing the document is not a warehouse but the document purports to be a warehouse receipt.

2007 Acts, ch 30, §25, 45, 46  
Section amended

**554.7402 Duplicate document of title — overissue.**

A duplicate or any other document of title purporting to cover goods already represented by an outstanding document of the same issuer does not confer any right in the goods, except as provided in the case of tangible bills of lading in a set of parts, overissue of documents for fungible goods, substitutes for lost, stolen, or destroyed documents, or substitute documents issued pursuant to section 554.7105. The issuer is liable for damages caused by its overissue or failure to identify a duplicate document by a conspicuous notation.

2007 Acts, ch 30, §26, 45, 46  
Section amended

**554.7403 Obligation of bailee to deliver — excuse.**

1. A bailee shall deliver the goods to a person entitled under a document of title if the person complies with subsections 2 and 3, unless and to the extent that the bailee establishes any of the following:

a. delivery of the goods to a person whose receipt was rightful as against the claimant;

b. damage to or delay, loss, or destruction of the goods for which the bailee is not liable;

c. previous sale or other disposition of the goods in lawful enforcement of a lien or on a warehouse's lawful termination of storage;

d. the exercise by a seller of its right to stop de-

livery pursuant to section 554.2705 or by a lessor of its right to stop delivery pursuant to section 554.13526;

*e.* a diversion, reconsignment, or other disposition pursuant to section 554.7303;

*f.* release, satisfaction or any other personal defense against the claimant; or

*g.* any other lawful excuse.

2. A person claiming goods covered by a document of title shall satisfy the bailee's lien if the bailee so requests or if the bailee is prohibited by law from delivering the goods until the charges are paid.

3. Unless a person claiming the goods is a person against which the document of title does not confer a right under section 554.7503, subsection 1:

*a.* the person claiming under a document shall surrender possession or control of any outstanding negotiable document covering the goods for cancellation or indication of partial deliveries; and

*b.* the bailee shall cancel the document or conspicuously indicate in the document the partial delivery or the bailee is liable to any person to which the document is duly negotiated.

2007 Acts, ch 30, §27, 45, 46  
Section amended

**554.7404 No liability for good-faith delivery pursuant to document of title.**

A bailee that in good faith has received goods and delivered or otherwise disposed of the goods according to the terms of a document of title or pursuant to this Article is not liable for the goods even if:

1. the person from which the bailee received the goods did not have authority to procure the document or to dispose of the goods; or

2. the person to which the bailee delivered the goods did not have authority to receive the goods.

2007 Acts, ch 30, §28, 45, 46  
Section amended

PART 5

WAREHOUSE RECEIPTS AND  
BILLS OF LADING:  
NEGOTIATION AND TRANSFER

**554.7501 Form of negotiation and requirements of due negotiation.**

1. The following rules apply to a negotiable tangible document of title:

*a.* If the document's original terms run to the order of a named person, the document is negotiated by the named person's indorsement and delivery. After the named person's indorsement in blank or to bearer, any person may negotiate the document by delivery alone.

*b.* If the document's original terms run to bearer, it is negotiated by delivery alone.

*c.* If the document's original terms run to the

order of a named person and it is delivered to the named person, the effect is the same as if the document had been negotiated.

*d.* Negotiation of the document after it has been indorsed to a named person requires indorsement by the named person and delivery.

*e.* A document is "duly negotiated" if it is negotiated in the manner stated in this subsection to a holder that purchases it in good faith, without notice of any defense against or claim to it on the part of any person, and for value, unless it is established that the negotiation is not in the regular course of business or financing or involves receiving the document in settlement or payment of a monetary obligation.

2. The following rules apply to a negotiable electronic document of title:

*a.* If the document's original terms run to the order of a named person or to bearer, the document is negotiated by delivery of the document to another person. Indorsement by the named person is not required to negotiate the document.

*b.* If the document's original terms run to the order of a named person and the named person has control of the document, the effect is the same as if the document had been negotiated.

*c.* A document is duly negotiated if it is negotiated in the manner stated in this subsection to a holder that purchases it in good faith, without notice of any defense against or claim to it on the part of any person, and for value, unless it is established that the negotiation is not in the regular course of business or financing or involves taking delivery of the document in settlement or payment of a monetary obligation.

3. Indorsement of a nonnegotiable document of title neither makes it negotiable nor adds to the transferee's rights.

4. The naming in a negotiable bill of lading of a person to be notified of the arrival of the goods does not limit the negotiability of the bill or constitute notice to a purchaser of the bill of any interest of that person in the goods.

2007 Acts, ch 30, §29, 45, 46  
Section amended

**554.7502 Rights acquired by due negotiation.**

1. Subject to sections 554.7205 and 554.7503, a holder to which a negotiable document of title has been duly negotiated acquires thereby:

*a.* title to the document;

*b.* title to the goods;

*c.* all rights accruing under the law of agency or estoppel, including rights to goods delivered to the bailee after the document was issued; and

*d.* the direct obligation of the issuer to hold or deliver the goods according to the terms of the document free of any defense or claim by the issuer except those arising under the terms of the document or under this Article, but in the case of a delivery order, the bailee's obligation accrues only

upon the bailee's acceptance of the delivery order and the obligation acquired by the holder is that the issuer and any indorser will procure the acceptance of the bailee.

2. Subject to section 554.7503, title and rights acquired by due negotiation are not defeated by any stoppage of the goods represented by the document of title or by surrender of the goods by the bailee, and are not impaired even if:

- a. the due negotiation or any prior due negotiation constituted a breach of duty;
- b. any person has been deprived of possession of a negotiable tangible document or control of a negotiable electronic document by misrepresentation, fraud, accident, mistake, duress, loss, theft, or conversion; or
- c. a previous sale or other transfer of the goods or document has been made to a third person.

2007 Acts, ch 30, §30 – 32, 45, 46  
Subsection 1, unnumbered paragraph 1 amended  
Subsection 1, paragraph d amended  
Subsection 2 amended

**554.7503 Document of title to goods defeated in certain cases.**

1. A document of title confers no right in goods against a person that before issuance of the document had a legal interest or a perfected security interest in the goods and that did not:

a. deliver or entrust the goods or any document of title covering the goods to the bailor or the bailor's nominee with:

- (1) actual or apparent authority to ship, store, or sell;
- (2) power to obtain delivery under section 554.7403; or
- (3) power of disposition under section 554.2403, 554.9320, 554.9321, subsection 3, section 554.13304, subsection 2, or section 554.13305, subsection 2, or other statute or rule of law; or

b. acquiesce in the procurement by the bailor or its nominee of any document.

2. Title to goods based upon an unaccepted delivery order is subject to the rights of any person to which a negotiable warehouse receipt or bill of lading covering the goods has been duly negotiated. That title may be defeated under section 554.7504 to the same extent as the rights of the issuer or a transferee from the issuer.

3. Title to goods based upon a bill of lading issued to a freight forwarder is subject to the rights of any person to which a bill issued by the freight forwarder is duly negotiated. However, delivery by the carrier in accordance with Part 4 pursuant to its own bill of lading discharges the carrier's obligation to deliver.

2007 Acts, ch 30, §33, 45, 46  
Section amended

**554.7504 Rights acquired in absence of due negotiation — effect of diversion — stoppage of delivery.**

1. A transferee of a document of title, whether

negotiable or nonnegotiable, to which the document has been delivered but not duly negotiated, acquires the title and rights that its transferor had or had actual authority to convey.

2. In the case of a transfer of a nonnegotiable document of title, until but not after the bailee receives notice of the transfer, the rights of the transferee may be defeated:

- a. by those creditors of the transferor who could treat the transfer as void under section 554.2402 or 554.13308;
- b. by a buyer from the transferor in ordinary course of business if the bailee has delivered the goods to the buyer or received notification of the buyer's rights;
- c. by a lessee from the transferor in ordinary course of business if the bailee has delivered the goods to the lessee or received notification of the lessee's rights; or
- d. as against the bailee, by good-faith dealings of the bailee with the transferor.

3. A diversion or other change of shipping instructions by the consignor in a nonnegotiable bill of lading which causes the bailee not to deliver the goods to the consignee defeats the consignee's title to the goods if the goods have been delivered to a buyer in ordinary course of business or a lessee in ordinary course of business and, in any event, defeats the consignee's rights against the bailee.

4. Delivery of the goods pursuant to a nonnegotiable document of title may be stopped by a seller under section 554.2705, or a lessor under section 554.13526, subject to the requirements of due notification in those sections. A bailee that honors the seller's or lessor's instructions is entitled to be indemnified by the seller or lessor against any resulting loss or expense.

2007 Acts, ch 30, §34, 45, 46  
Section amended

**554.7505 Indorser not guarantor for other parties.**

The indorsement of a tangible document of title issued by a bailee does not make the indorser liable for any default by the bailee or previous indorsers.

2007 Acts, ch 30, §35, 45, 46  
Section amended

**554.7506 Delivery without indorsement — right to compel indorsement.**

The transferee of a negotiable tangible document of title has a specifically enforceable right to have its transferor supply any necessary indorsement, but the transfer becomes a negotiation only as of the time the indorsement is supplied.

2007 Acts, ch 30, §36, 45, 46  
Section amended

**554.7507 Warranties on negotiation or delivery of document of title.**

If a person negotiates or delivers a document of title for value otherwise than as a mere intermedi-



ary under section 554.7508, unless otherwise agreed, the transferor, in addition to any warranty made in selling or leasing the goods, warrants to its immediate purchaser only that:

1. the document is genuine;
2. the transferor does not have knowledge of any fact that would impair the document's validity or worth; and
3. the negotiation or delivery is rightful and fully effective with respect to the title to the document and the goods it represents.

2007 Acts, ch 30, §37, 45, 46  
Section amended

**554.7508 Warranties of collecting bank as to documents of title.**

A collecting bank or other intermediary known to be entrusted with documents of title on behalf of another or with collection of a draft or other claim against delivery of documents warrants by the delivery of the documents only its own good faith and authority even if the collecting bank or other intermediary has purchased or made advances against the claim or draft to be collected.

2007 Acts, ch 30, §38, 45, 46  
Section amended

**554.7509 Adequate compliance with commercial contract.**

Whether a document of title is adequate to fulfill the obligations of a contract for sale, a contract for lease, or the conditions of a letter of credit is determined by Article 2, 5, or 13.

2007 Acts, ch 30, §39, 45, 46  
Section amended

PART 6

WAREHOUSE RECEIPTS AND  
BILLS OF LADING:  
MISCELLANEOUS PROVISIONS

**554.7601 Lost, stolen, or destroyed documents of title.**

1. If a document of title is lost, stolen, or destroyed, a court may order delivery of the goods or issuance of a substitute document and the bailee may without liability to any person comply with the order. If the document was negotiable, a court may not order delivery of the goods or issuance of a substitute document without the claimant's posting security unless it finds that any person that may suffer loss as a result of nonsurrender of possession or control of the document is adequately protected against the loss. If the document was not negotiable, the court may require security. The court may also order payment of the bailee's reasonable costs and attorney's fees in any action under this subsection.
2. A bailee that, without a court order, delivers

goods to a person claiming under a missing negotiable document of title is liable to any person injured thereby. If the delivery is not in good faith, the bailee is liable for conversion. Delivery in good faith is not conversion if the claimant posts security with the bailee in an amount at least double the value of the goods at the time of posting to indemnify any person injured by the delivery which files a notice of claim within one year after the delivery.

2007 Acts, ch 30, §40, 45, 46  
Section amended

**554.7601A Lost, stolen, or destroyed documents — additional requirements.**

1. *a.* If a warehouse receipt has been lost, stolen, or destroyed, the warehouse shall issue a duplicate upon receipt of:

(1) an affidavit that the warehouse receipt has been lost, stolen, or destroyed.

(2) a bond in an amount at least double the value of the goods at the time of posting the bond, to indemnify any person injured by issuance of the duplicate warehouse receipt who files a notice of claim within one year after delivery of the goods.

*b.* A duplicate warehouse receipt shall be plainly marked to indicate that it is a duplicate. A receipt plainly marked as a duplicate is a representation and warranty by the warehouse that the duplicate receipt is an accurate copy of an original receipt properly issued and uncanceled at the date of the issue of the duplicate, but shall not impose upon the warehouse other liability.

*c.* A warehouse which in good faith delivers goods to the holder of a duplicate receipt issued in accordance with this subsection is liable to any person injured by the delivery, but only to the extent of the security posted in accordance with paragraph "b" of this subsection.

2. If a warehouse receipt has been lost, stolen,\* or destroyed, the depositor may either remove the goods from the warehouse facility or sell the goods to the warehouse after executing a lost warehouse receipt release on a form prescribed by the department of agriculture and land stewardship. The form shall include an affidavit stating that the warehouse receipt has been lost or destroyed, and the depositor's undertaking to indemnify the warehouse for any loss incurred as a result of the loss or destruction of the warehouse receipt. The form shall be filed with the department of agriculture and land stewardship.

3. If a warehouse receipt has been lost or destroyed by a warehouse after delivery of the goods or purchase of the goods by the warehouse, the warehouse shall execute and file with the department of agriculture and land stewardship a notarized affidavit stating that the warehouse receipt has been lost or destroyed by the warehouse after delivery or purchase of the goods by the warehouse. The form of the affidavit shall be pre-

scribed by the department of agriculture and land stewardship.

2007 Acts, ch 30, §41, 45, 46

\*The word “stolen” probably not intended; corrective legislation is pending

NEW section

#### **554.7602 Judicial process against goods covered by negotiable document of title.**

Unless a document of title was originally issued upon delivery of the goods by a person that did not have power to dispose of them, a lien does not attach by virtue of any judicial process to goods in the possession of a bailee for which a negotiable document of title is outstanding unless possession or control of the document is first surrendered to the bailee or the document’s negotiation is enjoined. The bailee may not be compelled to deliver the goods pursuant to process until possession or control of the document is surrendered to the bailee or to the court. A purchaser of the document for value without notice of the process or injunction takes free of the lien imposed by judicial process.

2007 Acts, ch 30, §42, 45, 46  
Section amended

#### **554.7603 Conflicting claims — interpleader.**

If more than one person claims title to or possession of the goods, the bailee is excused from delivery until the bailee has a reasonable time to ascertain the validity of the adverse claims or to commence an action for interpleader. The bailee may assert an interpleader either in defending an action for nondelivery of the goods or by original action.

2007 Acts, ch 30, §43, 45, 46  
Section amended

#### **554.8102 Definitions.**

1. In this Article:

*a. “Adverse claim”* means a claim that a claimant has a property interest in a financial asset and that it is a violation of the rights of the claimant for another person to hold, transfer, or deal with the financial asset.

*b. “Bearer form”*, as applied to a certificated security, means a form in which the security is payable to the bearer of the security certificate according to its terms but not by reason of an indorsement.

*c. “Broker”* means a person defined as a broker or dealer under the federal securities laws, but without excluding a bank acting in that capacity.

*d. “Certificated security”* means a security that is represented by a certificate.

*e. “Clearing corporation”* means:

- (1) a person that is registered as a “clearing agency” under the federal securities laws;
- (2) a federal reserve bank; or
- (3) any other person that provides clearance or settlement services with respect to financial as-

sets that would require it to register as a clearing agency under the federal securities laws but for an exclusion or exemption from the registration requirement, if its activities as a clearing corporation, including promulgation of rules, are subject to regulation by a federal or state governmental authority.

*f. “Communicate”* means to:

- (1) send a signed writing; or
- (2) transmit information by any mechanism agreed upon by the persons transmitting and receiving the information.

*g. “Entitlement holder”* means a person identified in the records of a securities intermediary as the person having a security entitlement against the securities intermediary. If a person acquires a security entitlement by virtue of section 554.8501, subsection 2, paragraph “b” or “c”, that person is the entitlement holder.

*h. “Entitlement order”* means a notification communicated to a securities intermediary directing transfer or redemption of a financial asset to which the entitlement holder has a security entitlement.

*i. “Financial asset”*, except as otherwise provided in section 554.8103, means:

- (1) a security;
- (2) an obligation of a person or a share, participation, or other interest in a person or in property or an enterprise of a person, which is, or is of a type, dealt in or traded on financial markets, or which is recognized in any area in which it is issued or dealt in as a medium for investment; or
- (3) any property that is held by a securities intermediary for another person in a securities account if the securities intermediary has expressly agreed with the other person that the property is to be treated as a financial asset under this Article.

As context requires, the term means either the interest itself or the means by which a person’s claim to it is evidenced, including a certificated or uncertificated security, a security certificate, or a security entitlement.

*j. Reserved.*

*k. “Indorsement”* means a signature that alone or accompanied by other words is made on a security certificate in registered form or on a separate document for the purpose of assigning, transferring, or redeeming the security or granting a power to assign, transfer, or redeem it.

*l. “Instruction”* means a notification communicated to the issuer of an uncertificated security which directs that the transfer of the security be registered or that the security be redeemed.

*m. “Registered form”*, as applied to a certificated security, means a form in which:

- (1) the security certificate specifies a person entitled to the security; and
- (2) a transfer of the security may be registered upon books maintained for that purpose by or on

behalf of the issuer, or the security certificate so states.

*n.* “*Securities intermediary*” means:

(1) a clearing corporation; or  
 (2) a person, including a bank or broker, that in the ordinary course of its business maintains securities accounts for others and is acting in that capacity.

*o.* “*Security*”, except as otherwise provided in section 554.8103, means an obligation of an issuer or a share, participation, or other interest in an issuer or in property or an enterprise of an issuer:

(1) which is represented by a security certificate in bearer or registered form, or the transfer of which may be registered upon books maintained for that purpose by or on behalf of the issuer;

(2) which is one of a class or series or by its terms is divisible into a class or series of shares, participations, interests, or obligations; and

(3) which:

(a) is, or is of a type, dealt in or traded on securities exchanges or securities markets; or

(b) is a medium for investment and by its terms expressly provides that it is a security governed by this Article.

*p.* “*Security certificate*” means a certificate representing a security.

*q.* “*Security entitlement*” means the rights and property interest of an entitlement holder with respect to a financial asset specified in Part 5.

*r.* “*Uncertificated security*” means a security that is not represented by a certificate.

2. Other definitions applying to this Article and the sections in which they appear are:

“Appropriate person”	Section 554.8107
“Control”	Section 554.8106
“Delivery”	Section 554.8301
“Investment company security”	Section 554.8103
“Issuer”	Section 554.8201
“Overissue”	Section 554.8210
“Protected purchaser”	Section 554.8303
“Securities account”	Section 554.8501

3. In addition, Article 1 contains general definitions and principles of construction and interpretation applicable throughout this Article.

4. The characterization of a person, business, or transaction for purposes of this Article does not determine the characterization of the person, business, or transaction for purposes of any other law, regulation, or rule.

2007 Acts, ch 41, §29

Subsection 1, paragraph j stricken

### **554.8103 Rules for determining whether certain obligations and interests are securities or financial assets.**

1. A share or similar equity interest issued by a corporation, business trust, joint stock company, or similar entity is a security.

2. An “investment company security” is a security. “*Investment company security*” means a share

or similar equity interest issued by an entity that is registered as an investment company under the federal investment company laws, an interest in a unit investment trust that is so registered, or a face-amount certificate issued by a face-amount certificate company that is so registered. Investment company security does not include an insurance policy or endowment policy or annuity contract issued by an insurance company.

3. An interest in a partnership or limited liability company is not a security unless it is dealt in or traded on securities exchanges or in securities markets, its terms expressly provide that it is a security governed by this Article, or it is an investment company security. However, an interest in a partnership or limited liability company is a financial asset if it is held in a securities account.

4. A writing that is a security certificate is governed by this Article and not by Article 3, even though it also meets the requirements of that Article. However, a negotiable instrument governed by Article 3 is a financial asset if it is held in a securities account.

5. An option or similar obligation issued by a clearing corporation to its participants is not a security, but is a financial asset.

6. A commodity contract, as defined in section 554.9102, subsection 1, paragraph “o”, is not a security or a financial asset.

7. A document of title is not a financial asset unless section 554.8102, subsection 1, paragraph “i”, subparagraph (3) applies.

2007 Acts, ch 30, §45, 46, 64

NEW subsection 7

### **554.9102 Definitions and index of definitions.**

1. *Article 9 definitions.* In this Article:

*a.* “*Accession*” means goods that are physically united with other goods in such a manner that the identity of the original goods is not lost.

*b.* “*Account*”, except as used in “*account for*”, means a right to payment of a monetary obligation, whether or not earned by performance, (i) for property that has been or is to be sold, leased, licensed, assigned, or otherwise disposed of, (ii) for services rendered or to be rendered, (iii) for a policy of insurance issued or to be issued, (iv) for a secondary obligation incurred or to be incurred, (v) for energy provided or to be provided, (vi) for the use or hire of a vessel under a charter or other contract, (vii) arising out of the use of a credit or charge card or information contained on or for use with the card, or (viii) as winnings in a lottery or other game of chance operated or sponsored by a state, governmental unit of a state, or person licensed or authorized to operate the game by a state or governmental unit of a state. The term includes health care insurance receivables. The term does not include (i) rights to payment evidenced by chattel paper or an instrument, (ii) commercial tort claims, (iii) deposit accounts, (iv) in-

vestment property, (v) letter-of-credit rights or letters of credit, or (vi) rights to payment for money or funds advanced or sold, other than rights arising out of the use of a credit or charge card or information contained on or for use with the card.

c. “*Account debtor*” means a person obligated on an account, chattel paper, or general intangible. The term does not include persons obligated to pay a negotiable instrument, even if the instrument constitutes part of chattel paper.

d. “*Accounting*”, except as used in “*accounting for*”, means a record:

(1) authenticated by a secured party;

(2) indicating the aggregate unpaid secured obligations as of a date not more than thirty-five days earlier or thirty-five days later than the date of the record; and

(3) identifying the components of the obligations in reasonable detail.

e. “*Agricultural lien*” means an interest, other than a security interest, in farm products:

(1) which secures payment or performance of an obligation for:

(a) goods or services furnished in connection with a debtor’s farming operation; or

(b) rent on real property leased by a debtor in connection with its farming operation;

(2) which is created by statute in favor of a person that:

(a) in the ordinary course of its business furnished goods or services to a debtor in connection with a debtor’s farming operation; or

(b) leased real property to a debtor in connection with the debtor’s farming operation; and

(3) whose effectiveness does not depend on the person’s possession of the personal property.

f. “*As-extracted collateral*” means:

(1) oil, gas, or other minerals that are subject to a security interest that:

(a) is created by a debtor having an interest in the minerals before extraction; and

(b) attaches to the minerals as extracted; or

(2) accounts arising out of the sale at the well-head or minehead of oil, gas, or other minerals in which the debtor had an interest before extraction.

g. “*Authenticate*” means:

(1) to sign; or

(2) to execute or otherwise adopt a symbol, or encrypt or similarly process a record in whole or in part, with the present intent of the authenticating person to identify the person and adopt or accept a record.

h. “*Bank*” means an organization that is engaged in the business of banking. The term includes savings banks, savings and loan associations, credit unions, and trust companies.

i. “*Cash proceeds*” means proceeds that are money, checks, deposit accounts, or the like.

j. “*Certificate of title*” means a certificate of title with respect to which a statute provides for

the security interest in question to be indicated on the certificate as a condition or result of the security interest’s obtaining priority over the rights of a lien creditor with respect to the collateral.

k. “*Chattel paper*” means a record or records that evidence both a monetary obligation and a security interest in specific goods, a security interest in specific goods and software used in the goods, a security interest in specific goods and license of software used in the goods, a lease of specific goods, or a lease of specific goods and license of software used in the goods. In this paragraph, “*monetary obligation*” means a monetary obligation secured by the goods or owed under a lease of the goods and includes a monetary obligation with respect to software used in the goods. The term does not include (i) charters or other contracts involving the use or hire of a vessel or (ii) records that evidence a right to payment arising out of the use of a credit or charge card or information contained on or for use with the card. If a transaction is evidenced by records that include an instrument or series of instruments, the group of records taken together constitutes chattel paper.

l. “*Collateral*” means the property subject to a security interest or agricultural lien. The term includes:

(1) proceeds to which a security interest attaches;

(2) accounts, chattel paper, payment intangibles, and promissory notes that have been sold; and

(3) goods that are the subject of a consignment.

m. “*Commercial tort claim*” means a claim arising in tort with respect to which:

(1) the claimant is an organization; or

(2) the claimant is an individual and the claim:

(a) arose in the course of the claimant’s business or profession; and

(b) does not include damages arising out of personal injury to or the death of an individual.

n. “*Commodity account*” means an account maintained by a commodity intermediary in which a commodity contract is carried for a commodity customer.

o. “*Commodity contract*” means a commodity futures contract, an option on a commodity futures contract, a commodity option, or another contract if the contract or option is:

(1) traded on or subject to the rules of a board of trade that has been designated as a contract market for such a contract pursuant to federal commodities laws; or

(2) traded on a foreign commodity board of trade, exchange, or market, and is carried on the books of a commodity intermediary for a commodity customer.

p. “*Commodity customer*” means a person for which a commodity intermediary carries a commodity contract on its books.

q. “Commodity intermediary” means a person that:

(1) is registered as a futures commission merchant under federal commodities law; or

(2) in the ordinary course of its business provides clearance or settlement services for a board of trade that has been designated as a contract market pursuant to federal commodities law.

r. “Communicate” means:

(1) to send a written or other tangible record;

(2) to transmit a record by any means agreed upon by the persons sending and receiving the record; or

(3) in the case of transmission of a record to or by a filing office, to transmit a record by any means prescribed by filing-office rule.

s. “Consignee” means a merchant to which goods are delivered in a consignment.

t. “Consignment” means a transaction, regardless of its form, in which a person delivers goods to a merchant for the purpose of sale and:

(1) the merchant:

(a) deals in goods of that kind under a name other than the name of the person making delivery;

(b) is not an auctioneer; and

(c) is not generally known by its creditors to be substantially engaged in selling the goods of others;

(2) with respect to each delivery, the aggregate value of the goods is one thousand dollars or more at the time of delivery;

(3) the goods are not consumer goods immediately before delivery; and

(4) the transaction does not create a security interest that secures an obligation.

u. “Consignor” means a person that delivers goods to a consignee in a consignment.

v. “Consumer debtor” means a debtor in a consumer transaction.

w. “Consumer goods” means goods that are used or bought for use primarily for personal, family, or household purposes.

x. “Consumer-goods transaction” means a consumer transaction in which:

(1) an individual incurs an obligation primarily for personal, family, or household purposes; and

(2) a security interest in consumer goods secures the obligation.

y. “Consumer obligor” means an obligor who is an individual and who incurred the obligation as part of a transaction entered into primarily for personal, family, or household purposes.

z. “Consumer transaction” means a transaction in which (i) an individual incurs an obligation primarily for personal, family, or household purposes, (ii) a security interest secures the obligation, and (iii) the collateral is held or acquired primarily for personal, family, or household purposes. The term includes consumer-goods transactions.

aa. “Continuation statement” means an amendment of a financing statement which:

(1) identifies, by its file number, the initial financing statement to which it relates; and

(2) indicates that it is a continuation statement for, or that it is filed to continue the effectiveness of, the identified financing statement.

ab. “Debtor” means:

(1) a person having an interest, other than a security interest or other lien, in the collateral, whether or not the person is an obligor;

(2) a seller of accounts, chattel paper, payment intangibles, or promissory notes; or

(3) a consignee.

ac. “Deposit account” means a demand, time, savings, passbook, or similar account maintained with a bank. The term does not include investment property or accounts evidenced by an instrument.

ad. “Document” means a document of title or a receipt of the type described in section 554.7201, subsection 2.

ae. “Electronic chattel paper” means chattel paper evidenced by a record or records consisting of information stored in an electronic medium.

af. “Encumbrance” means a right, other than an ownership interest, in real property. The term includes mortgages and other liens on real property.

ag. “Equipment” means goods other than inventory, farm products, or consumer goods.

ah. “Farm products” means goods, other than standing timber, with respect to which the debtor is engaged in a farming operation and which are:

(1) crops grown, growing, or to be grown, including:

(a) crops produced on trees, vines, and bushes; and

(b) aquatic goods produced in aquacultural operations;

(2) livestock, born or unborn, including aquatic goods produced in aquacultural operations;

(3) supplies used or produced in a farming operation; or

(4) products of crops or livestock in their unmanufactured states.

ai. “Farming operation” means raising, cultivating, propagating, fattening, grazing, or any other farming, livestock, or aquacultural operation.

aj. “File number” means the number assigned to an initial financing statement pursuant to section 554.9519, subsection 1.

ak. “Filing office” means an office designated in section 554.9501 as the place to file a financing statement.

al. “Filing-office rule” means a rule adopted pursuant to section 554.9526.

am. “Financing statement” means a record or records composed of an initial financing statement and any filed record relating to the initial financ-

ing statement.

*an.* “*Fixture filing*” means the filing of a financing statement covering goods that are or are to become fixtures and satisfying section 554.9502, subsections 1 and 2. The term includes the filing of a financing statement covering goods of a transmitting utility which are or are to become fixtures.

*ao.* “*Fixtures*” means goods that have become so related to particular real property that an interest in them arises under real property law.

*ap.* “*General intangible*” means any personal property, including things in action, other than accounts, chattel paper, commercial tort claims, deposit accounts, documents, goods, instruments, investment property, letter-of-credit rights, letters of credit, money, and oil, gas, or other minerals before extraction. The term includes payment intangibles and software.

*aq.* Reserved.

*ar.* “*Goods*” means all things that are movable when a security interest attaches. The term includes (i) fixtures, (ii) standing timber that is to be cut and removed under a conveyance or contract for sale, (iii) the unborn young of animals, (iv) crops grown, growing, or to be grown, even if the crops are produced on trees, vines, or bushes, and (v) manufactured homes. The term also includes a computer program embedded in goods and any supporting information provided in connection with a transaction relating to the program if (i) the program is associated with the goods in such a manner that it customarily is considered part of the goods, or (ii) by becoming the owner of the goods, a person acquires a right to use the program in connection with the goods. The term does not include a computer program embedded in goods that consist solely of the medium in which the program is embedded. The term also does not include accounts, chattel paper, commercial tort claims, deposit accounts, documents, general intangibles, instruments, investment property, letter-of-credit rights, letters of credit, money, or oil, gas, or other minerals before extraction.

*as.* “*Governmental unit*” means a subdivision, agency, department, county, parish, municipality, or other unit of the government of the United States, a state, or a foreign country. The term includes an organization having a separate corporate existence if the organization is eligible to issue debt on which interest is exempt from income taxation under the laws of the United States.

*at.* “*Health care insurance receivable*” means an interest in or claim under a policy of insurance which is a right to payment of a monetary obligation for health care goods or services provided.

*au.* “*Instrument*” means a negotiable instrument or any other writing that evidences a right to the payment of a monetary obligation, is not itself a security agreement or lease, and is of a type that in ordinary course of business is transferred by de-

livery with any necessary indorsement or assignment. The term does not include (i) investment property, (ii) letters of credit, or (iii) writings that evidence a right to payment arising out of the use of a credit or charge card or information contained on or for use with the card.

*av.* “*Inventory*” means goods, other than farm products, which:

- (1) are leased by a person as lessor;
- (2) are held by a person for sale or lease or to be furnished under a contract of service;
- (3) are furnished by a person under a contract of service; or
- (4) consist of raw materials, work in process, or materials used or consumed in a business.

*aw.* “*Investment property*” means a security, whether certificated or uncertificated, security entitlement, securities account, commodity contract, or commodity account.

*ax.* “*Jurisdiction of organization*”, with respect to a registered organization, means the jurisdiction under whose law the organization is organized.

*ay.* “*Letter-of-credit right*” means a right to payment or performance under a letter of credit, whether or not the beneficiary has demanded or is at the time entitled to demand payment or performance. The term does not include the right of a beneficiary to demand payment or performance under a letter of credit.

*az.* “*Lien creditor*” means:

- (1) a creditor that has acquired a lien on the property involved by attachment, levy, or the like;
- (2) an assignee for benefit of creditors from the time of assignment;
- (3) a trustee in bankruptcy from the date of the filing of the petition; or
- (4) a receiver in equity from the time of appointment.

*ba.* “*Manufactured home*” means a structure, transportable in one or more sections, which, in the traveling mode, is eight body feet or more in width or forty body feet or more in length, or, when erected on site, is three hundred twenty or more square feet, and which is built on a permanent chassis and designed to be used as a dwelling with or without a permanent foundation when connected to the required utilities, and includes the plumbing, heating, air-conditioning, and electrical systems contained therein. The term includes any structure that meets all of the requirements of this paragraph except the size requirements and with respect to which the manufacturer voluntarily files a certification required by the United States secretary of housing and urban development and complies with the standards established under Title 42 of the United States Code.

*bb.* “*Manufactured-home transaction*” means a secured transaction:

- (1) that creates a purchase-money security interest in a manufactured home, other than a man-

ufactured home held as inventory; or

(2) in which a manufactured home, other than a manufactured home held as inventory, is the primary collateral.

*bc.* “*Mortgage*” means a consensual interest in real property, including fixtures, which secures payment or performance of an obligation.

*bd.* “*New debtor*” means a person that becomes bound as debtor under section 554.9203, subsection 4, by a security agreement previously entered into by another person.

*be.* “*New value*” means (i) money, (ii) money’s worth in property, services, or new credit, or (iii) release by a transferee of an interest in property previously transferred to the transferee. The term does not include an obligation substituted for another obligation.

*bf.* “*Noncash proceeds*” means proceeds other than cash proceeds.

*bg.* “*Obligor*” means a person that, with respect to an obligation secured by a security interest in or an agricultural lien on the collateral, (i) owes payment or other performance of the obligation, (ii) has provided property other than the collateral to secure payment or other performance of the obligation, or (iii) is otherwise accountable in whole or in part for payment or other performance of the obligation. The term does not include issuers or nominated persons under a letter of credit.

*bh.* “*Original debtor*”, except as used in section 554.9310, subsection 3, means a person that, as debtor, entered into a security agreement to which a new debtor has become bound under section 554.9203, subsection 4.

*bi.* “*Payment intangible*” means a general intangible under which the account debtor’s principal obligation is a monetary obligation.

*bj.* “*Person related to*”, with respect to an individual, means:

- (1) the spouse of the individual;
- (2) a brother, brother-in-law, sister, or sister-in-law of the individual;
- (3) an ancestor or lineal descendant of the individual or the individual’s spouse; or
- (4) any other relative, by blood or marriage, of the individual or the individual’s spouse who shares the same home with the individual.

*bk.* “*Person related to*”, with respect to an organization, means:

- (1) a person directly or indirectly controlling, controlled by, or under common control with the organization;
- (2) an officer or director of, or a person performing similar functions with respect to, the organization;
- (3) an officer or director of, or a person performing similar functions with respect to, a person described in subparagraph (1);
- (4) the spouse of an individual described in subparagraph (1), (2), or (3); or

(5) an individual who is related by blood or marriage to an individual described in subparagraph (1), (2), (3), or (4) and shares the same home with the individual.

*bl.* “*Proceeds*”, except as used in section 554.9609, subsection 2, means the following property:

(1) whatever is acquired upon the sale, lease, license, exchange, or other disposition of collateral;

(2) whatever is collected on, or distributed on account of, collateral;

(3) rights arising out of collateral;

(4) to the extent of the value of collateral, claims arising out of the loss, nonconformity, or interference with the use of, defects or infringement of rights in, or damage to, the collateral; or

(5) to the extent of the value of collateral and to the extent payable to the debtor or the secured party, insurance payable by reason of the loss or nonconformity of, defects or infringement of rights in, or damage to, the collateral.

*bm.* “*Promissory note*” means an instrument that evidences a promise to pay a monetary obligation, does not evidence an order to pay, and does not contain an acknowledgment by a bank that the bank has received for deposit a sum of money or funds.

*bn.* “*Proposal*” means a record authenticated by a secured party which includes the terms on which the secured party is willing to accept collateral in full or partial satisfaction of the obligation it secures pursuant to sections 554.9620, 554.9621, and 554.9622.

*bo.* “*Public-finance transaction*” means a secured transaction in connection with which:

(1) debt securities are issued;

(2) all or a portion of the securities issued have an initial stated maturity of at least twenty years; and

(3) the debtor, obligor, secured party, account debtor or other person obligated on collateral, assignor or assignee of a secured obligation, or assignor or assignee of a security interest is a state or a governmental unit of a state.

*bp.* “*Pursuant to commitment*”, with respect to an advance made or other value given by a secured party, means pursuant to the secured party’s obligation, whether or not a subsequent event of default or other event not within the secured party’s control has relieved or may relieve the secured party from its obligation.

*bq.* “*Record*”, except as used in “*for record*”, “*of record*”, “*record or legal title*”, and “*record owner*”, means information that is inscribed on a tangible medium or which is stored in an electronic or other medium and is retrievable in perceivable form.

*br.* “*Registered organization*” means an organization organized solely under the law of a single state or the United States and as to which the state or the United States must maintain a public

record showing the organization to have been organized.

*bs. "Secondary obligor"* means an obligor to the extent that:

- (1) the obligor's obligation is secondary; or
- (2) the obligor has a right of recourse with respect to an obligation secured by collateral against the debtor, another obligor, or property of either.

*bt. "Secured party"* means:

(1) a person in whose favor a security interest is created or provided for under a security agreement, whether or not any obligation to be secured is outstanding;

(2) a person that holds an agricultural lien;

(3) a consignor;

(4) a person to which accounts, chattel paper, payment intangibles, or promissory notes have been sold;

(5) a trustee, indenture trustee, agent, collateral agent, or other representative in whose favor a security interest or agricultural lien is created or provided for; or

(6) a person that holds a security interest arising under section 554.2401, 554.2505, 554.2711, subsection 3, section 554.4210, 554.5118, or 554.13508, subsection 5.

*bu. "Security agreement"* means an agreement that creates or provides for a security interest.

*bv. "Send"*, in connection with a record or notification, means:

(1) to deposit in the mail, deliver for transmission, or transmit by any other usual means of communication, with postage or cost of transmission provided for, addressed to any address reasonable under the circumstances; or

(2) to cause the record or notification to be received within the time that it would have been received if properly sent under subparagraph (1).

*bw. "Software"* means a computer program and any supporting information provided in connection with a transaction relating to the program. The term does not include a computer program that is included in the definition of goods.

*bx. "State"* means a state of the United States, the District of Columbia, Puerto Rico, the United States Virgin Islands, or any territory or insular possession subject to the jurisdiction of the United States.

*by. "Supporting obligation"* means a letter-of-credit right or secondary obligation that supports the payment or performance of an account, chattel paper, a document, a general intangible, an instrument, or investment property.

*bz. "Tangible chattel paper"* means chattel paper evidenced by a record or records consisting of information that is inscribed on a tangible medium.

*ca. "Termination statement"* means an amendment of a financing statement which:

- (1) identifies, by its file number, the initial financing statement to which it relates; and

(2) indicates either that it is a termination statement or that the identified financing statement is no longer effective.

*cb. "Transmitting utility"* means a person primarily engaged in the business of:

(1) operating a railroad, subway, street railway, or trolley bus;

(2) transmitting communications electrically, electromagnetically, or by light;

(3) transmitting goods by pipeline or sewer; or

(4) transmitting or producing and transmitting electricity, steam, gas, or water.

2. *Definitions in other Articles.* "Control" as provided in section 554.7106 and the following definitions in other Articles apply to this Article:

"Applicant"	Section 554.5102
"Beneficiary"	Section 554.5102
"Broker"	Section 554.8102
"Certificated security"	Section 554.8102
"Check"	Section 554.3104
"Clearing corporation"	Section 554.8102
"Contract for sale"	Section 554.2106
"Customer"	Section 554.4104
"Entitlement holder"	Section 554.8102
"Financial asset"	Section 554.8102
"Holder in due course"	Section 554.3302
"Issuer" (with respect to a letter of credit or letter-of-credit right)	Section 554.5102
"Issuer" (with respect to a security)	Section 554.8201
"Issuer" (with respect to documents of title)	Section 554.7102
"Lease"	Section 554.13103
"Lease agreement"	Section 554.13103
"Lease contract"	Section 554.13103
"Leasehold interest"	Section 554.13103
"Lessee"	Section 554.13103
"Lessee in ordinary course of business"	Section 554.13103
"Lessor"	Section 554.13103
"Lessor's residual interest"	Section 554.13103
"Letter of credit"	Section 554.5102
"Merchant"	Section 554.2104
"Negotiable instrument"	Section 554.3104
"Nominated person"	Section 554.5102
"Note"	Section 554.3104
"Proceeds of a letter of credit"	Section 554.5114
"Prove"	Section 554.3103
"Sale"	Section 554.2106
"Securities account"	Section 554.8501
"Securities intermediary"	Section 554.8102
"Security"	Section 554.8102
"Security certificate"	Section 554.8102
"Security entitlement"	Section 554.8102
"Uncertificated security"	Section 554.8102

3. *Article 1 definitions and principles.* Article 1 contains general definitions and principles of construction and interpretation applicable



throughout this Article.

4. *Federal Food Security Act.* For purposes of the Federal Food Security Act, 7 U.S.C. § 1631, written notice shall be considered to be received by the person to whom it was delivered if the notice is delivered in hand to the person, or mailed by certified or registered mail with the proper postage and properly addressed to the person to whom it was sent. The refusal of a person to whom a notice is so mailed to accept delivery of the notice shall be considered receipt.

2007 Acts, ch 30, §45, 46, 65; 2007 Acts, ch 41, §30  
Former section repealed effective July 1, 2001; 2000 Acts, ch 1149, §185, 187; for law prior to July 1, 2001, see Code 2001  
Subsection 1, paragraph aq stricken  
Subsection 2 amended

**554.9203 Attachment and enforceability of security interest — proceeds — supporting obligations — formal requisites.**

1. *Attachment.* A security interest attaches to collateral when it becomes enforceable against the debtor with respect to the collateral, unless an agreement expressly postpones the time of attachment.

2. *Enforceability.* Except as otherwise provided in subsections 3 through 9, a security interest is enforceable against the debtor and third parties with respect to the collateral only if:

- a. value has been given;
- b. the debtor has rights in the collateral or the power to transfer rights in the collateral to a secured party; and
- c. one of the following conditions is met:

(1) the debtor has authenticated a security agreement that provides a description of the collateral and, if the security interest covers timber to be cut, a description of the land concerned;

(2) the collateral is not a certificated security and is in the possession of the secured party under section 554.9313 pursuant to the debtor's security agreement;

(3) the collateral is a certificated security in registered form and the security certificate has been delivered to the secured party under section 554.8301 pursuant to the debtor's security agreement; or

(4) the collateral is deposit accounts, electronic chattel paper, investment property, letter-of-credit rights, or electronic documents, and the secured party has control under section 554.7106, 554.9104, 554.9105, 554.9106, or 554.9107 pursuant to the debtor's security agreement.

3. *Other UCC provisions.* Subsection 2 is subject to section 554.4210 on the security interest of a collecting bank, section 554.5118 on the security interest of a letter-of-credit issuer or nominated person, section 554.9110 on a security interest arising under Article 2 or 13, and section 554.9206 on security interests in investment property.

4. *When person becomes bound by another per-*

*son's security agreement.* A person becomes bound as debtor by a security agreement entered into by another person if, by operation of law other than this Article or by contract:

a. the security agreement becomes effective to create a security interest in the person's property; or

b. the person becomes generally obligated for the obligations of the other person, including the obligation secured under the security agreement, and acquires or succeeds to all or substantially all of the assets of the other person.

5. *Effect of new debtor becoming bound.* If a new debtor becomes bound as debtor by a security agreement entered into by another person:

a. the agreement satisfies subsection 2, paragraph "c", with respect to existing or after-acquired property of the new debtor to the extent the property is described in the agreement; and

b. another agreement is not necessary to make a security interest in the property enforceable.

6. *Proceeds and supporting obligations.* The attachment of a security interest in collateral gives the secured party the rights to proceeds provided by section 554.9315 and is also attachment of a security interest in a supporting obligation for the collateral.

7. *Lien securing right to payment.* The attachment of a security interest in a right to payment or performance secured by a security interest or other lien on personal or real property is also attachment of a security interest in the security interest, mortgage, or other lien.

8. *Security entitlement carried in securities account.* The attachment of a security interest in a securities account is also attachment of a security interest in the security entitlements carried in the securities account.

9. *Commodity contracts carried in commodity account.* The attachment of a security interest in a commodity account is also attachment of a security interest in the commodity contracts carried in the commodity account.

2007 Acts, ch 30, §45, 46, 66  
Sufficiency of description, see §554.9108  
Effectiveness of financing statement if new debtor bound, see §554.9508  
Former section repealed effective July 1, 2001; 2000 Acts, ch 1149, §185, 187; for law prior to July 1, 2001, see Code 2001  
Subsection 2, paragraph c, subparagraph (4) amended

**554.9207 Rights and duties of secured party having possession or control of collateral.**

1. *Duty of care when secured party in possession.* Except as otherwise provided in subsection 4, a secured party shall use reasonable care in the custody and preservation of collateral in the secured party's possession. In the case of chattel paper or an instrument, reasonable care includes taking necessary steps to preserve rights against prior parties unless otherwise agreed.

2. *Expenses, risks, duties, and rights when se-*

*cured party in possession.* Except as otherwise provided in subsection 4, if a secured party has possession of collateral:

*a.* reasonable expenses, including the cost of insurance and payment of taxes or other charges, incurred in the custody, preservation, use, or operation of the collateral are chargeable to the debtor and are secured by the collateral;

*b.* the risk of accidental loss or damage is on the debtor to the extent of a deficiency in any effective insurance coverage;

*c.* the secured party shall keep the collateral identifiable, but fungible collateral may be commingled; and

*d.* the secured party may use or operate the collateral:

(1) for the purpose of preserving the collateral or its value;

(2) as permitted by an order of a court having competent jurisdiction; or

(3) except in the case of consumer goods, in the manner and to the extent agreed by the debtor.

3. *Duties and rights when secured party in possession or control.* Except as otherwise provided in subsection 4, a secured party having possession of collateral or control of collateral under section 554.7106, 554.9104, 554.9105, 554.9106, or 554.9107:

*a.* may hold as additional security any proceeds, except money or funds, received from the collateral;

*b.* shall apply money or funds received from the collateral to reduce the secured obligation, unless remitted to the debtor; and

*c.* may create a security interest in the collateral.

4. *Buyer of certain rights to payment.* If the secured party is a buyer of accounts, chattel paper, payment intangibles, or promissory notes or a consignor:

*a.* subsection 1 does not apply unless the secured party is entitled under an agreement:

(1) to charge back uncollected collateral; or

(2) otherwise to full or limited recourse against the debtor or a secondary obligor based on the nonpayment or other default of an account debtor or other obligor on the collateral; and

*b.* subsections 2 and 3 do not apply.

2007 Acts, ch 30, §45, 46, 67  
Former section repealed effective July 1, 2001; 2000 Acts, ch 1149, §185, 187; for law prior to July 1, 2001, see Code 2001  
Subsection 3, unnumbered paragraph 1 amended

### **554.9208 Additional duties of secured party having control of collateral.**

1. *Applicability of section.* This section applies to cases in which there is no outstanding secured obligation and the secured party is not committed to make advances, incur obligations, or otherwise give value.

2. *Duties of secured party after receiving demand from debtor.* Within ten days after receiv-

ing an authenticated demand by the debtor:

*a.* a secured party having control of a deposit account under section 554.9104, subsection 1, paragraph “b”, shall send to the bank with which the deposit account is maintained an authenticated statement that releases the bank from any further obligation to comply with instructions originated by the secured party;

*b.* a secured party having control of a deposit account under section 554.9104, subsection 1, paragraph “c”, shall:

(1) pay the debtor the balance on deposit in the deposit account; or

(2) transfer the balance on deposit into a deposit account in the debtor’s name;

*c.* a secured party, other than a buyer, having control of electronic chattel paper under section 554.9105 shall:

(1) communicate the authoritative copy of the electronic chattel paper to the debtor or its designated custodian;

(2) if the debtor designates a custodian that is the designated custodian with which the authoritative copy of the electronic chattel paper is maintained for the secured party, communicate to the custodian an authenticated record releasing the designated custodian from any further obligation to comply with instructions originated by the secured party and instructing the custodian to comply with instructions originated by the debtor; and

(3) take appropriate action to enable the debtor or its designated custodian to make copies or revisions to the authoritative copy which add or change an identified assignee of the authoritative copy without the consent of the secured party;

*d.* a secured party having control of investment property under section 554.8106, subsection 4, paragraph “b”, or section 554.9106, subsection 2, shall send to the securities intermediary or commodity intermediary with which the security entitlement or commodity contract is maintained an authenticated record that releases the securities intermediary or commodity intermediary from any further obligation to comply with entitlement orders or directions originated by the secured party;

*e.* a secured party having control of a letter-of-credit right under section 554.9107 shall send to each person having an unfulfilled obligation to pay or deliver proceeds of the letter of credit to the secured party an authenticated release from any further obligation to pay or deliver proceeds of the letter of credit to the secured party; and

*f.* a secured party having control of an electronic document shall:

(1) give control of the electronic document to the debtor or its designated custodian;

(2) if the debtor designates a custodian that is the designated custodian with which the authoritative copy of the electronic document is maintained for the secured party, communicate to the

custodian an authenticated record releasing the designated custodian from any further obligation to comply with instructions originated by the secured party and instructing the custodian to comply with instructions originated by the debtor; and

(3) take appropriate action to enable the debtor or its designated custodian to make copies of or revisions to the authoritative copy which add or change an identified assignee of the authoritative copy without the consent of the secured party.

2007 Acts, ch 30, §45, 46, 68  
Remedies for noncompliance, see §554.9625  
Former section repealed effective July 1, 2001; 2000 Acts, ch 1149, §185, 187; for law prior to July 1, 2001, see Code 2001  
Subsection 2, paragraphs d and e amended  
Subsection 2, NEW paragraph f

**554.9301 Law governing perfection and priority of security interests.**

Except as otherwise provided in sections 554.9303, 554.9304, 554.9305, and 554.9306, the following rules determine the law governing perfection, the effect of perfection or nonperfection, and the priority of a security interest in collateral:

1. Except as otherwise provided in this section, while a debtor is located in a jurisdiction, the local law of that jurisdiction governs perfection, the effect of perfection or nonperfection, and the priority of a security interest in collateral.

2. While collateral is located in a jurisdiction, the local law of that jurisdiction governs perfection, the effect of perfection or nonperfection, and the priority of a possessory security interest in that collateral.

3. Except as otherwise provided in subsection 4, while tangible negotiable documents, goods, instruments, money, or tangible chattel paper is located in a jurisdiction, the local law of that jurisdiction governs:

a. perfection of a security interest in the goods by filing a fixture filing;

b. perfection of a security interest in timber to be cut; and

c. the effect of perfection or nonperfection and the priority of a nonpossessory security interest in the collateral.

4. The local law of the jurisdiction in which the wellhead or minehead is located governs perfection, the effect of perfection or nonperfection, and the priority of a security interest in as-extracted collateral.

2007 Acts, ch 30, §45, 46, 69  
Former section repealed effective July 1, 2001; 2000 Acts, ch 1149, §185, 187; for law prior to July 1, 2001, see Code 2001  
Subsection 3, unnumbered paragraph 1 amended

**554.9310 When filing required to perfect security interest or agricultural lien — security interests and agricultural liens to which filing provisions do not apply.**

1. *General rule — perfection by filing.* Except as otherwise provided in subsection 2 and section 554.9312, subsection 2, a financing statement

must be filed to perfect all security interests and agricultural liens.

2. *Exceptions — filing not necessary.* The filing of a financing statement is not necessary to perfect a security interest:

a. that is perfected under section 554.9308, subsection 4, 5, 6, or 7;

b. that is perfected under section 554.9309 when it attaches;

c. in property subject to a statute, regulation, or treaty described in section 554.9311, subsection 1;

d. in goods in possession of a bailee which is perfected under section 554.9312, subsection 4, paragraph “a” or “b”;

e. in certificated securities, documents, goods, or instruments which is perfected without filing, control, or possession under section 554.9312, subsection 5, 6, or 7;

f. in collateral in the secured party’s possession under section 554.9313;

g. in a certificated security which is perfected by delivery of the security certificate to the secured party under section 554.9313;

h. in deposit accounts, electronic chattel paper, electronic documents, investment property, or letter-of-credit rights which is perfected by control under section 554.9314;

i. in proceeds which is perfected under section 554.9315; or

j. that is perfected under section 554.9316.

3. *Assignment of perfected security interest.* If a secured party assigns a perfected security interest or agricultural lien, a filing under this Article is not required to continue the perfected status of the security interest against creditors of and transferees from the original debtor.

2007 Acts, ch 30, §45, 46, 70  
Former section repealed effective July 1, 2001; 2000 Acts, ch 1149, §185, 187; for law prior to July 1, 2001, see Code 2001  
Subsection 2, paragraphs e and h amended

**554.9312 Perfection of security interests in chattel paper, deposit accounts, documents, goods covered by documents, instruments, investment property, letter-of-credit rights, and money — perfection by permissive filing — temporary perfection without filing or transfer of possession.**

1. *Perfection by filing permitted.* A security interest in chattel paper, negotiable documents, instruments, or investment property may be perfected by filing.

2. *Control or possession of certain collateral.* Except as otherwise provided in section 554.9315, subsections 3 and 4, for proceeds:

a. a security interest in a deposit account may be perfected only by control under section 554.9314;

b. and except as otherwise provided in section 554.9308, subsection 4, a security interest in a letter-of-credit right may be perfected only by control

under section 554.9314; and

c. a security interest in money may be perfected only by the secured party's taking possession under section 554.9313.

3. *Goods covered by negotiable document.* While goods are in the possession of a bailee that has issued a negotiable document covering the goods:

a. a security interest in the goods may be perfected by perfecting a security interest in the document; and

b. a security interest perfected in the document has priority over any security interest that becomes perfected in the goods by another method during that time.

4. *Goods covered by nonnegotiable document.* While goods are in the possession of a bailee that has issued a nonnegotiable document covering the goods, a security interest in the goods may be perfected by:

a. issuance of a document in the name of the secured party;

b. the bailee's receipt of notification of the secured party's interest; or

c. filing as to the goods.

5. *Temporary perfection — new value.* A security interest in certificated securities, negotiable documents, or instruments is perfected without filing or the taking of possession or control for a period of twenty days from the time it attaches to the extent that it arises for new value given under an authenticated security agreement.

6. *Temporary perfection — goods or documents made available to debtor.* A perfected security interest in a negotiable document or goods in possession of a bailee, other than one that has issued a negotiable document for the goods, remains perfected for twenty days without filing if the secured party makes available to the debtor the goods or documents representing the goods for the purpose of:

a. ultimate sale or exchange; or

b. loading, unloading, storing, shipping, transshipping, manufacturing, processing, or otherwise dealing with them in a manner preliminary to their sale or exchange.

7. *Temporary perfection — delivery of security certificate or instrument to debtor.* A perfected security interest in a certificated security or instrument remains perfected for twenty days without filing if the secured party delivers the security certificate or instrument to the debtor for the purpose of:

a. ultimate sale or exchange; or

b. presentation, collection, enforcement, renewal, or registration of transfer.

8. *Expiration of temporary perfection.* After the twenty-day period specified in subsection 5, 6, or 7 expires, perfection depends upon compliance with this Article.

2007 Acts, ch 30, §45, 46, 71

Former section repealed effective July 1, 2001; 2000 Acts, ch 1149, §185,

187; for law prior to July 1, 2001, see Code 2001  
Subsection 5 amended

**554.9313 When possession by or delivery to secured party perfects security interest without filing.**

1. *Perfection by possession or delivery.* Except as otherwise provided in subsection 2, a secured party may perfect a security interest in tangible negotiable documents, goods, instruments, money, or tangible chattel paper by taking possession of the collateral. A secured party may perfect a security interest in certificated securities by taking delivery of the certificated securities under section 554.8301.

2. *Goods covered by certificate of title.* With respect to goods covered by a certificate of title issued by this state, a secured party may perfect a security interest in the goods by taking possession of the goods only in the circumstances described in section 554.9316, subsection 4.

3. *Collateral in possession of person other than debtor.* With respect to collateral other than certificated securities and goods covered by a document, a secured party takes possession of collateral in the possession of a person other than the debtor, the secured party, or a lessee of the collateral from the debtor in the ordinary course of the debtor's business, when:

a. the person in possession authenticates a record acknowledging that it holds possession of the collateral for the secured party's benefit; or

b. the person takes possession of the collateral after having authenticated a record acknowledging that it will hold possession of collateral for the secured party's benefit.

4. *Time of perfection by possession — continuation of perfection.* If perfection of a security interest depends upon possession of the collateral by a secured party, perfection occurs no earlier than the time the secured party takes possession and continues only while the secured party retains possession.

5. *Time of perfection by delivery — continuation of perfection.* A security interest in a certificated security in registered form is perfected by delivery when delivery of the certificated security occurs under section 554.8301 and remains perfected by delivery until the debtor obtains possession of the security certificate.

6. *Acknowledgment not required.* A person in possession of collateral is not required to acknowledge that it holds possession for a secured party's benefit.

7. *Effectiveness of acknowledgment — no duties or confirmation.* If a person acknowledges that it holds possession for the secured party's benefit:

a. the acknowledgment is effective under subsection 3 or section 554.8301, subsection 1, even if the acknowledgment violates the rights of a debtor; and

b. unless the person otherwise agrees or law other than this Article otherwise provides, the person does not owe any duty to the secured party and is not required to confirm the acknowledgment to another person.

8. *Secured party's delivery to person other than debtor.* A secured party having possession of collateral does not relinquish possession by delivering the collateral to a person other than the debtor or a lessee of the collateral from the debtor in the ordinary course of the debtor's business if the person was instructed before the delivery or is instructed contemporaneously with the delivery:

- a. to hold possession of the collateral for the secured party's benefit; or
- b. to redeliver the collateral to the secured party.

9. *Effect of delivery under subsection 8 — no duties or confirmation.* A secured party does not relinquish possession, even if a delivery under subsection 8 violates the rights of a debtor. A person to which collateral is delivered under subsection 8 does not owe any duty to the secured party and is not required to confirm the delivery to another person unless the person otherwise agrees or law other than this Article otherwise provides.

2007 Acts, ch 30, §45, 46, 72  
Rights and duties of secured party having possession or control of collateral, §554.9207, 554.9208  
Former section repealed effective July 1, 2001; 2000 Acts, ch 1149, §185, 187; for law prior to July 1, 2001, see Code 2001  
Subsection 1 amended

#### 554.9314 Perfection by control.

1. *Perfection by control.* A security interest in investment property, deposit accounts, letter-of-credit rights, electronic chattel paper, or electronic documents may be perfected by control of the collateral under section 554.7106, 554.9104, 554.9105, 554.9106, or 554.9107.

2. *Specified collateral — time of perfection by control — continuation of perfection.* A security interest in deposit accounts, electronic chattel paper, letter-of-credit rights, or electronic documents is perfected by control under section 554.7106, 554.9104, 554.9105, or 554.9107 when the secured party obtains control and remains perfected by control only while the secured party retains control.

3. *Investment property — time of perfection by control — continuation of perfection.* A security interest in investment property is perfected by control under section 554.9106 from the time the secured party obtains control and remains perfected by control until:

- a. the secured party does not have control; and
- b. one of the following occurs:
  - (1) if the collateral is a certificated security, the debtor has or acquires possession of the security certificate;
  - (2) if the collateral is an uncertificated security, the issuer has registered or registers the debtor as the registered owner; or

(3) if the collateral is a security entitlement, the debtor is or becomes the entitlement holder.

2007 Acts, ch 30, §45, 46, 73  
Former section repealed effective July 1, 2001; 2000 Acts, ch 1149, §185, 187; for law prior to July 1, 2001, see Code 2001  
Subsections 1 and 2 amended

#### 554.9317 Interests that take priority over or take free of security interest or agricultural lien.

1. *Conflicting security interests and rights of lien creditors.* A security interest or agricultural lien is subordinate to the rights of:

- a. a person entitled to priority under section 554.9322; and
- b. except as otherwise provided in subsection 5, a person that becomes a lien creditor before the earlier of the time:

(1) The security interest or agricultural lien is perfected; or

(2) One of the conditions specified in section 554.9203, subsection 2, paragraph "c" is met and a financing statement covering the collateral is filed.

2. *Buyers that receive delivery.* Except as otherwise provided in subsection 5, a buyer, other than a secured party, of tangible chattel paper, tangible documents, goods, instruments, or a security certificate takes free of a security interest or agricultural lien if the buyer gives value and receives delivery of the collateral without knowledge of the security interest or agricultural lien and before it is perfected.

3. *Lessees that receive delivery.* Except as otherwise provided in subsection 5, a lessee of goods takes free of a security interest or agricultural lien if the lessee gives value and receives delivery of the collateral without knowledge of the security interest or agricultural lien and before it is perfected.

4. *Licensees and buyers of certain collateral.* A licensee of a general intangible or a buyer, other than a secured party, of accounts, electronic chattel paper, electronic documents, general intangibles, or investment property other than a certificated security takes free of a security interest if the licensee or buyer gives value without knowledge of the security interest and before it is perfected.

5. *Purchase-money security interest.* Except as otherwise provided in sections 554.9320 and 554.9321, if a person files a financing statement with respect to a purchase-money security interest before or within twenty days after the debtor receives delivery of the collateral, the security interest takes priority over the rights of a buyer, lessee, or lien creditor which arise between the time the security interest attaches and the time of filing.

2007 Acts, ch 30, §45, 46, 74  
Former section repealed effective July 1, 2001; 2000 Acts, ch 1149, §185, 187; for law prior to July 1, 2001, see Code 2001  
Subsections 2 and 4 amended

**554.9338 Priority of security interest or agricultural lien perfected by filed financing statement providing certain incorrect information.**

If a security interest or agricultural lien is perfected by a filed financing statement providing information described in section 554.9516, subsection 2, paragraph “e”, which is incorrect at the time the financing statement is filed:

1. the security interest or agricultural lien is subordinate to a conflicting perfected security interest in the collateral to the extent that the holder of the conflicting security interest gives value in reasonable reliance upon the incorrect information; and

2. a purchaser, other than a secured party, of the collateral takes free of the security interest or agricultural lien to the extent that, in reasonable reliance upon the incorrect information, the purchaser gives value and, in the case of tangible chattel paper, tangible documents, goods, instruments, or a security certificate, receives delivery of the collateral.

2007 Acts, ch 30, §45, 46, 75  
Subsection 2 amended

**554.9601 Rights after default — judicial enforcement — consignor or buyer of accounts, chattel paper, payment intangibles, or promissory notes.**

1. *Rights of secured party after default.* After default, a secured party has the rights provided in this part and, except as otherwise provided in section 554.9602, those provided by agreement of the parties. A secured party:

a. may reduce a claim to judgment, foreclose, or otherwise enforce the claim, security interest, or agricultural lien by any available judicial procedure; and

b. if the collateral is documents, may proceed either as to the documents or as to the goods they cover.

2. *Rights and duties of secured party in possession or control.* A secured party in possession of collateral or control of collateral under section 554.7106, 554.9104, 554.9105, 554.9106, or 554.9107 has the rights and duties provided in section 554.9207.

3. *Rights cumulative — simultaneous exercise.* The rights under subsections 1 and 2 are cumulative and may be exercised simultaneously.

4. *Rights of debtor and obligor.* Except as otherwise provided in subsection 7 and section 554.9605, after default, a debtor and an obligor have the rights provided in this part and by agreement of the parties.

5. *Lien of levy after judgment.* If a secured party has reduced its claim to judgment, the lien of any levy that may be made upon the collateral by virtue of an execution based upon the judgment relates back to the earliest of:

a. the date of perfection of the security interest

or agricultural lien in the collateral;

b. the date of filing a financing statement covering the collateral; or

c. any date specified in a statute under which the agricultural lien was created.

6. *Execution sale.* A sale pursuant to an execution is a foreclosure of the security interest or agricultural lien by judicial procedure within the meaning of this section. A secured party may purchase at the sale and thereafter hold the collateral free of any other requirements of this Article.

7. *Consignor or buyer of certain rights to payment.* Except as otherwise provided in section 554.9607, subsection 3, this part imposes no duties upon a secured party that is a consignor or is a buyer of accounts, chattel paper, payment intangibles, or promissory notes.

2007 Acts, ch 30, §45, 46, 76  
Subsection 2 amended

**554.10104 Laws not repealed.** Repealed by 2007 Acts, ch 30, § 44 – 46. See § 554.7103.

**554.12105 Other definitions.**

1. In this article unless the context otherwise requires:

a. “*Authorized account*” means a deposit account of a customer in a bank designated by the customer as a source of payment of payment orders issued by the customer to the bank. If a customer does not so designate an account, any account of the customer is an authorized account if payment of a payment order from that account is not inconsistent with a restriction on the use of that account.

b. “*Bank*” means a person engaged in the business of banking and includes a savings bank, savings and loan association, credit union, and trust company. A branch or separate office of a bank is a separate bank for purposes of this article.

c. “*Customer*” means a person, including a bank, having an account with a bank or from whom a bank has agreed to receive payment orders.

d. “*Funds-transfer business day*” of a receiving bank means the part of a day during which the receiving bank is open for the receipt, processing, and transmittal of payment orders, and cancellations and amendments of payment orders.

e. “*Funds-transfer system*” means a wire transfer network, automated clearing house, or other communication system of a clearing house or other association of banks through which a payment order by a bank may be transmitted to the bank to which the order is addressed.

f. Reserved.

g. “*Prove*” with respect to a fact means to meet the burden of establishing the fact as defined in section 554.1201, subsection 2, paragraph “h”.

2. Other definitions applying to this article and the sections in which they appear are:

“Acceptance”	Section 554.12209
“Beneficiary”	Section 554.12103
“Beneficiary’s bank”	Section 554.12103
“Executed”	Section 554.12301
“Execution date”	Section 554.12301
“Funds transfer”	Section 554.12104
“Funds-transfer system rule”	Section 554.12501
“Governing law”	Section 554.12507
“Intermediary bank”	Section 554.12104
“Originator”	Section 554.12104
“Originator’s bank”	Section 554.12104
“Payment by beneficiary’s bank to beneficiary”	Section 554.12405
“Payment by originator to beneficiary”	Section 554.12406
“Payment by sender to receiving bank”	Section 554.12403
“Payment date”	Section 554.12401
“Payment order”	Section 554.12103
“Receiving bank”	Section 554.12103
“Security procedure”	Section 554.12201
“Sender”	Section 554.12103

3. The following definitions in article 4 apply to this article:

“Clearing house”	Section 554.4104
“Item”	Section 554.4104
“Suspends payments”	Section 554.4104

4. In addition, article 1 contains general definitions and principles of construction and interpretation applicable throughout this article.

2007 Acts, ch 41, §31, 32  
Subsection 1, paragraph f stricken  
Subsection 1, paragraph g amended

#### **554.12106 Time payment order is received.**

1. The time of receipt of a payment order or communication canceling or amending a payment order is determined by the rules applicable to receipt of a notice stated in section 554.1202. A receiving bank may establish a cut-off time or times on a funds-transfer business day for the receipt and processing of payment orders, and communications canceling or amending payment orders. Different cut-off times may apply to payment orders, cancellations, or amendments, or to different categories of payment orders, cancellations, or amendments. A cut-off time may apply to senders generally, or different cut-off times may apply to different senders or categories of payment orders. If a payment order or communication canceling or amending a payment order is received after the close of a funds-transfer business day or after the appropriate cut-off time on a funds-transfer business day, the receiving bank may treat the payment order or communication as received at the opening of the next funds-transfer business day.

2. Unless otherwise provided, if this article refers to an execution date or payment date or states a day on which a receiving bank is required to take action, and the date or day does not fall on a funds-

transfer business day, the next day that is a funds-transfer business day is treated as the date or day stated.

2007 Acts, ch 41, §33  
Subsection 1 amended

#### **554.12204 Refund of payment and duty of customer to report with respect to unauthorized payment order.**

1. If a receiving bank accepts a payment order issued in the name of its customer as sender which is not authorized and not effective as the order of the customer under section 554.12202, or which is not enforceable, in whole or in part, against the customer under section 554.12203, the bank shall refund any payment related to the payment order received from the customer to the extent the bank is not entitled to enforce payment and shall pay interest on the refundable amount calculated from the date the bank received payment to the date of the refund. However, the customer is not entitled to interest from the bank on the amount to be refunded if the customer fails to exercise ordinary care to determine that the order was not authorized by the customer and to notify the bank of the relevant facts within a reasonable time not exceeding ninety days after the date the customer received notification from the bank that the order was accepted or that the customer’s account was debited with respect to the order. The bank is not entitled to any recovery from the customer as a result of a failure by the customer to give notification as stated in this section.

2. Reasonable time under subsection 1 may be fixed by agreement as provided in section 554.1302, subsection 2, but the obligation of a receiving bank to refund payment as stated in subsection 1 may not otherwise be varied by agreement.

2007 Acts, ch 41, §34  
Subsection 2 amended

#### **554.13103 Definitions and index of definitions.**

1. In this Article unless the context otherwise requires:

a. “*Buyer in ordinary course of business*” means a person who in good faith and without knowledge that the sale to the person is in violation of the ownership rights or security interest or leasehold interest of a third party in the goods, buys in ordinary course from a person in the business of selling goods of that kind but does not include a pawnbroker. “*Buying*” may be for cash or by exchange of other property or on secured or unsecured credit and includes acquiring goods or documents of title under a preexisting contract for sale but does not include a transfer in bulk or as security for or in total or partial satisfaction of a money debt.

b. “*Cancellation*” occurs when either party puts an end to the lease contract for default by the other party.

c. “*Commercial unit*” means such a unit of goods as by commercial usage is a single whole for purposes of lease and division of which materially impairs its character or value on the market or in use. A commercial unit may be a single article, as a machine, or a set of articles, as a suite of furniture or a line of machinery, or a quantity, as a gross or carload, or any other unit treated in use or in the relevant market as a single whole.

d. “*Conforming*” goods or performance under a lease contract means goods or performance that are in accordance with the obligations under the lease contract.

e. “*Consumer lease*” means a lease that a lessor regularly engaged in the business of leasing or selling makes to a lessee who is an individual and who takes under the lease primarily for a personal, family, or household purpose, if the total payments to be made under the lease contract, excluding payments for options to renew or buy, do not exceed the dollar amount designated in section 537.1301, subsection 14.

f. “*Fault*” means wrongful act, omission, breach, or default.

g. “*Finance lease*” means a lease with respect to which:

(1) the lessor does not select, manufacture, or supply the goods;

(2) the lessor acquires the goods or the right to possession and use of the goods in connection with the lease; and

(3) one of the following occurs:

(a) the lessee receives a copy of the contract by which the lessor acquired the goods or the right to possession and use of the goods before signing the lease contract;

(b) the lessee’s approval of the contract by which the lessor acquired the goods or the right to possession and use of the goods is a condition to effectiveness of the lease contract;

(c) the lessee, before signing the lease contract, receives an accurate and complete statement designating the promises and warranties, and any disclaimers of warranties, limitations or modifications of remedies, or liquidated damages, including those of a third party, such as the manufacturer of the goods, provided to the lessor by the person supplying the goods in connection with or as part of the contract by which the lessor acquired the goods or the right to possession and use of the goods; or

(d) if the lease is not a consumer lease, the lessor, before the lessee signs the lease contract, informs the lessee in writing (i) of the identity of the person supplying the goods to the lessor, unless the lessee has selected that person and directed the lessor to acquire the goods or the right to possession and use of the goods from that person, (ii) that the lessee is entitled under this Article to the promises and warranties, including those of any third party, provided to the lessor by the person

supplying the goods in connection with or as part of the contract by which the lessor acquired the goods or the right to possession and use of the goods, and (iii) that the lessee may communicate with the person supplying the goods to the lessor and receive an accurate and complete statement of those promises and warranties, including any disclaimers and limitations of them or of remedies.

h. “*Goods*” means all things that are movable at the time of identification to the lease contract, or are fixtures (section 554.13309), but the term does not include money, documents, instruments, accounts, chattel paper, general intangibles, or minerals or the like, including oil and gas, before extraction. The term also includes the unborn young of animals.

i. “*Installment lease contract*” means a lease contract that authorizes or requires the delivery of goods in separate lots to be separately accepted, even though the lease contract contains a clause “each delivery is a separate lease” or its equivalent.

j. “*Lease*” means a transfer of the right to possession and use of goods for a term in return for consideration, but a sale, including a sale on approval or a sale or return, or retention or creation of a security interest is not a lease. Unless the context clearly indicates otherwise, the term includes a sublease.

k. “*Lease agreement*” means the bargain, with respect to the lease, of the lessor and the lessee in fact as found in their language or by implication from other circumstances including course of dealing or usage of trade or course of performance as provided in this Article. Unless the context clearly indicates otherwise, the term includes a sublease agreement.

l. “*Lease contract*” means the total legal obligation that results from the lease agreement as affected by this Article and any other applicable rules of law. Unless the context clearly indicates otherwise, the term includes a sublease contract.

m. “*Leasehold interest*” means the interest of the lessor or the lessee under a lease contract.

n. “*Lessee*” means a person who acquires the right to possession and use of goods under a lease. Unless the context clearly indicates otherwise, the term includes a sublessee.

o. “*Lessee in ordinary course of business*” means a person who in good faith and without knowledge that the lease to the person is in violation of the ownership rights or security interest or leasehold interest of a third party in the goods, leases in ordinary course from a person in the business of selling or leasing goods of that kind but does not include a pawnbroker. “*Leasing*” may be for cash or by exchange of other property or on secured or unsecured credit and includes acquiring goods or documents of title under a preexisting lease contract but does not include a transfer in bulk or as security for or in total or partial satisfac-



tion of a money debt.

p. “*Lessor*” means a person who transfers the right to possession and use of goods under a lease. Unless the context clearly indicates otherwise, the term includes a sublessor.

q. “*Lessor’s residual interest*” means the lessor’s interest in the goods after expiration, termination, or cancellation of the lease contract.

r. “*Lien*” means a charge against or interest in goods to secure payment of a debt or performance of an obligation, but the term does not include a security interest.

s. “*Lot*” means a parcel or a single article that is the subject matter of a separate lease or delivery, whether or not it is sufficient to perform the lease contract.

t. “*Merchant lessee*” means a lessee that is a merchant with respect to goods of the kind subject to the lease.

u. “*Present value*” means the amount as of a date certain of one or more sums payable in the future, discounted to the date certain. The discount is determined by the interest rate specified by the parties if the rate was not manifestly unreasonable at the time the transaction was entered into; otherwise, the discount is determined by a commercially reasonable rate that takes into account the facts and circumstances of each case at the time the transaction was entered into.

v. “*Purchase*” includes taking by sale, lease, mortgage, security interest, pledge, gift, or any other voluntary transaction creating an interest in goods.

w. “*Sublease*” means a lease of goods the right to possession and use of which was acquired by the lessor as a lessee under an existing lease.

x. “*Supplier*” means a person from whom a lessor buys or leases goods to be leased under a finance lease.

y. “*Supply contract*” means a contract under which a lessor buys or leases goods to be leased.

z. “*Termination*” occurs when either party pursuant to a power created by agreement or law puts an end to the lease contract otherwise than for default.

2. Other definitions applying to this Article and the sections in which they appear are:

“Accessions”	Section 554.13310, subsection 1
“Construction mortgage”	Section 554.13309, subsection 1, paragraph “d”
“Encumbrance”	Section 554.13309, subsection 1, paragraph “e”
“Fixtures”	Section 554.13309, subsection 1, paragraph “a”
“Fixture filing”	Section 554.13309, subsection 1, paragraph “b”

“Purchase money lease” Section 554.13309, subsection 1, paragraph “c”

3. The following definitions in other Articles apply to this Article:

“Account”	Section 554.9102, subsection 1, paragraph “b”
“Between merchants”	Section 554.2104, subsection 3
“Buyer”	Section 554.2103, subsection 1, paragraph “a”
“Chattel paper”	Section 554.9102, subsection 1, paragraph “k”
“Consumer goods”	Section 554.9102, subsection 1, paragraph “w”
“Document”	Section 554.9102, subsection 1, paragraph “ad”
“Entrusting”	Section 554.2403, subsection 3
“General intangible”	Section 554.9102, subsection 1, paragraph “ap”
“Good faith”	Section 554.2103, subsection 1, paragraph “b”*
“Instrument”	Section 554.9102, subsection 1, paragraph “au”
“Merchant”	Section 554.2104, subsection 1
“Mortgage”	Section 554.9102, subsection 1, paragraph “bc”

“Pursuant to commitment” Section 554.9102, subsection 1, paragraph “bp”

“Receipt” Section 554.2103, subsection 1, paragraph “c”

“Sale” Section 554.2106, subsection 1

“Sale on approval” Section 554.2326

“Sale or return” Section 554.2326

“Seller” Section 554.2103, subsection 1, paragraph “d”

4. In addition, Article 1 contains general definitions and principles of construction and interpretation applicable throughout this Article.

2007 Acts, ch 30, §45, 46, 77

\*Section 554.1201 probably intended

Subsection 1, paragraphs a and o amended

**554.13207 Course of performance or practical construction.** Repealed by 2007 Acts, ch 41, § 61. See § 554.1303.

**554.13501 Default — procedure.**

1. Whether the lessor or the lessee is in default under a lease contract is determined by the lease agreement and this Article.

2. If the lessor or the lessee is in default under the lease contract, the party seeking enforcement has rights and remedies as provided in this Article and, except as limited by this Article, as provided in the lease agreement.

3. If the lessor or the lessee is in default under the lease contract, the party seeking enforcement may reduce the party's claim to judgment, or otherwise enforce the lease contract by self-help or any available judicial procedure or nonjudicial procedure, including administrative proceeding, arbitration, or the like, in accordance with this Article.

4. Except as otherwise provided in section 554.1305, subsection 1, or this Article or the lease agreement, the rights and remedies referred to in subsections 2 and 3 are cumulative.

5. If the lease agreement covers both real property and goods, the party seeking enforcement may proceed under this Part as to the goods, or under other applicable law as to both the real property and the goods in accordance with that party's rights and remedies in respect of the real property, in which case this Part does not apply.

2007 Acts, ch 41, §35  
Subsection 4 amended

**554.13514 Waiver of lessee's objections.**

1. In rejecting goods, a lessee's failure to state a particular defect that is ascertainable by reasonable inspection precludes the lessee from relying on the defect to justify rejection or to establish default:

- a. if, stated seasonably, the lessor or the supplier could have cured it (section 554.13513); or
- b. between merchants if the lessor or the supplier after rejection has made a request in writing for a full and final written statement of all defects on which the lessee proposes to rely.

2. A lessee's failure to reserve rights when paying rent or other consideration against documents precludes recovery of the payment for defects apparent in the documents.

2007 Acts, ch 30, §45, 46, 78  
Subsection 2 amended

**554.13518 Cover — substitute goods.**

1. After a default by a lessor under the lease contract of the type described in section 554.13508, subsection 1, or, if agreed, after other default by the lessor, the lessee may cover by making any purchase or lease of or contract to purchase or lease goods in substitution for those due from the lessor.

2. Except as otherwise provided with respect to damages liquidated in the lease agreement (section 554.13504) or otherwise determined pursuant to agreement of the parties (sections 554.1302

and 554.13503), if a lessee's cover is by a lease agreement substantially similar to the original lease agreement and the new lease agreement is made in good faith and in a commercially reasonable manner, the lessee may recover from the lessor as damages (i) the present value, as of the date of the commencement of the term of the new lease agreement, of the rent under the new lease agreement, applicable to that period of the new lease term which is comparable to the then remaining term of the original lease agreement minus the present value as of the same date of the total rent for the then remaining lease term of the original lease agreement, and (ii) any incidental or consequential damages, less expenses saved in consequence of the lessor's default.

3. If a lessee's cover is by lease agreement that for any reason does not qualify for treatment under subsection 2, or is by purchase or otherwise, the lessee may recover from the lessor as if the lessee had elected not to cover and section 554.13519 governs.

2007 Acts, ch 41, §36  
Subsection 2 amended

**554.13519 Lessee's damages for nondelivery, repudiation, default, and breach of warranty in regard to accepted goods.**

1. Except as otherwise provided with respect to damages liquidated in the lease agreement (section 554.13504) or otherwise determined pursuant to agreement of the parties (sections 554.1302 and 554.13503), if a lessee elects not to cover or a lessee elects to cover and the cover is by lease agreement that for any reason does not qualify for treatment under section 554.13518, subsection 2, or is by purchase or otherwise, the measure of damages for nondelivery or repudiation by the lessor or for rejection or revocation of acceptance by the lessee is the present value, as of the date of the default, of the then market rent minus the present value as of the same date of the original rent, computed for the remaining lease term of the original lease agreement, together with incidental and consequential damages, less expenses saved in consequence of the lessor's default.

2. Market rent is to be determined as of the place for tender or, in cases of rejection after arrival or revocation of acceptance, as of the place of arrival.

3. Except as otherwise agreed, if the lessee has accepted goods and given notification (section 554.13516, subsection 3), the measure of damages for nonconforming tender or delivery or other default by a lessor is the loss resulting in the ordinary course of events from the lessor's default as determined in any manner that is reasonable together with incidental and consequential damages, less expenses saved in consequence of the lessor's default.

4. Except as otherwise agreed, the measure of damages for breach of warranty is the present val-

ue at the time and place of acceptance of the difference between the value of the use of the goods accepted and the value if they had been as warranted for the lease term, unless special circumstances show proximate damages of a different amount, together with incidental and consequential damages, less expenses saved in consequence of the lessor's default or breach of warranty.

2007 Acts, ch 41, §37  
Subsection 1 amended

**554.13526 Lessor's stoppage of delivery in transit or otherwise.**

1. A lessor may stop delivery of goods in the possession of a carrier or other bailee if the lessor discovers the lessee to be insolvent and may stop delivery of carload, truckload, planeload, or larger shipments of express or freight if the lessee repudiates or fails to make a payment due before delivery, whether for rent, security or otherwise under the lease contract, or for any other reason the lessor has a right to withhold or take possession of the goods.

2. In pursuing its remedies under subsection 1, the lessor may stop delivery until

- a. receipt of the goods by the lessee;
- b. acknowledgment to the lessee by any bailee of the goods, except a carrier, that the bailee holds the goods for the lessee; or
- c. such an acknowledgment to the lessee by a carrier via reshipment or as a warehouse.

3. a. To stop delivery, a lessor shall so notify as to enable the bailee by reasonable diligence to prevent delivery of the goods.

b. After notification, the bailee shall hold and deliver the goods according to the directions of the lessor, but the lessor is liable to the bailee for any ensuing charges or damages.

c. A carrier who has issued a nonnegotiable bill of lading is not obliged to obey a notification to stop received from a person other than the consignor.

2007 Acts, ch 30, §45, 46, 79  
Subsection 2, paragraph c amended

**554.13527 Lessor's rights to dispose of goods.**

1. After a default by a lessee under the lease contract of the type described in section 554.13523, subsection 1, or section 554.13523, subsection 3, paragraph "a", or after the lessor refuses to deliver or takes possession of goods (section 554.13525 or 554.13526), or, if agreed, after other default by a lessee, the lessor may dispose of the goods concerned or the undelivered balance thereof by lease, sale, or otherwise.

2. Except as otherwise provided with respect to damages liquidated in the lease agreement (section 554.13504) or otherwise determined pursuant to agreement of the parties (sections 554.1302 and 554.13503), if the disposition is by lease agreement substantially similar to the original lease

agreement and the new lease agreement is made in good faith and in a commercially reasonable manner, the lessor may recover from the lessee as damages (i) accrued and unpaid rent as of the date of the commencement of the term of the new lease agreement, (ii) the present value, as of the same date, of the total rent for the remaining lease term of the original lease agreement minus the present value, as of the same date, of the rent under the new lease agreement applicable to that period of the new lease term which is comparable to the then remaining term of the original lease agreement, and (iii) any incidental damages allowed under section 554.13530, less expenses saved in consequence of the lessee's default.

3. If the lessor's disposition is by lease agreement that for any reason does not qualify for treatment under subsection 2, or is by sale or otherwise, the lessor may recover from the lessee as if the lessor had elected not to dispose of the goods and section 554.13528 governs.

4. A subsequent buyer or lessee who buys or leases from the lessor in good faith for value as a result of a disposition under this section takes the goods free of the original lease contract and any rights of the original lessee even though the lessor fails to comply with one or more of the requirements of this Article.

5. The lessor is not accountable to the lessee for any profit made on any disposition. A lessee who has rightfully rejected or justifiably revoked acceptance shall account to the lessor for any excess over the amount of the lessee's security interest (section 554.13508, subsection 5).

2007 Acts, ch 41, §38  
Subsection 2 amended

**554.13528 Lessor's damages for nonacceptance, failure to pay, repudiation, or other default.**

1. Except as otherwise provided with respect to damages liquidated in the lease agreement (section 554.13504) or otherwise determined pursuant to agreement of the parties (sections 554.1302 and 554.13503), if a lessor elects to retain the goods or a lessor elects to dispose of the goods and the disposition is by lease agreement that for any reason does not qualify for treatment under section 554.13527, subsection 2, or is by sale or otherwise, the lessor may recover from the lessee as damages for a default of the type described in section 554.13523, subsection 1, or section 554.13523, subsection 3, paragraph "a", or, if agreed, for other default of the lessee, (i) accrued and unpaid rent as of the date of default if the lessee has never taken possession of the goods, or, if the lessee has taken possession of the goods, as of the date the lessor repossesses the goods or an earlier date on which the lessee makes a tender of the goods to the lessor, (ii) the present value as of the date determined under clause (i) of the total rent for the then remaining lease term of the original lease agreement minus

the present value as of the same date of the market rent at the place where the goods are located computed for the same lease term, and (iii) any incidental damages allowed under section 554.13530, less expenses saved in consequence of the lessee's default.

2. If the measure of damages provided in subsection 1 is inadequate to put a lessor in as good a position as performance would have, the measure

of damages is the present value of the profit, including reasonable overhead, the lessor would have made from full performance by the lessee, together with any incidental damages allowed under section 554.13530, due allowance for costs reasonably incurred and due credit for payments or proceeds of disposition.

2007 Acts, ch 41, §39  
Subsection 1 amended

## CHAPTER 554D

### ELECTRONIC TRANSACTIONS — COMPUTER AGREEMENTS

#### 554D.104 Scope.

1. Except as provided in subsection 2, this chapter applies to electronic records and electronic signatures relating to a transaction.

2. This chapter does not apply to a transaction to the extent it is governed by any of the following:

a. A law governing the creation or execution of

wills, codicils, or testamentary trusts.

b. Chapter 554 other than articles 2 and 13 and section 554.1306.

3. A transaction subject to this chapter is also subject to other applicable substantive law.

2007 Acts, ch 41, §42  
Subsection 2, paragraph b amended

## CHAPTER 556

### DISPOSITION OF UNCLAIMED PROPERTY

#### 556.1 Definitions and use of terms.

As used in this chapter, unless the context otherwise requires:

1. "*Banking organization*" means any bank, trust company, savings bank, industrial bank, land bank, safe deposit company, or a private banker engaged in business in this state.

2. "*Business association*" means a corporation, cooperative association, joint stock company, business trust, investment company, partnership, limited liability company, trust company, mutual fund, or other business entity consisting of one or more persons, whether or not for profit.

3. "*Cooperative association*" means any of the following:

a. An entity which is structured and operated on a cooperative basis, including an association of persons organized under chapter 497, 498, or 499; or an entity composed of entities organized under those chapters.

b. A cooperative organized under chapter 501.

c. A cooperative organized under chapter 501A.

d. A cooperative association organized under chapter 490.

e. Any other entity recognized pursuant to 26 U.S.C. § 1381(a) which meets the definitional requirements of an association as provided in 12 U.S.C. § 1141(j)(a) or 7 U.S.C. § 291.

4. "*Financial organization*" means any savings and loan association, building and loan asso-

ciation, credit union, cooperative bank or investment company, engaged in business in this state.

5. "*Holder*" means any person in possession of property subject to this chapter belonging to another, or who is trustee in case of a trust, or is indebted to another on an obligation subject to this chapter.

6. "*Life insurance corporation*" means any association or corporation transacting within this state the business of insurance on the lives of persons or insurance appertaining thereto, including, but not by way of limitation, endowments and annuities.

7. "*Mineral*" means gas, oil, and coal; other gaseous, liquid, and solid hydrocarbons; oil shale; cement material; sand and gravel; road material; building stone; chemical raw material; gemstone; fissionable and nonfissionable ores; colloidal and other clays; steam and other geothermal resources; and any other substance defined as a mineral by a law of this state.

8. "*Mineral proceeds*" means amounts payable for the extraction, production, or sale of minerals, or upon the abandonment of those payments, all payments that become payable thereafter. "*Mineral proceeds*" includes amounts payable as follows:

a. For the acquisition and retention of a mineral lease, including bonuses, royalties, compensatory royalties, shut-in royalties, minimum royalties, and delay rentals.

b. For the extraction, production, or sale of minerals, including net revenue interests, royalties, overriding royalties, extraction payments, and production payments.

c. Under an agreement or option, including a joint operating agreement, unit agreement, pooling agreement, and farm-out agreement, relating to the extraction, production, or sale of minerals.

9. “*Money order*” includes an express money order and a personal money order, on which the remitter is the purchaser. “*Money order*” does not include a bank money order or any other instrument sold by a banking or financial organization if the seller has obtained the name and address of the payee.

10. “*Owner*” means a depositor in case of a deposit, a beneficiary in case of a trust, a creditor, claimant, or payee in case of other choses in action, or any person having a legal or equitable interest in property subject to this chapter, or that person’s legal representative.

11. “*Person*” means any individual, business association, government or political subdivision, public corporation, public authority, estate, trust, two or more persons having a joint or common interest, or any other legal or commercial entity.

12. “*Property*” means a fixed and certain interest in or right in an intangible that is held, issued, or owed in the course of a holder’s business, or by a government or governmental entity, and all income or increment therefrom, including that which is referred to as or evidenced by any of the following:

a. Money, check, draft, deposit, interest, dividend, and income.

b. Credit balance, customer overpayment, gift certificate, security deposit, refund, credit memorandum, unpaid wage, unused airline ticket, unused ticket, mineral proceeds, and unidentified remittance and electronic fund transfer.

c. Stock or other evidence of ownership interests in a business association.

d. Bond, debenture, note, or other evidence of indebtedness.

e. Money deposited to redeem stocks, bonds, coupons, and other securities, or to make distributions.

f. An amount due and payable under the terms of an insurance policy, including policies providing life insurance, property and casualty insurance, workers’ compensation insurance, or health and disability benefits insurance.

g. An amount distributable from a trust or custodian fund established under a plan to provide health, welfare, pension, vacation, severance, retirement, death, stock purchase, profit sharing, employee savings, supplemental unemployment insurance, or similar benefits.

h. Amounts distributable from a mineral interest in land.

i. Any other fixed and certain interest or right

in an intangible that is held, issued, or owing in the course of a holder’s business, or by a government or governmental entity.

“*Property*” does not include credits, advance payments, overpayments, refunds, or credit memoranda shown on the books and records of a business association with respect to another business association unless the balance is property described in section 556.2 held by a banking organization or financial organization.

13. “*Utility*” means any person who owns or operates within this state, for public use, any plant, equipment, property, franchise, or license for the transmission of communications or the production, storage, transmission, sale, delivery, or furnishing of electricity, water, steam, or gas.

2007 Acts, ch 60, §1  
NEW subsections 7 and 8 and former subsections 7 – 11 renumbered as 9 – 13

### **556.12 Notice and publication of lists of abandoned property.**

1. If a report has been filed with the treasurer of state, or property has been paid or delivered to the treasurer of state, for the fiscal year ending on June 30 or, in the case of unclaimed demutualization proceeds, for the preceding calendar year as required by section 556.11, the treasurer of state shall provide for the publication annually of at least one notice not later than the following November 30. Each notice shall be published at least once each week for two successive weeks in an English language newspaper of general circulation in the county in this state in which is located the last known address of any person to be named in the notice. If an address is not listed or if the address is outside this state, the notice shall be published in the county in which the holder of the abandoned property has its principal place of business within this state.

2. The published notice shall contain:

a. The names in alphabetical order and last known addresses, if any, of persons listed in the report and entitled to notice within the county as hereinbefore specified.

b. A statement that information concerning the amount or description of the property and the name and address of the holder may be obtained by any persons possessing an interest in the property by addressing an inquiry to the state treasurer.

3. The treasurer of state is not required to publish in such notice any item of less than one hundred dollars unless the treasurer deems the publication to be in the public interest.

4. The treasurer of state may mail a notice to each person listed in a report filed by the holder of unclaimed property, at the last known address of that person if the treasurer deems such notice to be in the best interests of that person and has reason to believe that the address submitted by the holder is sufficient to ensure that delivery of such

notice will likely occur.

5. The mailed notice shall contain a statement that, according to a report filed with the treasurer of state, property is being held to which the addressee appears entitled.

6. This section is not applicable to sums payable on traveler's checks, money orders, cashier's checks, official checks, or similar instruments presumed abandoned under section 556.2.

2007 Acts, ch 37, §2, 3  
Subsection 3 amended  
Subsection 4 stricken and rewritten

### **556.13 Payment or delivery of abandoned property.**

1. Except for property held in a safe deposit box or other safekeeping depository, upon filing the report required by section 556.11, the holder of property presumed abandoned shall pay, deliver, or cause to be paid or delivered to the administrator the property described in the report as unclaimed, but if the property is an automatically renewable deposit, and a penalty or forfeiture in the payment of interest would result, the time for compliance is extended until a penalty or forfeiture would no longer result. At the direction of the treasurer of state, the holder of tangible property held in a safe deposit box or other safekeeping depository shall deliver the property to the treasurer of state at the same time as or after filing the abandoned property report required in section 556.11.

2. If the property reported to the treasurer of state is a security or security entitlement under the Uniform Commercial Code, chapter 554, article 8, the treasurer of state is an appropriate person to make an indorsement, instruction, or entitlement order on behalf of the apparent owner to invoke the duty of the issuer or its transfer agent or the securities intermediary to transfer or dispose of the security or the security entitlement in accordance with the Uniform Commercial Code, chapter 554, article 8.

3. If the holder of property reported to the treasurer of state is the issuer of a certificated security, the treasurer of state has the right to obtain a replacement certificate pursuant to section 554.8405 but an indemnity bond is not required.

4. An issuer, the holder, and any transfer agent or other person acting pursuant to the instructions of and on behalf of the issuer or holder in accordance with this section is not liable to the apparent owner and shall be indemnified against claims of any person in accordance with section 556.14.

2007 Acts, ch 37, §4  
Subsection 1 amended

### **556.20 Determination of claims.**

1. The treasurer of state shall consider any

claim filed under this chapter and may hold a hearing and receive evidence concerning the claim. If a hearing is held, the treasurer shall prepare a finding and a decision in writing on each claim filed, stating the substance of any evidence heard by the treasurer and the reasons for the treasurer's decision. The decision shall be a public record.

2. If the claim is allowed, the treasurer of state shall make payment forthwith. The claim shall be paid without deduction for costs of notices or sale or for service charges. The treasurer or an employee thereof shall not be held liable in any action for any claim paid in good faith pursuant to this section. However, a claimant, attorney in fact, or attorney or any other person representing a claimant to whom such payment is made may be held liable to a person who proves a superior right to the payment.

3. As a condition precedent to payment of any claim filed under this chapter, the treasurer of state may require that the claimant or owner of the unclaimed or abandoned property furnish the treasurer with a surety bond containing terms and provisions acceptable to the treasurer and issued by a corporate surety authorized to do business in this state or with such other form of indemnification and protection that is determined by the treasurer to be acceptable and sufficient to protect the treasurer and the state against any loss, liability, or damage which may arise out of or result from the payment of the claim by the treasurer. The claimant or owner shall be responsible for all premiums, costs, fees, or other expenses associated with any such surety bond or other form of indemnification and protection required pursuant to this subsection.

2007 Acts, ch 37, §5  
Section amended

### **556.24A Public records.**

1. The treasurer of state shall maintain a public record of the name and last known address of each person appearing to be entitled to unclaimed or abandoned property paid or delivered to the treasurer pursuant to this chapter.

2. Notwithstanding any other provision of law, any other identifying information set forth in any report, record, claim, or other document submitted to the treasurer of state pursuant to this chapter concerning unclaimed or abandoned property is a confidential record as provided in section 22.7 and shall be made available for public examination or copying only in the discretion of the treasurer.

2007 Acts, ch 37, §6  
NEW section

## CHAPTER 557C

### MINERAL INTERESTS IN COAL

#### **557C.4 Statement of claim — recorder's duty.**

Upon the filing of the statement of claim provided for in section 557C.3 in the recorder's office for the county where the real estate on, or under, which the mineral interest in coal exists, is locat-

ed, the recorder shall record the statement of claim and index the entries required to be made pursuant to section 557C.3 and any applicable entries specified in sections 558.49 and 558.52.

2007 Acts, ch 101, §3  
Section amended

## CHAPTER 558

### CONVEYANCES

#### **558.55 Filing and indexing — constructive notice.**

The recorder must endorse upon every instrument properly filed for record in the recorder's office, the day, hour, and minute of the filing, and enter in the index the entries required to be entered pursuant to sections 558.49 and 558.52, and the filing and indexing shall constitute constructive notice to all persons of the rights of the grantees conferred by the instruments.

2007 Acts, ch 101, §4  
Section amended

#### **558.70 Contract disclosure statement required for certain residential real estate installment sales.**

1. Prior to executing a residential real estate installment sales contract, the contract seller shall deliver a written contract disclosure statement to the contract purchaser which shall clearly set forth the following information:

*a.* If the real estate subject to the contract has been separately assessed for property tax purposes, the current assessed value of the real estate.

*b.* (1) A complete description of any property taxes due and payable on the real estate and a complete description of any special assessment on the real estate and the term of the assessment.

(2) Information on whether any property taxes or special assessments are delinquent and whether any tax sale certificates have been issued for delinquent property taxes or special assessments on the real estate.

*c.* A complete description of any mortgages or other liens encumbering or secured by the real estate, including the identity and address of the current owner of record with respect to each such mortgage or lien, as well as a description of the total outstanding balance and due date under any such mortgage or lien.

*d.* A complete amortization schedule for all payments to be made pursuant to the contract, which amortization schedule shall include infor-

mation on the portion of each payment to be applied to principal and the portion to be applied to interest.

*e.* If the contract requires a balloon payment, a complete description of the balloon payment, including the date the payment is due, the amount of the balloon payment, and other terms related to the balloon payment. For purposes of this paragraph, a "balloon payment" is any scheduled payment that is more than twice as large as the average of earlier scheduled payments.

*f.* The annual rate of interest to be charged under the contract.

*g.* A statement that the purchaser has a right to seek independent legal counsel concerning the contract and any matters pertaining to the contract.

*h.* A statement that the purchaser has a right to receive a true and complete copy of the contract after it has been executed by all parties to the contract.

*i.* The mailing address of each party to the contract.

*j.* If the contract is subject to forfeiture, a statement that if the purchaser does not comply with the terms of the contract, the purchaser may lose all rights in the real estate and all sums paid under the contract.

2. The contract disclosure statement shall be dated and signed by each party to the contract, and the contract purchaser shall be provided a complete copy of the contract at the time the disclosure statement is delivered to the contract purchaser pursuant to subsection 1.

3. Within five days after a residential real estate installment sales contract has been executed by all parties to the contract, the contract seller shall mail a true and correct copy of the contract by regular first class mail to the last known address of each contract purchaser. However, this requirement is satisfied as to any purchaser who acknowledges in writing that the purchaser has received a true and correct copy of the fully executed contract.

4. This section applies to a contract seller who entered into four or more residential real estate contracts in the three hundred sixty-five days previous to the contract seller signing the contract disclosure statement. For purposes of this subsection, two or more entities sharing a common owner or manager are considered a single contract seller. This section does not apply to a person or organization listed in section 535B.2, subsections 1 through 7.

5. A violation of this section affects title to property only as provided in section 558.71.

6. For purposes of this section, “*residential real estate*” means a residential dwelling containing no more than two single-family dwelling units, which is not located on a tract of land used for agricultural purposes as defined in section 535.13.

7. This section and any rules adopted to administer this section shall not limit or abridge any duty, requirement, obligation, or liability for disclosure created by any other provision of law, or under a contract between the parties.

2007 Acts, ch 22, §99  
Subsection 4 amended

## CHAPTER 561

### HOMESTEAD

#### 561.1 “Homestead” defined.

1. The homestead must embrace the house used as a home by the owner, and, if the owner has two or more houses thus used, the owner may select which the owner will retain. It may contain one or more contiguous lots or tracts of land, with the building and other appurtenances thereon, habitually and in good faith used as part of the same homestead.

2. As used in this chapter, “*owner*” includes but is not limited to the person, or the surviving spouse of the person, occupying the homestead as a beneficiary of a trust that includes the property in the trust estate.

2007 Acts, ch 134, §3, 28  
2007 amendments to this section apply retroactively to beneficiaries of trusts in existence on or after July 1, 1997; 2007 Acts, ch 134, §28  
Section amended

#### 561.13 Conveyance or encumbrance.

A conveyance or encumbrance of, or contract to convey or encumber the homestead, if the owner is married, is not valid, unless and until the spouse

of the owner executes the same or a like instrument, or a power of attorney for the execution of the same or a like instrument. However, when the homestead is conveyed or encumbered along with or in addition to other real estate, it is not necessary to particularly describe or set aside the tract of land constituting the homestead, whether the homestead is exclusively the subject of the contract or not, but the contract may be enforced as to real estate other than the homestead at the option of the purchaser or encumbrancer. If a spouse who holds only homestead rights and surviving spouse’s statutory share in the homestead specifically relinquishes homestead rights in an instrument, including a power of attorney constituting the other spouse as the husband’s or wife’s attorney in fact, as provided in section 597.5, it is not necessary for the spouse to join in the granting clause of the same or a like instrument.

2007 Acts, ch 68, §1, 2  
2007 amendment to this section is effective April 16, 2007, and applies to powers of attorney in existence on or after that date; 2007 Acts, ch 68, §2  
Section amended

## CHAPTER 571

### HARVESTER’S LIEN

#### 571.1A Definitions.

As used in this chapter, unless the context otherwise requires:

1. “*Crop*” includes but is not limited to corn, soybeans, hay, straw, and crops produced on trees, vines, or bushes.

2. “*Harvester*” means a person who performs harvesting services.

3. “*Harvesting services*” means baling, chopping, combining, cutting, husking, picking, shelling, stacking, threshing, or windrowing a crop, regardless of the means or method employed.

4. “*Harvester’s lien*” or “*lien*” means the harvester’s lien created in section 571.1B.

2007 Acts, ch 126, §99  
Subsection 3 amended



## CHAPTER 572

### MECHANIC'S LIEN

#### 572.1 Definitions and rules of construction.

For the purpose of this chapter:

1. *"Building"* shall be construed as if followed by the words "erection, or other improvement upon land".

2. *"Labor"* means labor completed by the claimant.

3. *"Material"* shall, in addition to its ordinary meaning, include machinery, tools, fixtures, trees, evergreens, vines, plants, shrubs, tubers, bulbs, hedges, bushes, sod, soil, dirt, mulch, peat, fertilizer, fence wire, fence material, fence posts, tile, and the use of forms, accessories, and equipment furnished by the claimant.

4. *"Owner"* means the record titleholder and every person for whose use or benefit any building, erection, or other improvement is made, having the capacity to contract, including guardians.

5. *"Owner-occupied dwelling"* means the homestead of an owner, as defined in section 561.1, and without respect to the value limitations in section 561.3, and actually occupied by the owner or the spouse of the owner, or both. *"Owner-occupied dwelling"* includes a newly constructed dwelling to be occupied by the owner as a homestead, or a dwelling that is under construction and being built by or for an owner who will occupy the dwelling as a homestead.

6. *"Subcontractor"* shall include every person furnishing material or performing labor upon any building, erection, or other improvement, except those having contracts directly with the owner.

2007 Acts, ch 83, §1, 2  
NEW subsection 2 and former subsections 2 and 3 amended and renumbered as 3 and 4  
Former subsection 4 renumbered as 5 and former subsection 5 amended and renumbered as 6

#### 572.2 Persons entitled to lien.

1. Every person who shall furnish any material or labor for, or perform any labor upon, any building or land for improvement, alteration, or repair thereof, including those engaged in the construction or repair of any work of internal or external improvement, and those engaged in grading, sodding, installing nursery stock, landscaping, sidewalk building, fencing on any land or lot, by virtue of any contract with the owner, contractor, or subcontractor shall have a lien upon such building or improvement, and land belonging to the owner on which the same is situated or upon the land or lot so graded, landscaped, fenced, or otherwise improved, altered, or repaired, to secure payment for the material or labor furnished or labor performed.

2. If material is rented by a person to the owner, contractor, or subcontractor, the person shall

have a lien upon such building, improvement, or land to secure payment for the material rental. The lien is for the reasonable rental value during the period of actual use of the material and any reasonable periods of nonuse of the material taken into account in the rental agreement. The delivery of material to such building, improvement, or land, whether or not delivery is made by the person, creates a presumption that the material was used in the course of alteration, construction, or repair of the building, improvement, or land. However, this presumption shall not pertain to recoveries sought under a surety bond.

2007 Acts, ch 83, §3  
Homestead liable, §561.21  
Section amended

#### 572.8 Perfection of lien.

1. A person shall perfect a mechanic's lien by filing with the clerk of the district court of the county in which the building, land, or improvement to be charged with the lien is situated a verified statement of account of the demand due the person, after allowing all credits, setting forth:

a. The date when such material was first furnished or labor first performed, and the date on which the last of the material was furnished or the last of the labor was performed.

b. The legal description of the property to be charged with the lien.

c. The name and last known mailing address of the owner of the property.

2. Upon the filing of the lien, the clerk of court shall mail a copy of the lien to the owner. If the statement of the lien consists of more than one page, the clerk may omit such pages as consist solely of an accounting of the material furnished or labor performed. In this case, the clerk shall attach a notification that pages of accounting were omitted and may be inspected in the clerk's office.

2007 Acts, ch 83, §4  
Section amended and editorially renumbered

#### 572.9 Time of filing.

The statement of account required by section 572.8 shall be filed by a principal contractor or subcontractor within two years and ninety days after the date on which the last of the material was furnished or the last of the labor was performed.

2007 Acts, ch 83, §5  
Section amended

#### 572.10 Perfecting lien after lapse of ninety days.

A contractor or a subcontractor may perfect a mechanic's lien pursuant to section 572.8 beyond ninety days after the date on which the last of the

material was furnished or the last of the labor was performed by filing a claim with the clerk of the district court and giving written notice thereof to the owner. Such notice may be served by any person in the manner original notices are required to be served. If the party to be served is out of the county wherein the property is situated, a return of that fact by the person charged with making such service shall constitute sufficient service from and after the time it was filed with the clerk of the district court.

2007 Acts, ch 83, §6  
Service of notice, R.C.P. 1.302 – 1.315  
Section amended

**572.11 Extent of lien filed after ninety days.**

Liens perfected under section 572.10 shall be enforced against the property or upon the bond, if given, by the owner, only to the extent of the balance due from the owner to the contractor at the time of the service of such notice; but if the bond was given by the contractor, or person contracting with the subcontractor filing the claim for a lien, such bond shall be enforced to the full extent of the amount found due the subcontractor.

2007 Acts, ch 83, §7  
Section amended

**572.13 Liability of owner to original contractor.**

1. An owner of a building, land, or improvement upon which a mechanic's lien of a subcontractor may be filed, is not required to pay the original contractor for compensation for work done or material furnished for the building, land, or improvement until the expiration of ninety days after the completion of the building or improvement unless the original contractor furnishes to the owner one of the following:

*a.* Receipts and waivers of claims for mechanics' liens, signed by all persons who furnished material or performed labor for the building, land, or improvement.

*b.* A good and sufficient bond to be approved by the owner, conditioned that the owner shall be held harmless from any loss which the owner may sustain by reason of the filing of mechanics' liens by subcontractors.

2. An original contractor who enters into a contract for an owner-occupied dwelling and who has contracted or will contract with a subcontractor to provide labor or furnish material for the dwelling shall include the following notice in any written contract with the owner and shall provide the owner with a copy of the written contract:

“Persons or companies furnishing labor or materials for the improvement of real property may enforce a lien upon the improved property if they are not paid for their contributions, even if the parties

have no direct contractual relationship with the owner.”

If no written contract is entered into between the original contractor and the dwelling owner, the original contractor shall, within ten days of commencement of work on the dwelling, provide written notice to the dwelling owner stating the name and address of all subcontractors that the contractor intends to use for the construction and, that the subcontractors or suppliers may have lien rights in the event they are not paid for their labor or material used on this site; and the notice shall be updated as additional subcontractors and suppliers are used from the names disclosed on earlier notices.

An original contractor who fails to provide notice under this section is not entitled to the lien and remedy provided by this chapter.

2007 Acts, ch 83, §§, 9  
Subsection 1, unnumbered paragraph 1 amended  
Subsection 2, unnumbered paragraph 3 amended

**572.14 Liability to subcontractor after payment to original contractor.**

1. Except as provided in subsection 2, payment to the original contractor by the owner of any part or all of the contract price of the building or improvement within ninety days after the date on which the last of the materials was furnished or the last of the labor was performed by a subcontractor, does not relieve the owner from liability to the subcontractor for the full value of any material furnished or labor performed upon the building, land, or improvement if the subcontractor files a lien within ninety days after the date on which the last of the materials was furnished or the last of the labor was performed.

2. In the case of an owner-occupied dwelling, a mechanic's lien perfected under this chapter is enforceable only to the extent of the balance due the principal contractor by the owner-occupant prior to the owner-occupant being served with the notice specified in subsection 3. This notice may be served by delivering it to the owner or the owner's spouse personally, or by mailing it to the owner by certified mail with restricted delivery and return receipt to the person mailing the notice, or by personal service as provided in the rules of civil procedure.

3. The written notice required for purposes of subsection 2 shall contain the name of the owner, the address of the property charged with the lien, the name, address and telephone number of the lien claimant, and the following statement:

“The person named in this notice is providing labor or materials or both in connection with improvements to your residence or real property. Chapter 572 of the Code of Iowa may permit the enforcement of a lien against this property to secure payment for labor and materials supplied. You are not required to pay more to the person

claiming the lien than the amount of money due from you to the person with whom you contracted to perform the improvements. You should not make further payments to your contractor until the contractor presents you with a waiver of the lien claimed by the person named in this notice. If you have any questions regarding this notice you should call the person named in this notice at the phone number listed in this notice or contact an attorney. You should obtain answers to your questions before you make any payments to the contractor.”

2007 Acts, ch 83, §10  
Subsections 1 and 2 amended

#### **572.15 Discharge of subcontractor’s lien — bond.**

A mechanic’s lien may be discharged at any time by the owner, principal contractor, or intermediate subcontractor filing with the clerk of the district court of the county in which the property is located a bond in twice the amount of the sum for which the claim for the lien is filed, with surety or sureties, to be approved by the clerk, conditioned for the payment of any sum for which the claimant may obtain judgment upon the claim.

2007 Acts, ch 83, §11  
Section amended

#### **572.18 Priority over other liens.**

1. Mechanics’ liens filed by a principal contractor or subcontractor within ninety days after the date on which the last of the material was furnished or the last of the claimant’s labor was performed shall be superior to all other liens which may attach to or upon a building or improvement and to the land upon which it is situated, except liens of record prior to the time of the original commencement of the claimant’s work or the claimant’s improvements, except as provided in subsection 2.

2. Construction mortgage liens shall be preferred to all mechanics’ liens of claimants who commenced their particular work or improvement subsequent to the date of the recording of the construction mortgage lien. For purposes of this section, a lien is a “*construction mortgage lien*” to the extent that it secures loans or advancements made to directly finance work or improvements upon the real estate which secures the lien.

3. The rights of purchasers, encumbrancers, and other persons who acquire interests in good faith, for a valuable consideration, and without notice of a lien perfected pursuant to this chapter, are superior to the claims of all contractors or subcontractors who have perfected their liens more than ninety days after the date on which the last of the claimant’s material was furnished or the last of the claimant’s labor was performed.

4. For purposes of this section, a lender who obtains an interest in the real estate by assignment of a mortgage shall be entitled to the same

priority as the original mortgagee.

2007 Acts, ch 83, §12  
Section amended

#### **572.20 Priority as to buildings over prior liens upon land.**

Mechanics’ liens, including those for additions, repairs, and betterments, shall attach to the building or improvement for which the material or labor was furnished or done, in preference to any prior lien, encumbrance, or mortgage upon the land upon which such building or improvement was erected or situated except as provided in sections 572.10 and 572.11.

2007 Acts, ch 83, §13  
Section amended

#### **572.21 Foreclosure of mechanic’s lien when lien on land.**

In the foreclosure of a mechanic’s lien when there is a superior lien, encumbrance, or mortgage upon the land the following regulations shall govern:

1. *Lien on original and independent building or improvement.* If such material was furnished or labor performed in the construction of an original and independent building or improvement commenced after the attaching or execution of such superior lien, encumbrance, or mortgage, the court may, in its discretion, order such building or improvement to be sold separately under execution, and the purchaser may remove the same in such reasonable time as the court may fix. If the court shall find that such building or improvement should not be sold separately, it shall take an account of and ascertain the separate values of the land, and the building or improvement, and order the whole sold, and distribute the proceeds of such sale so as to secure to the superior lien, encumbrance, or mortgage priority upon the land, and to the mechanic’s lien priority upon the building or improvement.

2. *Lien on existing building or improvement for repairs or additions.* If the material furnished or labor performed was for additions, repairs, or betterments upon any building or improvement, the court shall take an accounting of the values before such material was furnished or labor performed, and the enhanced value caused by such additions, repairs, or betterments; and upon the sale of the premises, distribute the proceeds of such sale so as to secure to the superior mortgagee or lienholder priority upon the land and improvements as they existed prior to the attaching of the mechanic’s lien, and to the mechanic’s lienholder priority upon the enhanced value caused by such additions, repairs, or betterments. In case the premises do not sell for more than sufficient to pay off the superior mortgage or other superior lien, the proceeds shall be applied on the superior mortgage or other superior liens.

2007 Acts, ch 83, §14  
Section amended

**572.22 Record of claim.**

The clerk of the court shall endorse upon every claim for a mechanic's lien filed in the clerk's office the date and hour of filing and make an abstract thereof in the mechanic's lien book kept for that purpose. Said book shall be properly indexed and shall contain the following items concerning each claim:

1. The name of the person by whom filed.
2. The date and hour of filing.
3. The amount thereof.
4. The name of the person against whom filed.
5. The legal description of the property to be charged therewith.

2007 Acts, ch 83, §15  
Subsection 5 amended

**572.27 Limitation on action.**

Any action to enforce a mechanic's lien shall be brought within two years from the expiration of ninety days after the date on which the last of the material was furnished or the last of the labor was performed.

2007 Acts, ch 83, §16  
Section amended

**572.28 Demand for bringing suit.**

1. Upon the written demand of the owner served on the lienholder requiring the lienholder to commence action to enforce the lien, such action shall be commenced within thirty days thereafter, or the lien and all benefits derived therefrom shall be forfeited.

2. If an action is not filed within thirty days after demand to commence action is served, the party serving the demand or causing the demand to be served may file for record with the clerk of the district court a copy of the demand with proofs of service attached and endorsed and, in case of service by publication, a personal affidavit that personal service could not be made within this state. Upon completion of the requirements of this subsection, the record shall be constructive notice to all parties of the due forfeiture and cancellation of the

lien. Upon the filing of the demand with the required attachments, the clerk of the district court shall mail a file-stamped copy of the demand to both parties.

2007 Acts, ch 83, §17  
Subsection 1 amended

**572.33 Requirement of notification.**

1. A person furnishing labor or materials to a subcontractor shall not be entitled to a lien under this chapter unless the person furnishing labor or materials does all of the following:

*a.* Notifies the principal contractor in writing with a one-time notice containing the name, mailing address, and telephone number of the person furnishing the labor or materials, and the name of the subcontractor to whom the labor or materials were furnished, within thirty days of first furnishing labor or materials for which a lien claim may be made. Additional labor or materials furnished by the same person to the same subcontractor for use in the same construction project shall be covered by this notice.

*b.* Supports the lien claim with a certified statement that the principal contractor was notified in writing with a one-time notice containing the name, mailing address, and telephone number of the person furnishing the labor or materials, and the name of the subcontractor to whom the labor or materials were furnished, within thirty days after the labor or materials were first furnished, pursuant to paragraph "a".

2. This section shall not apply to a mechanic's lien on single-family or two-family dwellings occupied or intended to be occupied or used for residential purposes.

3. Notwithstanding other provisions of this chapter, a principal contractor shall not be prohibited from requesting information from a subcontractor or a person furnishing labor or materials to a subcontractor regarding payments made or payments to be made to a person furnishing labor or materials to a subcontractor.

2007 Acts, ch 83, §18  
Subsection 1, unnumbered paragraph 1 amended

**CHAPTER 579B****COMMODITY PRODUCTION CONTRACT LIEN****579B.1 Definitions.**

As used in this chapter, unless the context otherwise requires:

1. "*Commodity*" means livestock, raw milk, or a crop.
2. "*Continuous arrival*" means the arrival of livestock at a contract livestock facility on a monthly basis or more frequently as provided in a production contract.
3. "*Contract crop field*" means farmland where

a crop is produced according to a production contract executed pursuant to section 579B.2 by a contract producer who owns or leases the farmland.

4. "*Contract livestock facility*" means an animal feeding operation as defined in section 459.102, in which livestock or raw milk is produced according to a production contract executed pursuant to section 579B.2 by a contract producer who owns or leases the animal feeding operation.

“*Contract livestock facility*” includes a confinement feeding operation as defined in section 459.102, an open feedlot as defined in section 459A.102, or an area which is used for the raising of crops or other vegetation and upon which livestock is fed for slaughter or is allowed to graze or feed.

5. “*Contract operation*” means a contract livestock facility or contract crop field.

6. “*Contract producer*” means a person who owns or leases a contract operation and who produces a commodity under a production contract executed pursuant to section 579B.2.

7. “*Contractor*” means a person who owns a commodity at the time that the commodity is under the authority of the contract producer as provided in section 579B.3 pursuant to a production contract executed pursuant to section 579B.2.

8. *a.* “*Crop*” means a plant used for food, animal feed, fiber, or oil, if the plant is classified as a forage or cereal plant, including but not limited to alfalfa, barley, buckwheat, corn, flax, forage, millet, oats, popcorn, rye, sorghum, soybeans, sunflowers, wheat, and grasses used for forage or silage.

*b.* A “*crop*” does not include trees or nuts or fruit grown on trees; sod; shrubs; greenhouse plants; or plants or plant parts produced for pre-commercial, experimental, or research purposes.

9. “*Farmland*” means agricultural land suitable for use in farming as defined in section 9H.1.

10. “*Lien*” means a commodity production con-

tract lien created in section 579B.3.

11. “*Livestock*” means beef cattle, dairy cattle, sheep, or swine.

12. “*Personal representative*” means a person who is authorized by a contract producer to act on behalf of the contract producer, including by executing an agreement, managing a contract operation, filing a financing statement perfecting a lien, and enforcing a lien as provided in this chapter.

13. “*Processor*” means a person engaged in the business of manufacturing goods from commodities, including by slaughtering or processing livestock, processing raw milk, or processing crops.

14. “*Produce*” means to do any of the following:

*a.* Provide feed or services relating to the care and feeding of livestock. If the livestock is dairy cattle, “*produce*” includes milking the dairy cattle and storing raw milk at the contract producer’s contract livestock facility.

*b.* Provide for planting, raising, harvesting, and storing a crop. “*Produce*” includes preparing the soil for planting and nurturing the crop by the application of fertilizers or soil conditioners as defined in section 200.3 or pesticides as defined in section 206.2.

15. “*Production contract*” means an oral or written agreement executed pursuant to section 579B.2 that provides for the production of a commodity by a contract producer.

2007 Acts, ch 22, §100, 101  
Subsection 4 amended  
Subsection 12 stricken and former subsections 13 – 16 renumbered as  
12 – 15

## CHAPTER 582

### HOSPITAL LIEN

#### 582.1 Definitions.

1. “*Health plan*” means an individual or group plan that provides, or pays the costs of, medical care as that term is defined in the federal Health Insurance Portability and Accountability Act of 1996, Pub. L. No. 104-191 and regulations promulgated thereunder.

2. “*Hospital*” means a public or private institution licensed pursuant to chapter 135B.

3. “*Provider agreement*” means a contract, understanding, or arrangement made by an association, corporation, county, municipal corporation, or other institution maintaining a hospital in the state, with any health plan or other entity for the provision or payment of health care services.

2007 Acts, ch 154, §1  
Former §582.1 transferred to §582.1A  
NEW section

#### 582.1A Nature of lien.

1. Every association, corporation, county, municipal corporation, or other institution maintaining a hospital in the state, which shall furnish

medical or other service to any patient injured by reason of an accident not covered by the workers’ compensation Act, shall, if such injured party shall assert or maintain a claim against another for damages on account of such injuries, have a lien upon that part going or belonging to such patient of any recovery or sum had or collected or to be collected by such patient, or by the patient’s heirs or personal representatives in the case of the patient’s death, whether by judgment or by settlement or compromise to the amount of the reasonable and customary charges of such hospital for the treatment, care, and maintenance of such patient in such hospital up to the date of payment of such damages, except as provided in subsection 2.

2. If a patient provides proof of insurance coverage under a health plan within thirty days of the patient’s discharge from a hospital, the hospital shall submit all charges to the patient’s health plan prior to filing the notice of the lien pursuant to section 582.2. The patient’s health plan shall not deny payment for hospital services received on

the basis that a third party or other insurance carrier is responsible for the patient's injuries. If the health plan denies payment for any other reason, the health plan shall nonetheless provide the hospital and the patient with a statement detailing the amount the health plan would have paid for the hospital services provided and the amount the patient would have been responsible for had the claim not been denied. In such a case, the amount of the lien shall be limited to the amount the hospital would have received if such charges were covered by the patient's health plan. A health plan's failure to provide a statement shall not affect the limitations on a hospital lien pursuant to this section. This subsection shall not prohibit a hospital from filing notice of a lien pursuant to section 582.2 for the amount owed to the hospital due to patient responsibility including but not limited to deductibles, copayments, and coinsurance.

3. If at any time subsequent to the filing of the notice of the lien a hospital receives health plan information regarding a patient, the hospital shall not be required to withdraw notice of the lien but shall submit the hospital's charges to the health plan. In such a case, the amount of the hospital's lien shall be limited pursuant to subsection 2.

4. The lien shall not in any way prejudice or interfere with any lien or contract which may be made by such patient or the patient's heirs or personal representatives with any attorney or attorneys for handling the claim on behalf of such patient, the patient's heirs, or personal representatives; provided, further, that the lien shall not be applied or considered valid against a patient covered under the workers' compensation Act pursuant to chapters 85, 85A, and 85B.

5. A hospital that recovers from a judgment, verdict, or settlement pursuant to this chapter shall be responsible for the pro rata share of the legal and administrative expenses incurred in obtaining the judgment, verdict, or settlement.

2007 Acts, ch 154, §2  
Section amended and transferred from §582.1 in Code Supplement 2007

### 582.2 Written notice of lien.

No such lien shall be effective, however, unless a written notice containing the name and address of the injured person, the date of the accident, the name and location of the hospital, and the name of the person or persons, firm or firms, corporation or corporations alleged to be liable to the injured party for the injuries received, shall be filed in the office of the clerk of the district court of the county in which such hospital is located, prior to the payment of any moneys to such injured person, the person's attorneys or legal representative, as compensation for such injuries; nor unless the hospital shall also mail, postage prepaid, a copy of such notice with a statement of the date of filing thereof to the person or persons, firm or firms, corporation or corporations alleged to be liable to the injured party for the injuries sustained prior to the pay-

ment of any moneys to such injured person, the person's attorneys or legal representative, as compensation for such injuries. Such hospital shall mail a copy of such notice to any insurance carrier which has insured such person, firm or corporation against such liability, if the name and address shall be known. Such hospital shall also mail a copy of such notice to the injured person or to the injured person's attorney or legal representative, if known.

2007 Acts, ch 154, §3  
Section amended

### 582.3 Duration and enforcement of lien.

1. Any person, firm, or corporation, including an insurance carrier, making any payment to such patient or to the patient's attorneys or heirs or legal representatives as compensation for the injury sustained, after the filing and mailing of such notice without paying to such hospital the amount of its lien recoverable pursuant to section 582.1A from such person, firm, or corporation or so much thereof as can be satisfied out of the moneys due under any final judgment or compromise or settlement agreement, after paying the amount of any prior liens, shall, for a period of one year from the date of payment to such patient or the patient's heirs, attorneys, or legal representatives, as aforesaid, be and remain liable to such hospital for the amount which such hospital was entitled to receive as aforesaid; any such association, corporation, or other institution maintaining such hospital may, within such period, enforce its lien by a suit at law against such person, firm, or corporation making any such payment.

2. Prior to payment by a person, firm, or corporation, including an insurance carrier, to a patient's attorney, the patient's attorney may notify the person, firm, or corporation that will be making the payment that the attorney agrees to assume responsibility for the satisfaction of some or all liens of which the person, firm, or attorney has received notice pursuant to section 582.2. Upon receipt of such notification by the patient's attorney, such person, firm, or corporation shall provide the patient's attorney with copies of any lien notice relating to a hospital lien for which the attorney has agreed to assume responsibility and such person, firm, or corporation shall not thereafter be responsible to any hospital encompassed by such notification. A patient's attorney who so notifies a person, firm, or corporation and who receives a copy of any lien notice encompassed by such notification from the person, firm, or corporation shall pay such hospital the amount to which the hospital is entitled pursuant to section 582.1A from the amount received from the person, firm, or corporation. If there is a dispute concerning the amount owed to a hospital pursuant to section 582.1A, a patient's attorney shall hold in trust the maximum amount to which the hospital may be entitled pursuant to section 582.1A and may disburse

any other amounts to the patient, attorney, or other persons entitled to the funds. Any dispute concerning the amount owed to a hospital pursuant to section 582.1A shall be resolved by the court in which the patient filed an action to recover for the patient's injury and the court shall retain jurisdiction of the case to resolve the amount of the lien af-

ter dismissal of the action. If no such action was commenced by the patient, a court in which such action could have been brought shall have jurisdiction to determine the amount owed to the hospital.

2007 Acts, ch 154, §4  
Section amended

## CHAPTER 598

### DISSOLUTION OF MARRIAGE AND DOMESTIC RELATIONS

#### **598.16 Conciliation — domestic relations divisions.**

1. A majority of the judges in any judicial district, with the cooperation of any county board of supervisors in the district, may establish a domestic relations division of the district court of the county where the board is located. The division shall offer counseling and related services to persons before the court.

2. Except as provided in subsection 7, upon the application of the petitioner in the petition or by the respondent in the responsive pleading thereto or, within twenty days of appointment, of an attorney appointed under section 598.12, the court shall require the parties to participate in conciliation efforts for a period of sixty days from the issuance of an order setting forth the conciliation procedure and the conciliator.

3. At any time upon its own motion or upon the application of a party the court may require the parties to participate in conciliation efforts for sixty days or less following the issuance of such an order.

4. Every order for conciliation shall require the conciliator to file a written report by a date certain which shall state the conciliation procedures undertaken and such other matters as may have been required by the court. The report shall be a part of the record unless otherwise ordered by the court. Such conciliation procedure may include, but is not limited to, referrals to the domestic relations division of the court, if established, public or private marriage counselors, family service agencies, community health centers, physicians and clergy.

5. The costs of conciliation procedures shall be paid in full or in part by the parties and taxed as court costs; however, if the court determines that the parties will be unable to pay the costs without prejudicing their financial ability to provide themselves and any minor children with economic necessities, the costs may be paid in full or in part by the county.

6. Persons providing counseling and other services pursuant to this section are not court employees, but are subject to court supervision.

7. Upon application, the court shall grant a

waiver from the requirements of this section if a party demonstrates that a history of domestic abuse, as defined in section 236.2, exists. In determining whether a history of domestic abuse exists, the court's consideration shall include, but is not limited to, commencement of an action pursuant to section 236.3, the issuance of a protective order against a party or the issuance of a court order or consent agreement pursuant to section 236.5, the issuance of an emergency order pursuant to section 236.6, the holding of a party in contempt pursuant to section 664A.7, the response of a peace officer to the scene of alleged domestic abuse or the arrest of a party following response to a report of alleged domestic abuse, or a conviction for domestic abuse assault pursuant to section 708.2A.

2007 Acts, ch 180, §1  
Section amended

#### **598.20A Beneficiary revocation — life insurance.**

1. Except as preempted by federal law, if a decree of dissolution, annulment, or separate maintenance is issued after an insured has designated the insured's spouse or one or more relatives of the insured's spouse as a beneficiary under a life insurance policy in effect on the date of the decree, a provision in the life insurance policy making such a designation is voided by the issuance of the decree unless any of the following apply:

a. The decree designates the insured's former spouse or one or more relatives of the insured's spouse as beneficiary.

b. After issuance of the decree, the insured executes a designation of beneficiary form provided by the insurance company naming the insured's former spouse or one or more relatives of the insured's former spouse as beneficiary.

c. The insured and the insured's former spouse remarry.

2. If a beneficiary designation is not effective pursuant to subsection 1, the benefits or proceeds of the life insurance policy are payable to an alternate beneficiary, or if there is no alternate beneficiary, to the estate of the insured.

3. An insurer who pays benefits or proceeds of a life insurance policy to a beneficiary under a des-

ignation that is void pursuant to subsection 1 is not liable for payment to an alternative beneficiary as provided under subsection 2 unless both of the following apply:

*a.* At least ten days prior to payment of the benefits or proceeds of the life insurance policy to the designated beneficiary, the insurer receives written notice at the home office of the insurer that the designation of the beneficiary is not effective pursuant to subsection 1.

*b.* The insurer has failed to interplead the benefits or proceeds of the life insurance policy in a court of competent jurisdiction in accordance with the rules of civil procedure.

4. This section does not limit the right of a beneficiary to seek recovery from any person or entity that erroneously receives or collects the benefits or proceeds from a life insurance policy.

5. This section does not affect the right of an insured's former spouse to assert an ownership interest in a life insurance policy that is not disclosed to the insured's spouse prior to the decree of dissolution, annulment, or separate maintenance and that is not addressed by the decree.

6. For purposes of this section, "*relative of the insured's spouse*" means a person who is related to the insured's former spouse by blood, adoption, or affinity, and who, subsequent to a decree of dissolution, annulment, or separate maintenance, ceases to be related to the insured by blood, adoption, or affinity.

2007 Acts, ch 134, §4, 28

Section applies to all decrees of dissolution, annulment, or separate maintenance entered on or after July 1, 2007; 2007 Acts, ch 134, §28

NEW section

### **598.20B Beneficiary revocation — other contracts.**

1. Except as preempted by federal law, if a decree of dissolution, annulment, or separate maintenance is issued after a participant, annuitant, or account holder has designated the participant's, annuitant's, or account holder's spouse or one or more relatives of the participant's, annuitant's, or account holder's spouse as beneficiary under any individual retirement account, stock option plan, transfer on death account, payable on death account, or annuity in force at the date of the decree, a provision in the retirement account, stock option plan, transfer on death account, payable on death account, or annuity designating the participant's, annuitant's, or account holder's spouse or one or more relatives of the participant's, annuitant's, or account holder's spouse as beneficiary is voided by the issuance of the decree unless any of the following apply:

*a.* The decree designates the participant's, annuitant's, or account holder's spouse or one or more relatives of the participant's, annuitant's, or account holder's spouse as beneficiary.

*b.* After issuance of the decree, the participant, annuitant, or account holder executes a des-

ignation of beneficiary form provided by the plan or company naming the participant's, annuitant's, or account holder's former spouse or one or more relatives of the participant's, annuitant's, or account holder's former spouse as the beneficiary.

*c.* The participant, annuitant, or account holder and the participant's, annuitant's, or account holder's former spouse remarry.

*d.* Prior to the issuance of the decree, annuity payments have irrevocably commenced based on the joint life expectancies of the participant, annuitant, or account holder and the participant's, annuitant's, or account holder's former spouse.

2. If a beneficiary designation is not effective pursuant to subsection 1, the benefits or proceeds from the individual retirement account, stock option plan, transfer on death account, payable on death account, or annuity are payable to an alternate beneficiary, or if there is no alternate beneficiary, to the estate of the participant, annuitant, or account holder.

3. A business entity, employer, insurer, financial institution, or other person or entity obligated to pay the benefits or proceeds from an individual retirement account, stock option plan, transfer on death account, payable on death account, or annuity to a beneficiary under a designation that is void pursuant to subsection 1 is not liable for payment of the benefits or proceeds to a beneficiary as provided under subsection 2 unless both of the following apply:

*a.* At least ten days prior to payment of the benefits or proceeds to the designated beneficiary, the business entity, employer, insurer, financial institution, or other person or entity obligated to pay the benefits or proceeds receives written notice at the home office of the business entity, employer, insurer, financial institution, or other person or entity that the designation of the beneficiary is not effective pursuant to subsection 1.

*b.* The business entity, employer, insurer, financial institution, or other person or entity has failed to interplead the benefits or proceeds in a court of competent jurisdiction in accordance with the rules of civil procedure.

4. This section does not limit the right of a beneficiary to seek recovery from any person or entity that erroneously receives or collects the benefits or proceeds of an individual retirement account, stock option plan, transfer on death account, payable on death account, or annuity.

5. This section does not affect the right of the participant's, annuitant's, or account holder's former spouse to assert an ownership interest in an individual retirement account, stock option plan, transfer or payable on death account, or annuity that is not disclosed to the participant's, annuitant's, or account holder's spouse prior to the issuance of the decree of dissolution, annulment, or separate maintenance and that is not addressed by the decree.



6. For purposes of this section, “*relative of the participant’s, annuitant’s, or account holder’s spouse*” means a person who is related to the participant’s, annuitant’s, or account holder’s former spouse by blood, adoption, or affinity, and who, subsequent to a decree of dissolution, annulment, or separate maintenance ceases to be related to the participant, annuitant, or account holder by blood, adoption, or affinity.

2007 Acts, ch 134, §5, 28  
Section applies to all decrees of dissolution, annulment, or separate maintenance entered on or after July 1, 2007; 2007 Acts, ch 134, §28  
NEW section

### 598.21 Orders for disposition of property.

1. *General principles.* Upon every judgment of annulment, dissolution, or separate maintenance, the court shall divide the property of the parties and transfer the title of the property accordingly, including ordering the parties to execute a quitclaim deed or ordering a change of title for tax purposes and delivery of the deed or change of title to the county recorder of the county in which each parcel of real estate is located.

2. *Duties of county recorder.* The county recorder shall record each quitclaim deed or change of title and shall collect the fee specified in section 331.507, subsection 2, paragraph “a”, and the fee specified in section 331.604, subsection 1.

3. *Duties of clerk of court.* If the court orders a transfer of title to real property, the clerk of court shall issue a certificate under chapter 558 relative to each parcel of real estate affected by the order and immediately deliver the certificate for recording to the county recorder of the county in which the real estate is located. Any fees assessed shall be included as part of the court costs. The county recorder shall deliver the certificates to the county auditor as provided in section 558.58, subsection 1.

4. *Property for children.* The court may protect and promote the best interests of children of the parties by setting aside a portion of the property of the parties in a separate fund or conservatorship for the support, maintenance, education, and general welfare of the minor children.

5. *Division of property.* The court shall divide all property, except inherited property or gifts received or expected by one party, equitably between the parties after considering all of the following:

- a. The length of the marriage.
- b. The property brought to the marriage by each party.
- c. The contribution of each party to the marriage, giving appropriate economic value to each party’s contribution in homemaking and child care services.
- d. The age and physical and emotional health of the parties.
- e. The contribution by one party to the education, training, or increased earning power of the other.

f. The earning capacity of each party, including educational background, training, employment skills, work experience, length of absence from the job market, custodial responsibilities for children, and the time and expense necessary to acquire sufficient education or training to enable the party to become self-supporting at a standard of living reasonably comparable to that enjoyed during the marriage.

g. The desirability of awarding the family home or the right to live in the family home for a reasonable period to the party having custody of the children, or if the parties have joint legal custody, to the party having physical care of the children.

h. The amount and duration of an order granting support payments to either party pursuant to section 598.21A and whether the property division should be in lieu of such payments.

i. Other economic circumstances of each party, including pension benefits, vested or unvested. Future interests may be considered, but expectancies or interests arising from inherited or gifted property created under a will or other instrument under which the trustee, trustor, trust protector, or owner has the power to remove the party in question as a beneficiary, shall not be considered.

j. The tax consequences to each party.

k. Any written agreement made by the parties concerning property distribution.

l. The provisions of an antenuptial agreement.

m. Other factors the court may determine to be relevant in an individual case.

6. *Inherited and gifted property.* Property inherited by either party or gifts received by either party prior to or during the course of the marriage is the property of that party and is not subject to a property division under this section except upon a finding that refusal to divide the property is inequitable to the other party or to the children of the marriage.

7. *Not subject to modification.* Property divisions made under this chapter are not subject to modification.

8. *Necessary content of order.* Orders made pursuant to this section need mention only those factors relevant to the particular case for which the orders are made but shall contain the names, birth dates, addresses, and counties of residence of the petitioner and respondent.

2007 Acts, ch 163, §1 – 3  
2007 amendments to subsection 5 take effect May 21, 2007, and apply to all dissolutions granted on or after that date; 2007 Acts, ch 163, §3  
Subsection 5, unnumbered paragraph 1 amended  
Subsection 5, paragraph i amended

### 598.21B Orders for child support and medical support.

1. *Child support guidelines.*

a. The supreme court shall maintain uniform child support guidelines and criteria and review the guidelines and criteria at least once every four years, pursuant to the federal Family Support Act

of 1988, Pub. L. No. 100-485. The initial review shall be performed within four years of October 12, 1989, and subsequently within the four-year period of the most recent review.

b. The guidelines prescribed by the supreme court shall incorporate provisions for medical support as defined in chapter 252E to be effective on or before January 1, 1991.

c. It is the intent of the general assembly that, to the extent possible within the requirements of federal law, the court and the child support recovery unit consider the individual facts of each judgment or case in the application of the guidelines and determine the support obligation accordingly. It is also the intent of the general assembly that in the supreme court's review of the guidelines, the supreme court shall do both of the following:

(1) Emphasize the ability of a court to apply the guidelines in a just and appropriate manner based upon the individual facts of a judgment or case.

(2) In determining monthly child support payments, consider other children for whom either parent is legally responsible for support and other child support obligations actually paid by either party pursuant to a court or administrative order.

d. The guidelines prescribed by the supreme court shall be used by the department of human services in determining child support payments under sections 252C.2 and 252C.4. A variation from the guidelines shall not be considered by the department without a record or written finding, based on stated reasons, that the guidelines would be unjust or inappropriate as determined under criteria prescribed by the supreme court.

## 2. *Child support orders.*

a. *Court's authority.* Unless prohibited pursuant to 28 U.S.C. § 1738B, upon every judgment of annulment, dissolution, or separate maintenance, the court may order either parent or both parents to pay an amount reasonable and necessary for supporting a child.

### b. *Calculating amount of support.*

(1) In establishing the amount of support, consideration shall be given to the responsibility of both parents to support and provide for the welfare of the minor child and of a child's need, whenever practicable, for a close relationship with both parents.

(2) For purposes of calculating a support obligation under this section, the income of the parent from whom support is sought shall be used as the noncustodial parent income for purposes of application of the guidelines, regardless of the legal custody of the child.

(3) For the purposes of including a child's dependent benefit in calculating a support obligation under this section for a child whose parent has been awarded disability benefits under the federal Social Security Act, the provisions of section 598.22C shall apply.

### c. *Rebuttable presumption in favor of guide-*

*lines.* There shall be a rebuttable presumption that the amount of child support which would result from the application of the guidelines prescribed by the supreme court is the correct amount of child support to be awarded.

d. *Variation from guidelines.* A variation from the guidelines shall not be considered by a court without a record or written finding, based on stated reasons, that the guidelines would be unjust or inappropriate as determined under the criteria prescribed by the supreme court.

e. *Special circumstances justifying variation from guidelines.* Unless the special circumstances of the case justify a deviation, the court or the child support recovery unit shall establish a monthly child support payment of twenty-five dollars for a parent who is nineteen years of age or younger, who has not received a high school or high school equivalency diploma, and to whom each of the following apply:

(1) The parent is attending a school or program described as follows or has been identified as one of the following:

(a) The parent is in full-time attendance at an accredited school and is pursuing a course of study leading to a high school diploma.

(b) The parent is attending an instructional program leading to a high school equivalency diploma.

(c) The parent is attending a vocational education program approved pursuant to chapter 258.

(d) The parent has been identified by the director of special education of the area education agency as a child requiring special education as defined in section 256B.2.

(2) The parent provides proof of compliance with the requirements of subparagraph (1) to the child support recovery unit, if the unit is providing services under chapter 252B, or if the unit is not providing services pursuant to chapter 252B, to the court as the court may direct. Failure to provide proof of compliance under this subparagraph or proof of compliance under section 598.21G is grounds for modification of the support order using the uniform child support guidelines and imputing an income to the parent equal to a forty-hour workweek at the state minimum wage, unless the parent's education, experience, or actual earnings justify a higher income.

3. *Medical support.* The court shall order as child medical support a health benefit plan as defined in chapter 252E if available to either parent at a reasonable cost. A health benefit plan is considered reasonable in cost if it is employment-related or other group health insurance, regardless of the service delivery mechanism. The premium cost of the health benefit plan may be considered by the court as a reason for varying from the child support guidelines. If a health benefit plan is not available at a reasonable cost, the court may order any other provisions for medical support as defined in chapter 252E.

4. *Necessary content of order.* Orders made pursuant to this section need mention only those factors relevant to the particular case for which the orders are made but shall contain the names, birth dates, addresses, and counties of residence of the petitioner and respondent.

For future amendment to subsection 3, effective March 1, 2008, see 2007 Acts, ch 218, §184, 187

For transition provisions applicable to existing child support recovery unit rules, procedures, definitions, and requirements, and for nullification of 441 IAC rule 98.3, see 2007 Acts, ch 218, §186

Section not amended; footnotes added

#### **598.21C Modification of child, spousal, or medical support orders.**

1. *Criteria for modification.* Subject to 28 U.S.C. § 1738B, the court may subsequently modify child, spousal, or medical support orders when there is a substantial change in circumstances. In determining whether there is a substantial change in circumstances, the court shall consider the following:

- a. Changes in the employment, earning capacity, income, or resources of a party.
- b. Receipt by a party of an inheritance, pension, or other gift.
- c. Changes in the medical expenses of a party.
- d. Changes in the number or needs of dependents of a party.
- e. Changes in the physical, mental, or emotional health of a party.
- f. Changes in the residence of a party.
- g. Remarriage of a party.
- h. Possible support of a party by another person.
- i. Changes in the physical, emotional, or educational needs of a child whose support is governed by the order.
- j. Contempt by a party of existing orders of court.
- k. Entry of a dispositional or permanency order in juvenile court pursuant to chapter 232 placing custody or physical care of a child with a party who is obligated to pay support for a child. Any filing fees or court costs for a modification filed or ordered pursuant to this paragraph are waived.

l. Other factors the court determines to be relevant in an individual case.

2. *Additional criteria for modification of child support orders.*

a. Subject to 28 U.S.C. § 1738B, but notwithstanding subsection 1, a substantial change of circumstances exists when the court order for child support varies by ten percent or more from the amount which would be due pursuant to the most current child support guidelines established pursuant to section 598.21B or the obligor has access to a health benefit plan, the current order for support does not contain provisions for medical support, and the dependents are not covered by a health benefit plan provided by the obligee, excluding coverage pursuant to chapter 249A or a comparable statute of a foreign jurisdiction.

b. This basis for modification is applicable to petitions filed on or after July 1, 1992, notwithstanding whether the guidelines prescribed by section 598.21B were used in establishing the current amount of support. Upon application for a modification of an order for child support for which services are being received pursuant to chapter 252B, the court shall set the amount of child support based upon the most current child support guidelines established pursuant to section 598.21B, including provisions for medical support pursuant to chapter 252E. The child support recovery unit shall, in submitting an application for modification, adjustment, or alteration of an order for support, employ additional criteria and procedures as provided in chapter 252H and as established by rule.

3. *Applicable law.* Unless otherwise provided pursuant to 28 U.S.C. § 1738B, a modification of a support order entered under chapter 234, 252A, 252C, 600B, this chapter, or any other support chapter or proceeding between parties to the order is void unless the modification is approved by the court, after proper notice and opportunity to be heard is given to all parties to the order, and entered as an order of the court. If support payments have been assigned to the department of human services pursuant to section 234.39, 239B.6, or 252E.11, or if services are being provided pursuant to chapter 252B, the department is a party to the support order. Modifications of orders pertaining to child custody shall be made pursuant to chapter 598B. If the petition for a modification of an order pertaining to child custody asks either for joint custody or that joint custody be modified to an award of sole custody, the modification, if any, shall be made pursuant to section 598.41.

4. *Temporary modification of child support orders.* While an application for modification of a child support or child custody order is pending, the court may, on its own motion or upon application by either party, enter a temporary order modifying an order of child support. The court may enter such temporary order only after service of the original notice, and an order shall not be entered until at least five days' notice of hearing and opportunity to be heard, is provided to all parties. In entering temporary orders under this subsection, the court shall consider all pertinent matters, which may be demonstrated by affidavits, as the court may direct. The hearing on application shall be limited to matters set forth in the application, the affidavits of the parties, and any required statements of income. The court shall not hear any other matter relating to the application for modification, respondent's answer, or any pleadings connected with the application for modification or the answer. This subsection shall also apply to an order, decree, or judgment entered or pending on or before July 1, 2007, and shall apply to an order entered under this chapter, chapter 252A, 252C,

252F, 252H, 252K, or 600B, or any other applicable chapter of the Code.

5. *Retroactivity of modification.* Judgments for child support or child support awards entered pursuant to this chapter, chapter 234, 252A, 252C, 252F, 600B, or any other chapter of the Code which are subject to a modification proceeding may be retroactively modified only from three months after the date the notice of the pending petition for modification is served on the opposing party. The three-month limitation applies to a modification action pending on or after July 1, 1997. The prohibition of retroactive modification does not bar the child support recovery unit from obtaining orders for accrued support for previous time periods. Any retroactive modification which increases the amount of child support or any order for accrued support under this subsection shall include a periodic payment plan. A retroactive modification shall not be regarded as a delinquency unless there are subsequent failures to make payments in accordance with the periodic payment plan.

6. *Modification of periodic due date.* The periodic due date established under a prior order for payment of child support shall not be changed in any modified order under this section, unless the court determines that good cause exists to change the periodic due date. If the court determines that good cause exists, the court shall include the rationale for the change in the modified order and shall address the issue of reconciliation of any payments due or made under a prior order which would result in payment of the child support obligation under both the prior and the modified orders.

7. *Modification by child support recovery unit.* Notwithstanding any other provision of law to the contrary, when an application for modification or adjustment of support is submitted by the child support recovery unit, the sole issues which may be considered by the court in that action are the application of the guidelines in establishing the amount of support pursuant to section 598.21B, and provision for medical support under chapter 252E. When an application for a cost-of-living alteration of support is submitted by the child support recovery unit pursuant to section 252H.24, the sole issue which may be considered by the court in the action is the application of the cost-of-living alteration in establishing the amount of child support. Issues related to custody, visitation, or other provisions unrelated to support shall be considered only under a separate application for

modification.

8. *Necessary content of order.* Orders made pursuant to this section need mention only those factors relevant to the particular case for which the orders are made but shall contain the names, birth dates, addresses, and counties of residence of the petitioner and respondent.

9. *Duty of clerk of court.* If the court modifies an order, and the original decree was entered in another county in Iowa, the clerk of court shall send a copy of the modification by regular mail, electronic transmission, or facsimile to the clerk of court for the county where the original decree was entered.

2007 Acts, ch 106, §1

2006 amendment to subsection 1, paragraph k, applies to permanency orders entered by the juvenile court on or after July 1, 2006; 2006 Acts, ch 1119, §10

For future amendment to subsection 2, paragraph a effective March 1, 2008, see 2007 Acts, ch 218, §185, 187

For transition provisions applicable to existing child support recovery unit rules, procedures, definitions, and requirements, and for nullification of 441 IAC rule 98.3, see 2007 Acts, ch 218, §186

NEW subsection 4 and former subsections 4 – 8 renumbered as 5 – 9

#### **598.23 Contempt proceedings — alternatives to jail sentence.**

1. If a person against whom a temporary order or final decree has been entered willfully disobeys the order or decree, the person may be cited and punished by the court for contempt and be committed to the county jail for a period of time not to exceed thirty days for each offense.

2. The court may, as an alternative to punishment for contempt, make an order which, according to the subject matter of the order or decree involved, does the following:

a. Withholds income under the terms and conditions of chapter 252D.

b. Modifies visitation to compensate for lost visitation time or establishes joint custody for the child or transfers custody.

c. Directs the parties to provide contact with the child through a neutral party or neutral site or center.

d. Imposes sanctions or specific requirements or orders the parties to participate in mediation to enforce the joint custody provisions of the decree.

Pilot program to provide employment and support services to delinquent child support obligors as an alternative to commitment to jail; 2005 Acts, ch 175, §5; 2006 Acts, ch 1184, §6; 2007 Acts, ch 218, §7

Section not amended; footnote revised

**598.35 Grandparent — great-grandparent — visitation rights.** Repealed by 2007 Acts, ch 218, § 208. See § 600C.1.

## CHAPTER 600

## ADOPTION

**600.3 Commencement of adoption action — jurisdiction — forum non conveniens.**

1. An action for the adoption of any natural person shall be commenced by the filing of an adoption petition, as prescribed in section 600.5, in the juvenile court or court of the county in which an adult person to be adopted is domiciled or resides, or in the juvenile court or court of the county in which the guardian of a minor person to be adopted or the petitioner is domiciled or resides.

2. *a.* An adoption petition shall not be filed until a termination of parental rights has been accomplished except in the following cases:

(1) No termination of parental rights is required if the person to be adopted is an adult.

(2) If the stepparent of the child to be adopted is the adoption petitioner, the parent-child relationship between the child and the parent who is not the spouse of the petitioner may be terminated as part of the adoption proceeding by the filing of that parent's consent to the adoption.

(3) A termination of parental rights order is not required prior to the filing of an adoption petition if the adoption is a standby adoption as defined in section 600.14A.

*b.* For the purposes of this subsection, a consent to adopt recognized by the juvenile courts or courts of another jurisdiction in the United States and obtained from a resident of that jurisdiction shall be accepted in this state in lieu of a termination of parental rights proceeding.

*c.* Any adoption proceeding pending on or completed prior to July 1, 1978, is hereby legalized and validated to the extent that it is consistent with this subsection.

3. If upon filing of the adoption petition or at any later time in the adoption action the juvenile court or court finds that in the interest of substantial justice the adoption action should be conducted in another juvenile court or court, it may transfer, stay, or dismiss the adoption action on any conditions that are just.

4. An adoption petition shall be limited to the adoption of one natural person.

2007 Acts, ch 71, §1

Subsection 2, unnumbered paragraph 1, paragraphs a – c, and unnumbered paragraphs 2 and 3 redesignated editorially as paragraph a, unnumbered paragraph 1 and subparagraphs (1) – (3), and paragraphs b and c respectively

NEW subsection 4

**600.11 Notice of adoption hearing.**

1. The juvenile court or court shall set the time

and place of the adoption hearing prescribed in section 600.12 upon application of the petitioner. The juvenile court or court may continue the adoption hearing if the notice prescribed in subsections 2 and 3 is given, except that such notice shall only be given at least ten days prior to the date which has been set for the continuation of the adoption hearing.

2. At least twenty days before the adoption hearing, a copy of the petition and its attachments and a notice of the adoption hearing shall be given by the adoption petitioner to:

*a.* A guardian, guardian ad litem if appointed for the adoption proceedings, and custodian of, and a person in a parent-child relationship with the person to be adopted. This paragraph does not require notice to be given to a person whose parental rights have been terminated with regard to the person to be adopted.

*b.* The person to be adopted who is an adult.

*c.* Any person who is designated to make an investigation and report under section 600.8.

*d.* Any other person who is required to consent under section 600.7.

*e.* A person who has been granted visitation rights with the child to be adopted pursuant to section 600C.1.

Nothing in this subsection shall require the petitioner to give notice to self or to petitioner's spouse. A duplicate copy of the petition and its attachments shall be mailed to the department by the clerk of court at the time the petition is filed.

*f.* A person who is ordered to pay support or a postsecondary education subsidy pursuant to section 598.21F, or chapter 234, 252A, 252C, 252F, 598, 600B, or any other chapter of the Code, for a person eighteen years of age or older who is being adopted by a stepparent, and the support order or order requires payment of support or postsecondary education subsidy for any period of time after the child reaches eighteen years of age.

3. A notice of the adoption hearing shall state the time, place, and purpose of the hearing and shall be served in accordance with rule of civil procedure 1.305. Proof of the giving of notice shall be filed with the juvenile court or court prior to the adoption hearing. Acceptance of service by the party being given notice shall satisfy the requirements of this subsection.

2007 Acts, ch 218, §207

Subsection 2, paragraph e, unnumbered paragraph 1, amended

## CHAPTER 600B

### PATERNITY AND OBLIGATION FOR SUPPORT

#### 600B.26 Payment of attorney fees.

In a proceeding to determine custody or visitation, or to modify a paternity, custody, or visitation order under this chapter, the court may award the

prevailing party reasonable attorney fees.

2007 Acts, ch 24, §1  
NEW section

## CHAPTER 600C

### GRANDPARENT VISITATION

#### 600C.1 Grandparent and great-grandparent visitation.

1. The grandparent or great-grandparent of a minor child may petition the court for grandchild or great-grandchild visitation.

2. The court shall consider a fit parent's objections to granting visitation under this section. A rebuttable presumption arises that a fit parent's decision to deny visitation to a grandparent or great-grandparent is in the best interest of a minor child.

3. The court may grant visitation to the grandparent or great-grandparent if the court finds all of the following by clear and convincing evidence:

*a.* The grandparent or great-grandparent has established a substantial relationship with the child prior to the filing of the petition.

*b.* The parent who is being asked to temporarily relinquish care, custody, and control of the child to provide visitation is unfit to make the decision regarding visitation.

*c.* It is in the best interest of the child to grant such visitation.

4. For the purposes of this section, "court" means the district court or the juvenile court if that court currently has jurisdiction over the child in a pending action. If an action is not pending, the district court has jurisdiction.

5. Notwithstanding any provision of this chapter to the contrary, venue for any action to establish, enforce, or modify visitation under this section shall be in the county where either parent resides if no final custody order determination relating to the grandchild or great-grandchild has been entered by any other court. If a final custody order has been entered by any other court, venue shall be located exclusively in the county where the most recent final custody order was entered. If any other custodial proceeding is pending when an action to establish, enforce, or modify visitation under this section is filed, venue shall be located

exclusively in the county where the pending custodial proceeding was filed.

6. Notice of any proceeding to establish, enforce, or modify visitation under this section shall be personally served upon all parents of a child whose interests are affected by a proceeding brought pursuant to this section and all grandparents or great-grandparents who have previously obtained a final order or commenced a proceeding under this section.

7. The court shall not enter any temporary order to establish, enforce, or modify visitation under this section.

8. An action brought under this section is subject to chapter 598B, and in an action brought to establish, enforce, or modify visitation under this section, each party shall submit in its first pleading or in an attached affidavit all information required by section 598B.209.

9. In any action brought to establish, enforce, or modify visitation under this section, the court may award attorney fees to the prevailing party in an amount deemed reasonable by the court.

10. If a proceeding to establish or enforce visitation under this section is commenced when a dissolution of marriage proceeding is pending concerning the parents of the affected minor child, the record and evidence of the dissolution action shall remain impounded pursuant to section 598.26. The impounded information shall not be released or otherwise made available to any person who is not the petitioner or respondent or an attorney of record in the dissolution of marriage proceeding. Access to the impounded information by the attorney of record for the grandparent or great-grandparent shall be limited to only that information relevant to the grandparent's or great-grandparent's request for visitation.

2007 Acts, ch 218, §206  
NEW section

## CHAPTER 602

### JUDICIAL BRANCH

#### **602.1304 Revenues—enhanced court collections fund.**

1. Except as provided in article 8 and subsection 2 of this section, all fees and other revenues collected by judicial officers and court employees shall be paid into the general fund of the state.

2. *a.* The enhanced court collections fund is created in the state treasury under the authority of the supreme court. The fund shall be separate from the general fund of the state and the balance in the fund shall not be considered part of the balance of the general fund of the state. Notwithstanding section 8.33, moneys in the fund shall not revert to the general fund, unless and to the extent the total amount of moneys deposited into the fund in a fiscal year would exceed the maximum annual deposit amount established for the collections fund by the general assembly. The initial maximum annual deposit amount for a fiscal year is four million dollars. Notwithstanding section 12C.7, subsection 2, interest or earnings on moneys in the collections fund shall remain in the collections fund and any interest and earnings shall be in addition to the maximum annual deposit amount.

*b.* For each fiscal year, a judicial collection estimate for that fiscal year shall be equally and proportionally divided into a quarterly amount. The judicial collection estimate shall be calculated by using the state revenue estimating conference estimate made by December 15 pursuant to section 8.22A, subsection 3, of the total amount of fines, fees, civil penalties, costs, surcharges, and other revenues collected by judicial officers and court employees for deposit into the general fund of the state. The revenue estimating conference estimate shall be reduced by the maximum amounts allocated to the Iowa prison infrastructure fund pursuant to section 602.8108A, the court technology and modernization fund pursuant to section 602.8108, subsection 7, and the road use tax fund pursuant to section 602.8108, subsection 8, and the remainder shall be the judicial collection estimate. In each quarter of a fiscal year, after revenues collected by judicial officers and court employees equal to that quarterly amount are deposited into the general fund of the state, after the required amount is deposited during the quarter into the Iowa prison infrastructure fund pursuant to section 602.8108A, into the court technology and modernization fund pursuant to section 602.8108, subsection 7, and into the road use tax fund pursuant to section 602.8108, subsection 8, the director of the department of administrative services shall deposit the remaining revenues for that quarter into the enhanced court collections fund in lieu of the general fund. However, after to-

tal deposits into the collections fund for the fiscal year are equal to the maximum deposit amount established for the collections fund, remaining revenues for that fiscal year shall be deposited into the general fund. If the revenue estimating conference agrees to a different estimate at a later meeting which projects a lesser amount of revenue than the initial estimate amount used to calculate the judicial collection estimate, the director of the department of administrative services shall recalculate the judicial collection estimate accordingly. If the revenue estimating conference agrees to a different estimate at a later meeting which projects a greater amount of revenue than the initial estimate amount used to calculate the judicial collection estimate, the director of the department of administrative services shall recalculate the judicial collection estimate accordingly but only to the extent that the greater amount is due to an increase in the fines, fees, civil penalties, costs, surcharges, or other revenues allowed by law to be collected by judicial officers and court employees.

*c.* Moneys in the collections fund shall be used by the judicial branch for the Iowa court information system; records management equipment, services, and projects; other technological improvements; electronic legal research equipment, systems, and projects; and the study, development, and implementation of other innovations and projects that would improve the administration of justice. The moneys in the collection fund may also be used for capital improvements necessitated by the installation of or connection with the Iowa court information system, the Iowa communications network, and other technological improvements approved by the judicial branch.

2007 Acts, ch 215, §64

For provisions concerning the deposit of certain delinquent amounts collected in criminal proceedings in the revolving fund established under §602.1302, see §909.10

Use of enhanced court collections funds; 2002 Acts, ch 1166, §21; 2002 Acts, 2nd Ex, ch 1003, §173; 2003 Acts, ch 173, §1; 2004 Acts, ch 1175, §176; 2005 Acts, ch 171, §1; 2006 Acts, ch 1174, §1; 2007 Acts, ch 210, §1

Subsection 2, paragraph b amended

#### **602.4301 Clerk of supreme court.**

1. The supreme court shall appoint a clerk of the supreme court and may remove the clerk for cause.

2. The clerk of the supreme court shall have an office at the seat of government, shall keep a complete record of the proceedings of the court, and shall not allow an opinion filed in the office to be removed. Opinions shall be open to examination and, upon request, may be copied and certified. The clerk promptly shall announce by ordinary or electronic mail to one of the attorneys on each side any ruling made or decision rendered, shall record every opinion rendered as soon as filed, shall send

by ordinary or electronic mail a copy of each opinion rendered to each attorney of record and to each party not represented by counsel, and shall perform all other duties pertaining to the office of clerk.

3. The clerk of the supreme court shall collect and account to the state court administrator for all fees received by the supreme court.

4. The clerk of the supreme court shall give bond as provided in chapter 64.

2007 Acts, ch 33, §2  
Subsection 2 amended

**602.6201 Office of district judge — apportionment.**

1. District judges shall be nominated and appointed and shall stand for retention in office as provided in chapter 46. District judges shall qualify for office as provided in chapter 63.

2. A district judge must be a resident of the judicial election district in which appointed and retained. Subject to the provision for reassignment of judges under section 602.6108, a district judge shall serve in the district of the judge’s residence while in office, regardless of the number of judgeships to which the district is entitled under the formula prescribed by the supreme court in subsection 3.

3. The supreme court shall prescribe, subject to the restrictions of this section, a formula to determine the number of district judges who will serve in each judicial election district. The formula shall be based upon a model that measures and applies an estimated case-related workload formula of judicial officers, and shall account for administrative duties, travel time, and other judicial duties not related to a specific case.

4. For purposes of this section, a vacancy means the death, resignation, retirement, or removal of a district judge, or the failure of a district judge to be retained in office at the judicial election, or an increase in judgeships under the formula prescribed in subsection 3.

5. In those judicial election districts having more district judges than the number of judgeships specified by the formula prescribed in subsection 3, vacancies shall not be filled.

6. In those judicial election districts having fewer or the same number of district judges as the number of judgeships specified by the formula prescribed in subsection 3, vacancies in the number of district judges shall be filled as they occur.

7. In those judicial districts that contain more than one judicial election district, a vacancy in a judicial election district shall not be filled if the total number of district judges in all judicial election districts within the judicial district equals or exceeds the aggregate number of judgeships to which all of the judicial election districts of the judicial district are authorized by the formula in subsection 3.

8. An incumbent district judge shall not be re-

moved from office because of a reduction in the number of authorized judgeships specified by the formula prescribed in subsection 3.

9. During February of each year, and at other times as appropriate, the state court administrator shall make the determinations specified by the formula prescribed in subsection 3, and shall notify the appropriate nominating commissions and the governor of appointments that are required.

10. Notwithstanding the formula for determining the number of district judges prescribed in subsection 3, the number of district judges shall not exceed one hundred sixteen during the period commencing July 1, 1999.

2007 Acts, ch 86, §4 – 7  
Subsection 2 amended  
Subsection 3 stricken and rewritten  
Subsections 4 – 10 amended  
Subsections 11 and 12 stricken

**602.6502 Prohibitions to appointment.**

A member of a county magistrate appointing commission shall not be appointed to the office of magistrate, and shall not be nominated for or appointed to the office of district associate judge, office of associate juvenile judge, or office of associate probate judge. A member of the commission shall not be eligible to vote for the appointment or nomination of a family member, current law partner, or current business partner. For purposes of this section, “family member” means a spouse, son, daughter, brother, sister, uncle, aunt, first cousin, nephew, niece, father-in-law, mother-in-law, son-in-law, daughter-in-law, brother-in-law, sister-in-law, father, mother, stepfather, stepmother, stepson, stepdaughter, stepbrother, stepsister, half brother, or half sister.

2007 Acts, ch 86, §8  
Section amended

**602.8102 General duties.**

The clerk shall:

1. Keep the office of the clerk at the county seat.

2. Attend sessions of the district court.

3. Keep the records, papers, and seal, and record the proceedings of the district court as provided by law under the direction of the chief judge of the judicial district.

4. Upon the death of a judge or magistrate of the district court, give written notice to the department of management and the department of administrative services of the date of death. The clerk shall also give written notice of the death of a justice of the supreme court, a judge of the court of appeals, or a judge or magistrate of the district court who resides in the clerk’s county to the state commissioner of elections, as provided in section 46.12.

5. When money in the amount of five hundred dollars or more is paid to the clerk to be paid to another person and the money is not disbursed within thirty days, notify the person who is entitled to the money or for whose account the money is paid



or the attorney of record of the person. The notice shall be given by certified mail within forty days of the receipt of the money to the last known address of the person or the person's attorney and a memorandum of the notice shall be made in the proper record. If the notice is not given, the clerk and the clerk's sureties are liable for interest at the rate specified in section 535.2, subsection 1, on the money from the date of receipt to the date that the money is paid to the person entitled to it or the person's attorney.

6. On each process issued, indicate the date that it is issued, the clerk's name who issued it, and the seal of the court.

7. Upon return of an original notice to the clerk's office, enter in the appearance or combination docket information to show which parties have been served the notice and the manner and time of service.

8. When entering a lien or indexing an action affecting real estate in the clerk's office, enter the year, month, day, hour, and minute when the entry is made. The clerk shall mail a copy of a mechanic's lien to the owner of the building, land, or improvement which is charged with the lien as provided in section 572.8.

9. Enter in the appearance docket a memorandum of the date of filing of all petitions, demurrers, answers, motions, or papers of any other description in the cause. A pleading of any description is considered filed when the clerk entered the date the pleading was received on the pleading and the pleading shall not be taken from the clerk's office until the memorandum is made. The memorandum shall be made within two business days of a new petition or order being filed, and as soon as practicable for all other pleadings. Thereafter, when a demurrer or motion is sustained or overruled, a pleading is made or amended, or the trial of the cause, rendition of the verdict, entry of judgment, issuance of execution, or any other act is done in the progress of the cause, a similar memorandum shall be made of the action, including the date of action and the number of the book and page of the record where the entry is made. The appearance docket is an index of each suit from its commencement to its conclusion.

10. When title to real estate is finally established in a person by a judgment or decree of the district court or by decision of an appellate court or when the title to real estate is changed by judgment, decree, will, proceeding, or order in probate, certify the final decree, judgment, or decision under seal of the court to the auditor of the county in which the real estate is located.

11. Refund amounts less than three dollars only upon written application.

12. At the order of a justice of the supreme court, docket without fee any civil or criminal case transferred from a military district under martial law as provided in section 29A.45.

13. Reserved.

14. Maintain a bar admission list as provided in section 46.8.

15. Monthly, notify the county commissioner of registration and the state registrar of voters of persons seventeen and one-half years of age and older who have been convicted of a felony during the preceding calendar month or persons who at any time during the preceding calendar month have been legally declared to be a person who is incompetent to vote as that term is defined in section 48A.2.

16. Reserved.

17. Reserved.

18. Reserved.

19. Keep a book of the record of official bonds and record the official bonds of magistrates as provided in section 64.24.

20. Carry out duties relating to proceedings for the removal of a public officer as provided in sections 66.4 and 66.17.

21. Reserved.

22. Reserved.

23. Carry out duties relating to enforcing orders of the employment appeal board as provided in section 88.9, subsection 2.

24. Certify the imposition of a mulct tax against property creating a public nuisance to the auditor as provided in section 99.28.

25. Carry out duties relating to the judicial review of orders of the elevator safety board as provided in section 89A.10, subsection 2.

26. With sufficient surety, approve an appeal bond for judicial review of an order or action of the department of natural resources relating to dams and spillways as provided in section 464A.8.

27. Docket an appeal from the fence viewer's decision or order as provided in section 359A.23.

28. Certify to the recorder the fact that a judgment has been rendered upon an appeal of a fence viewer's order as provided in section 359A.24.

29. Reserved.

30. Approve bond sureties and enter in the lien index the undertakings of bonds for abatement relating to the illegal manufacture, sale, or consumption of alcoholic liquors as provided in sections 123.76, 123.79, and 123.80.

31. Destroy all records and files of a court proceeding maintained under section 135L.3 in accordance with section 135L.3, subsection 3, paragraph "o".

32. Reserved.

33. Furnish to the Iowa department of public health a certified copy of a judgment suspending or revoking a professional license as provided in section 147.66.

34. Reserved.

35. Send notice of the conviction, judgment, and sentence of a person violating the uniform controlled substances laws to the state board or officer who issued a license or registered the person to practice a profession or to conduct business as provided in section 124.412.

36. Carry out duties relating to the commitment of a person with mental retardation as provided in sections 222.37 through 222.40.

37. Keep a separate docket of proceedings of cases relating to persons with mental retardation as provided in section 222.57.

38. Reserved.

39. Refer persons applying for voluntary admission to a community mental health center for a preliminary diagnostic evaluation as provided in section 225C.16, subsection 2.

40. Reserved.

41. Carry out duties relating to the involuntary commitment of persons with mental impairments as provided in chapter 229.

42. Serve as clerk of the juvenile court and carry out duties as provided in chapter 232 and article 7 of this chapter.

43. Submit to the director of the division of child and family services of the department of human services a duplicate of the findings of the court related to adoptions as provided in section 235.3, subsection 7.

44. Reserved.

45. Reserved.

46. Carry out duties relating to reprieves, pardons, commutations, remission of fines and forfeitures, and restoration of citizenship as provided in sections 914.5 and 914.6.

47. Record support payments made pursuant to an order entered under chapter 252A, 252F, 598, or 600B, or under a comparable statute of a foreign jurisdiction and through setoff of a state or federal income tax refund or rebate, as if the payments were received and disbursed by the clerk; forward support payments received under section 252A.6 to the department of human services and furnish copies of orders and decrees awarding support to parties receiving welfare assistance as provided in section 252A.13.

47A. Accept a check, share draft, draft, or written order on a bank, savings and loan association, credit union, corporation, or person as payment of a support obligation which is payable to the clerk, in accordance with procedures established by the clerk to assure that such negotiable instruments will not be dishonored. The friend of court may perform the clerk's responsibilities under this subsection.

47B. Perform the duties relating to establishment and operation of a state case registry pursuant to section 252B.24.

47C. Perform duties relating to implementation and operation of requirements for the collection services center pursuant to section 252B.13A, subsection 2.

48. Reserved.

49. Enter a judgment based on the transcript of an appeal to the state board of education against the party liable for payment of costs as provided in section 290.4.

50. Certify the final order of the district court

upon appeal of an assessment within a secondary road assessment district to the auditor as provided in section 311.24.

50A. Assist the state department of transportation in suspending, pursuant to section 321.210A, the driver's licenses of persons who fail to timely pay criminal fines or penalties, surcharges, or court costs related to the violation of a law regulating the operation of a motor vehicle.

51. Forward to the state department of transportation a copy of the record of each conviction or forfeiture of bail of a person charged with the violation of the laws regulating the operation of vehicles on public roads as provided in sections 321J.2 and 321.491.

52. Reserved.

53. If a person fails to satisfy a judgment relating to motor vehicle financial responsibility within sixty days, forward to the director of the state department of transportation a certified copy of the judgment as provided in section 321A.12.

54. Approve a bond of a surety company or a bond with at least two individual sureties owning real estate in this state as proof of financial responsibility as provided in section 321A.24.

55. Carry out duties under the Iowa motor vehicle dealers licensing Act as provided in sections 322.10 and 322.24.

56. Carry out duties relating to the enforcement of motor fuel tax laws as provided in sections 452A.66 and 452A.67.

57. Reserved.

58. Upon order of the director of revenue, issue a commission for the taking of depositions as provided in section 421.17, subsection 8.

58A. Assist the department of administrative services in setting off against debtors' income tax refunds or rebates under section 8A.504, debts which are due, owing, and payable to the clerk of the district court as criminal fines, civil penalties, surcharges, or court costs.

59. Reserved.

60. With acceptable sureties, approve the bond of a petitioner for a tax appeal as provided in section 422.29, subsection 2.

61. Certify the final decision of the district court in an appeal of the tax assessments as provided in section 441.39. Costs of the appeal to be assessed against the board of review or a taxing body shall be certified to the treasurer as provided in section 441.40.

62. Certify a final order of the district court relating to the apportionment of tax receipts to the auditor as provided in section 449.7.

63. Carry out duties relating to the inheritance tax as provided in chapter 450.

64. Deposit funds held by the clerk in an approved depository as provided in section 12C.1.

65. Carry out duties relating to appeals and certification of costs relating to levee and drainage districts as provided in sections 468.86 through 468.95.

66. Carry out duties relating to the condemnation of land as provided in chapter 6B.

67. Forward civil penalties collected for violations relating to the siting of electric power generators to the treasurer of state as provided in section 476A.14, subsection 1.

68. Certify a copy of a decree of dissolution of a business corporation to the secretary of state as provided in section 490.1433.

69. With acceptable sureties, approve the bond of a petitioner filing an appeal for review of an order of the commissioner of insurance as provided in section 507A.7.

70. Certify a copy of a decree of dissolution of a nonprofit corporation to the secretary of state and the recorder in the county in which the corporation is located as provided in section 504.1434.

71. Carry out duties relating to the enforcement of decrees and orders of reciprocal states under the Iowa unauthorized insurers Act as provided in section 507A.11.

72. Certify copies of a decree of involuntary dissolution of a state bank to the secretary of state and the recorder of the county in which the bank is located as provided in section 524.1311, subsection 4.

73. Certify copies of a decree dissolving a credit union as provided in section 533.503, subsection 4.

74. Refuse to accept the filing of papers to institute legal action under the Iowa consumer credit code, chapter 537, if proper venue is not adhered to as provided in section 537.5113.

75. Receive payment of money due to a person who is absent from the state if the address or location of the person is unknown as provided in section 538.5.

76. Carry out duties relating to the appointment of the department of agriculture and land stewardship as receiver for agricultural commodities on behalf of a warehouse operator whose license is suspended or revoked as provided in section 203C.3.

77. Reserved.

78. Certify an acknowledgment of a written instrument relating to real estate as provided in section 9E.10 or 558.20.

79. Reserved.

80. With acceptable sureties, endorse a bond sufficient to settle a dispute between adjoining owners of a common wall as provided in section 563.11.

81. Carry out duties relating to cemeteries as provided in section 523I.602.

82. Carry out duties relating to liens as provided in chapters 249A, 572, 574, 580, 582, and 584.

83. Reserved.

84. Carry out duties relating to the dissolution of a marriage as provided in chapter 598.

85. Carry out duties relating to the custody of children as provided in chapter 598B.

86. Carry out duties relating to adoptions as

provided in chapter 600.

87. Enter upon the clerk's records actions taken by the court at a location which is not the county seat as provided in section 602.6106.

88. Maintain a record of the name, address, and term of office of each member of the county magistrate appointing commission as provided in section 602.6501.

89. Certify to the state court administrator the names and addresses of the magistrates appointed by the county magistrate appointing commission as provided in section 602.6403.

90. Furnish an individual or centralized docket for the magistrates of the county as provided in section 602.6604.

91. Serve as an ex officio jury commissioner and notify appointive commissioners of their appointment as provided in sections 607A.9 and 607A.13.

92. Carry out duties relating to the selection of jurors as provided in chapter 607A.

93. Carry out duties relating to the revocation or suspension of an attorney's authority to practice law as provided in article 10 of this chapter.

94. File and index petitions affecting real estate as provided in sections 617.10 through 617.15.

95. Designate the newspapers in which the notices pertaining to the clerk's office shall be published as provided in section 618.7.

96. With acceptable surety, approve a bond of the plaintiff in an action for the payment of costs which may be adjudged against the plaintiff as provided in section 621.1.

97. Issue subpoenas for witnesses as provided in section 622.63.

98. Carry out duties relating to trials and judgments as provided in sections 624.8 through 624.20 and 624.37.

99. Collect jury fees and court reporter fees as required by chapter 625.

100. Reserved.

101. Carry out duties relating to executions as provided in chapter 626.

102. Carry out duties relating to the redemption of property as provided in sections 628.13, 628.18, and 628.20.

103. Record statements of expenditures made by the holder of a sheriff's sale certificate in the encumbrance book and lien index as provided in section 629.3.

104. Carry out duties relating to small claim actions as provided in chapter 631.

105. Carry out duties of the clerk of the probate court as provided in chapter 633.

105A. Provide written notice to all duly appointed guardians and conservators of their liability as provided in sections 633.633A and 633.633B.

106. Carry out duties relating to the administration of small estates as provided in chapter 635.

107. Carry out duties relating to the attach-

ment of property as provided in chapter 639.

108. Carry out duties relating to garnishment as provided in chapter 642.

109. With acceptable surety, approve bonds of the plaintiff desiring immediate delivery of the property in an action of replevin as provided in sections 643.7 and 643.12.

110. Carry out duties relating to the disposition of lost property as provided in chapter 556F.

111. Carry out duties relating to the recovery of real property as provided in section 646.23.

112. Endorse the court's approval of a restored record as provided in section 647.3.

113. Reserved.

114. Carry out duties relating to the issuance of a writ of habeas corpus as provided in sections 663.9, 663.43, and 663.44.

115. Accept and docket an application for post-conviction review of a conviction as provided in section 822.3.

116. Report all fines, forfeited recognizances, penalties, and forfeitures as provided in section 602.8106, subsection 4, and section 666.6.

117. Issue a warrant for the seizure of a boat or raft as provided in section 667.2.

118. Carry out duties relating to the changing of a person's name as provided in chapter 674.

119. Notify the state registrar of vital statistics of a judgment determining the paternity of a child as provided in section 600B.36.

120. Enter a judgment made by confession and issue an execution of the judgment as provided in section 676.4.

121. With acceptable surety, approve the bond of a receiver as provided in section 680.3.

122. Carry out duties relating to the assignment of property for the benefit of creditors as provided in chapter 681.

123. Carry out duties relating to the certification of surety companies and the investment of trust funds as provided in chapter 636.

124. Maintain a separate docket for petitions requesting that the record and evidence in a judicial review proceeding be closed as provided in section 692.5.

125. Furnish a disposition of each criminal complaint or information or juvenile delinquency petition, alleging a delinquent act which would be a serious or aggravated misdemeanor or felony if committed by an adult, filed in the district or juvenile court to the department of public safety as provided in section 692.15.

126. Carry out duties relating to the issuance of warrants to persons who fail to appear to answer citations as provided in section 805.5.

126A. Upon the failure of a person charged to appear in person or by counsel to defend against the offense charged pursuant to a uniform citation and complaint as provided in section 805.6, enter a conviction and render a judgment in the amount of the appearance bond in satisfaction of the penal-

ty plus court costs.

127. Provide for a traffic and scheduled violations office for the district court and service the locked collection boxes at weigh stations as provided in section 805.7.

128. Issue a summons to corporations to answer an indictment as provided in section 807.5.

129. Carry out duties relating to the disposition of seized property as provided in chapter 809.

130. Docket undertakings of bail as liens on real estate and enter them upon the lien index as provided in section 811.4.

131. Hold the amount of forfeiture and judgment of bail in the clerk's office for sixty days as provided in section 811.6.

132. Carry out duties relating to appeals from the district court as provided in chapter 814.

133. Reserved.

134. Notify the director of the Iowa department of corrections of the commitment of a convicted person as provided in section 901.7.

135. Carry out duties relating to deferred judgments, probations, and restitution as provided in sections 907.4 and 907.8, and chapter 910.

135A. Assess the surcharges provided by sections 911.1, 911.2, 911.3, and 911.4.

135B. Reserved.

136. Carry out duties relating to the impaneling and proceedings of the grand jury as provided in rule of criminal procedure 2.3, Iowa court rules.

137. Issue subpoenas upon application of the prosecuting attorney and approval of the court as provided in rule of criminal procedure 2.5, Iowa court rules.

138. Issue summons or warrants to defendants as provided in rule of criminal procedure 2.7, Iowa court rules.

139. Carry out duties relating to the change of venue as provided in rule of criminal procedure 2.11, Iowa court rules.

140. Issue blank subpoenas for witnesses at the request of the defendant as provided in rule of criminal procedure 2.15, Iowa court rules.

141. Carry out duties relating to the entry of judgment as provided in rule of criminal procedure 2.23, Iowa court rules.

142. Carry out duties relating to the execution of a judgment as provided in rule of criminal procedure 2.26, Iowa court rules.

143. Carry out duties relating to the trial of simple misdemeanors as provided in rules of criminal procedure 2.51 through 2.75, Iowa court rules.

144. Serve notice of an order of judgment entered as provided in rule of civil procedure 1.442, Iowa court rules.

145. If a party is ordered or permitted to plead further by the court, serve notice to attorneys of record as provided in rule of civil procedure 1.444, Iowa court rules.

146. Maintain a motion calendar as provided in rule of civil procedure 1.431, Iowa court rules.

147. Provide notice of a judgment, order, or decree as provided in rule of civil procedure 1.453, Iowa court rules.

148. Issue subpoenas as provided in rules of civil procedure 1.715 and 1.1701, Iowa court rules.

149. Tax the costs of taking a deposition as provided in rule of civil procedure 1.716, Iowa court rules.

150. With acceptable sureties, approve a bond filed for change of venue under rule of civil procedure 1.801, Iowa court rules.

151. Transfer the papers relating to a case transferred to another court as provided in rule of civil procedure 1.807, Iowa court rules.

152. Reserved.

153. Reserved.

154. Carry out duties relating to the impaneling of jurors as provided in rules of civil procedure 1.915 through 1.918, Iowa court rules.

155. Furnish a referee, auditor, or examiner with a copy of the order of appointment as provided in rule of civil procedure 1.935, Iowa court rules.

156. Mail notice of the filing of the referee's, auditor's, or examiner's report to the attorneys of record as provided in rule of civil procedure 1.942, Iowa court rules.

157. Carry out duties relating to the entry of judgments as provided in rules of civil procedure 1.955, 1.958, 1.960, 1.961, and 1.962, Iowa court rules.

158. Carry out duties relating to defaults and judgments on defaults as provided in rules of civil procedure 1.972, 1.973, and 1.974, Iowa court rules.

159. Notify the attorney of record if exhibits used in a case are to be destroyed as provided in rule of civil procedure 1.1014, Iowa court rules.

160. Docket the request for a hearing on a sale of property as provided in rule of civil procedure 1.221, Iowa court rules.

161. With acceptable surety, approve the bond of a citizen commencing an action of quo warranto as provided in rule of civil procedure 1.1302, Iowa court rules.

162. Carry out duties relating to the issuance of a writ of certiorari as provided in rules of civil procedure 1.1401 through 1.1412, Iowa court rules.

163. Carry out duties relating to the issuance of an injunction as provided in rules of civil procedure 1.1501 through 1.1511, Iowa court rules.

164. Carry out other duties as provided by law.  
2007 Acts, ch 134, §6, 28; 2007 Acts, ch 174, §97  
 2007 amendment to subsection 106 applies to estates of decedents dying on or after July 1, 2007; 2007 Acts, ch 134, §28  
 Subsections 73 and 106 amended

### **602.8103 General powers.**

The clerk may:

1. Administer oaths and take affirmations as provided in section 63A.1.

2. Reproduce original records of the court by any reasonably permanent legible means including, but not limited to, reproduction by photographing, photostating, microfilming, computer cards, and electronic digital format. The reproduction shall include proper indexing. The reproduced record has the same authenticity as the original record. The supreme court shall adopt rules to provide for continued evaluation of the accessibility of records stored or reproduced in electronic digital format.

3. After the original record is reproduced and after approval of a majority of the judges of the district court by court order, destroy the original records including, but not limited to, dockets, journals, scrapbooks, files, and marriage license applications. The order shall state the specific records which are to be destroyed. An original court file shall not be destroyed until after the contents have been reproduced. As used in this subsection and subsection 4, "destroy" includes the transmission of the original records which are of general historical interest to any recognized historical society or association.

4. Destroy the following original records without prior court order or reproduction except as otherwise provided in this subsection:

a. Records including, but not limited to, journals, scrapbooks, and files, forty years after final disposition of the case. However, judgments, decrees, stipulations, records in criminal proceedings, probate records, and orders of court shall not be destroyed unless they have been reproduced as provided in subsection 2.

b. Administrative records, after five years, including, but not limited to, warrants, subpoenas, clerks' certificates, statements, praecipes, and depositions.

c. Records, dockets, and court files of civil and criminal actions heard in the municipal court which were transferred to the clerk, other than juvenile and adoption proceedings, or heard in justice of the peace proceedings, after a period of twenty years from the date of filing of the actions.

d. Original court files on dissolutions of marriage, one year after dismissal by the parties or under rule of civil procedure 1.943, Iowa court rules.

e. Small claims files, one year after dismissal with or without prejudice.

f. Uniform traffic citations in the magistrate court or traffic and scheduled violations office, one year after final disposition.

g. Court reporters' notes and certified transcripts of those notes in civil cases, ten years after final disposition of the case. For purposes of this section, "final disposition" means one year after dismissal of the case, after judgment or decree without appeal, or after procedendo or dismissal of appeal is filed in cases where appeal is taken.

h. Court reporters' notes and certified transcripts of those notes in criminal cases, ten years

after dismissal of all charges, or ten years after the expiration of all sentences imposed or the date probation is granted, whichever later occurs. For purposes of this subsection “sentences imposed” include all sentencing options pursuant to section 901.5.

*i.* Court files, as provided by rules prescribed by the supreme court, ten years after final disposition in civil cases, or ten years after expiration of all sentences in criminal cases. For purposes of this paragraph, “purging” means the removal and destruction of documents in the court file which have no legal, administrative, or historical value. Purging shall be done without reproduction of the removed documents. For purposes of this paragraph, “civil cases” does not include juvenile, mental health, probate, or adoption proceedings.

*j.* Court reporters’ notes and certified transcripts of those notes in mental health hearings under section 229.12 and substance abuse hearings under section 125.82, ninety days after the respondent has been discharged from involuntary custody.

*k.* Complaints, trial informations, and uniform citations and complaints relating to parking violations under sections 321.236, 321.239, 321.358, 321.360, and 321.361, one year after final disposition.

5. Invest money which is paid to the clerk to be paid to any other person in a savings account of a supervised financial organization as defined in section 537.1301, subsection 44, except a credit union operating pursuant to chapter 533. The provisions of chapter 12C relating to the deposit and investment of public funds apply to the deposit and investment of the money except that a supervised financial organization other than a credit union may be designated as a depository and the money shall be available upon demand. The interest earnings shall be paid into the general fund of the state, except as otherwise provided by law.

In addition, the money may be invested in an open-end management investment company organized in trust form registered with the federal securities and exchange commission under the federal Investment Company Act of 1940, 15 U.S.C. § 80(a), and operated in accordance with 17 C.F.R. § 270.2a-7, the portfolio of which is limited to obligations of the United States of America or agencies or instrumentalities of the United States of America and to repurchase agreements fully collateralized by obligations of the United States of America or an agency or instrumentality of the United States of America if the investment company takes delivery of the collateral either directly or through an authorized custodian.

6. Establish and maintain a procedure to set off against amounts held by the clerk of the district court and payable to the person any debt which is in the form of a liquidated sum due, owing and payable to the clerk. The procedure shall meet all

of the following conditions:

*a.* Before setoff, the clerk shall provide written notice to the debtor of the clerk’s claim to all or a portion of the amount held by the clerk for the debtor and the clerk’s right to recover the amount of the claim through the setoff procedure, the opportunity to request in writing, that a jointly or commonly owned right to payment be divided among owners, and the opportunity to give written notice to the clerk of the district court of the person’s intent to contest the amount of the claim. The debtor must file a notice of intent to contest the claim within fifteen days after the mailing of the notice of claim by the clerk or, if the notice of claim was provided by the clerk at the time the debtor appeared in the clerk’s office to claim payment, within fifteen days of that date.

*b.* Upon the request of the debtor or the owner of a jointly or commonly owned right to payment, the clerk of the district court shall divide the payment. Unless otherwise stated in a judgment or court order, any jointly or commonly owned right to payment is presumed to be owned in equal portions by joint or common owners.

*c.* Upon timely filing of a notice of intent to contest the setoff, the matter shall be set for hearing before a judge or magistrate. The clerk shall notify the debtor in writing of the time and date of the hearing.

*d.* If the claim is not contested or upon final determination of a contested claim authorizing a setoff, the clerk shall set off the debt against any amount the clerk is holding for payment to the debtor and pay any balance of the amount to the debtor. The amount set off shall be applied by the clerk of the district court according to the order of priority set out in section 602.8107, subsection 2.

2007 Acts, ch 71, §2  
Subsection 4, NEW paragraph k

#### **602.8105 Fees for civil cases and other services — collection and disposition.**

1. The clerk of the district court shall collect the following fees:

*a.* For filing and docketing a petition, other than a modification of a dissolution decree to which a written stipulation is attached at the time of filing containing the agreement of the parties to the terms of modification, one hundred dollars. In counties having a population of ninety-eight thousand or over, an additional five dollars shall be charged and collected to be known as the journal publication fee and used for the purposes provided for in section 618.13. For multiple adoption petitions filed at the same time by the same petitioner under section 600.3, the filing fee and any court costs for any petition filed in addition to the first petition filed are waived.

*b.* For filing and docketing an application for modification of a dissolution decree to which a written stipulation is attached at the time of filing

containing the agreement of the parties to the terms of modification, fifty dollars.

c. For entering a final decree of dissolution of marriage, fifty dollars. It is the intent of the general assembly that the funds generated from the dissolution fees be appropriated and used for sexual assault and domestic violence centers.

d. For filing and docketing a small claims action, the amounts specified in section 631.6.

e. For an appeal from a judgment in small claims or for filing and docketing a writ of error, seventy-five dollars.

f. For a motion to show cause in a civil case, fifty dollars.

g. For filing and docketing a transcript of the judgment in a civil case, fifty dollars.

2. The clerk of the district court shall collect the following fees for miscellaneous services:

a. For filing, entering, and endorsing a mechanic's lien, twenty dollars, and if a suit is brought, the fee is taxable as other costs in the action.

b. For filing and entering any other statutory lien, twenty dollars.

c. For a certificate and seal, ten dollars. However, there shall be no charge for a certificate and seal to an application to procure a pension, bounty, or back pay for a member of the armed services or other person.

d. For certifying a change in title of real estate, twenty dollars.

e. For filing a praecipe to issue execution under chapter 626, twenty-five dollars. The fee shall be recoverable by the creditor against whom the execution is issued. A fee payable by a political subdivision of the state under this paragraph shall be collected by the clerk of the district court as provided in section 602.8109. However, the fee shall be waived and shall not be collected from a political subdivision of the state if a county attorney or county attorney's designee is collecting a delinquent judgment pursuant to section 602.8107, subsection 4.

f. For filing a praecipe to issue execution under chapter 654, fifty dollars.

g. For filing a confession of judgment under chapter 676, fifty dollars if the judgment is five thousand dollars or less, and one hundred dollars if the judgment exceeds five thousand dollars.

h. Other fees provided by law.

3. The clerk of the district court shall pay to the treasurer of state all fees which have come into the clerk's possession and which are unclaimed pursuant to section 556.8 accompanied by a form prescribed by the treasurer. Claims for payment of the moneys must be filed pursuant to chapter 556.

4. The clerk of the district court shall collect a civil penalty assessed against a retailer pursuant to section 126.23B. Any moneys collected from the civil penalty shall be distributed to the city or

county that brought the enforcement action for a violation of section 126.23A.

2007 Acts, ch 71, §3; 2007 Acts, ch 196, §8  
Subsection 1, paragraph a amended  
Subsection 2, paragraph e amended

### **602.8106 Collection of fees in criminal cases and disposition of fees and fines.**

1. The clerk of the district court shall collect the following fees:

a. Except as otherwise provided in paragraphs "b" and "c", for filing and docketing a criminal case to be paid by the county or city which has the duty to prosecute the criminal action, payable as provided in section 602.8109, one hundred dollars. When judgment is rendered against the defendant, costs collected from the defendant shall be paid to the county or city which has the duty to prosecute the criminal action to the extent necessary for reimbursement for fees paid. However, the fees which are payable by the county to the clerk of the district court for services rendered in criminal actions prosecuted under state law and the court costs taxed in connection with the trial of those actions or appeals from the judgments in those actions are waived.

b. For filing and docketing of a complaint or information for a simple misdemeanor and a complaint or information for a nonscheduled simple misdemeanor under chapter 321, fifty dollars.

c. For filing and docketing a complaint or information or uniform citation and complaint for parking violations under sections 321.236, 321.239, 321.358, 321.360, and 321.361, eight dollars, effective January 1, 2004. The court costs in cases of parking meter and overtime parking violations which are denied, and charged and collected pursuant to section 321.236, subsection 1, or pursuant to a uniform citation and complaint, are eight dollars per information or complaint or per uniform citation and complaint effective January 1, 1991.

d. The court costs in scheduled violation cases where a court appearance is required, fifty dollars.

e. For court costs in scheduled violation cases where a court appearance is not required, fifty dollars.

f. For an appeal of a simple misdemeanor to the district court, fifty dollars.

g. For a motion to show cause in a criminal case, the fee shall be the same amount as the fee for filing and docketing a complaint, information, or citation for the underlying criminal case from which the motion arises.

h. For a probation revocation, the fee shall be the same amount as the fee for filing and docketing a complaint, information, or citation for the underlying case from which the revocation arises.

2. The clerk of the district court shall remit ninety percent of all fines and forfeited bail to the city that was the plaintiff in any action, and shall provide that city with a statement showing the to-

tal number of cases, the total of all fines and forfeited bail collected, and the total of all cases dismissed. The remaining ten percent shall be submitted to the state court administrator.

3. The clerk of the district court shall remit all fines and forfeited bail for violation of a county ordinance, except an ordinance relating to vehicle speed or weight restrictions, to the county treasurer of the county that was the plaintiff in the action, and shall provide that county with a statement showing the total number of cases, the total of all fines and forfeited bail collected, and the total of all cases dismissed. However, if a county ordinance provides a penalty for a violation which is also penalized under state law, the fines and forfeited bail collected for the violation shall be submitted to the state court administrator.

4. The clerk of the district court shall submit all other fines, fees, costs, and forfeited bail received from a magistrate to the state court administrator.

2007 Acts, ch 180, §2  
Subsection 1, NEW paragraph h

**602.8107 Collection of fines, penalties, fees, court costs, surcharges, and restitution.**

1. Restitution as defined in section 910.1 and all other fines, penalties, fees, court costs, and surcharges owing and payable to the clerk shall be paid to the clerk of the district court. All amounts collected shall be distributed pursuant to sections 602.8106 and 602.8108 or as otherwise provided by this Code. The clerk may accept payment of an obligation or a portion thereof by credit card. Any fees charged to the clerk with respect to payment by credit card may be paid from receipts collected by credit card.

2. If the clerk receives payment from a person who is an inmate of a state institution or who is under the supervision of a judicial district department of correctional services, the payment shall be applied to the balance owed under the identified case number of the case which has resulted in the placement of the person in a state institution or under the supervision of the judicial district department of correctional services. If a case number is not identified, the clerk shall apply the payment to the balance owed in the criminal case with the oldest judgment against the person. Payments received under this section shall be applied in the following priority order:

a. Pecuniary damages as defined in section 910.1, subsection 3.

b. Fines or penalties and criminal penalty and law enforcement initiative surcharges.

c. Crime victim compensation program reimbursement.

d. Court costs, including correctional fees assessed pursuant to sections 356.7 and 904.108, court-appointed attorney fees, or public defender expenses.

3. A fine, penalty, court cost, fee, or surcharge is deemed delinquent if it is not paid within six months after the date it is assessed. An amount which was ordered by the court to be paid on a date fixed in the future pursuant to section 909.3 is deemed delinquent if it is not received by the clerk within six months after the fixed future date set out in the court order. If an amount was ordered to be paid by installments, and an installment is not received within thirty days after the date it is due, the entire amount of the judgment is deemed delinquent.

4. All fines, penalties, court costs, fees, surcharges, and restitution for court-appointed attorney fees or for expenses of a public defender which are deemed delinquent by the clerk pursuant to subsection 3 may be collected by the county attorney or the county attorney's designee. Thirty-five percent of the amounts collected by the county attorney or the person procured or designated by the county attorney shall be deposited in the general fund of the county if the county attorney has filed the notice required in section 331.756, subsection 5, unless the county attorney has discontinued collection efforts on a particular delinquent amount. Up to one million two hundred thousand dollars of the remainder shall be paid each fiscal year to the clerks for distribution under section 602.8108. If the threshold amount of one million two hundred thousand dollars has been distributed under section 602.8108, the remainder shall be distributed as provided in subsection 5.

This subsection does not apply to amounts collected for victim restitution, the victim compensation fund, criminal penalty surcharge, law enforcement initiative surcharge, county enforcement surcharge, amounts collected as a result of procedures initiated under subsection 6 or under section 8A.504, or fees charged pursuant to section 356.7.

The county attorney shall file with the clerk of the district court a notice of the satisfaction of each obligation to the full extent of the moneys collected in satisfaction of the obligation. The clerk of the district court shall record the notice and enter a satisfaction for the amounts collected.

5. Any additional moneys collected in excess of the threshold amount under subsection 4 shall be distributed by the state court administrator as follows: thirty-five percent of any additional moneys collected by the county attorney or the person procured or designated by the county attorney shall be deposited in the general fund of the county where the moneys were collected; thirty-three percent of any additional moneys collected by the county attorney or the person procured or designated by the county attorney shall be deposited with the office of the county attorney that collected the moneys; and the remainder shall be paid to the clerk of the district court for distribution under section 602.8108 or the state court administrator may distribute the remainder under section



602.8108 if the additional moneys have already been received by the state court administrator.

6. If a county attorney does not file the notice and list of cases required in section 331.756, subsection 5, including the list of installment agreements under section 321.210B, the judicial branch may assign cases to the centralized collection unit of the department of revenue or its designee to collect debts owed to the clerk of the district court. In addition, an installment agreement in default that remains delinquent may also be assigned to the centralized collection unit of the department of revenue or its designee.

The department of revenue may impose a fee established by rule to reflect the cost of processing which shall be added to the debt owed to the clerk of the district court. Any amounts collected by the unit will first be applied to the processing fee. The remaining amounts shall be remitted to the clerk of the district court for the county in which the debt is owed. The judicial branch may prescribe rules to implement this section. These rules may provide for remittance of processing fees to the department of revenue or its designee.

Satisfaction of the outstanding obligation occurs only when all fees or charges and the outstanding obligation are paid in full. Payment of the outstanding obligation only shall not be considered payment in full for satisfaction purposes.

The department of revenue or its collection designee shall file with the clerk of the district court a notice of the satisfaction of each obligation to the full extent of the moneys collected in satisfaction of the obligation. The clerk of the district court shall record the notice and enter a satisfaction for the amounts collected.

2007 Acts, ch 196, §9 – 11  
 Surcharges, see chapter 911  
 Victim compensation fund, see §915.94  
 Subsection 4, unnumbered paragraph 1 amended  
 Subsection 5 stricken and rewritten  
 Subsection 6, unnumbered paragraph 1 amended

### **602.8108 Distribution of court revenue.**

1. The clerk of the district court shall establish an account and deposit in this account all revenue and other receipts. Not later than the fifteenth day of each month, the clerk shall distribute all revenues received during the preceding calendar month. Each distribution shall be accompanied by a statement disclosing the total amount of revenue received during the accounting period and any adjustments of gross revenue figures that are necessary to reflect changes in the balance of the account, including but not limited to reductions resulting from the dishonor of checks previously accepted by the clerk.

2. Except as otherwise provided, the clerk of the district court shall report and submit to the state court administrator, not later than the fifteenth day of each month, the fines and fees received during the preceding calendar month. Ex-

cept as provided in subsections 3, 4, 5, 7, 8, and 9, the state court administrator shall deposit the amounts received with the treasurer of state for deposit in the general fund of the state. The state court administrator shall report to the legislative services agency within thirty days of the beginning of each fiscal quarter the amount received during the previous quarter in the account established under this section.

3. The clerk of the district court shall remit to the state court administrator, not later than the fifteenth day of each month, ninety-five percent of all moneys collected from the criminal penalty surcharge provided in section 911.1 during the preceding calendar month. The clerk shall remit the remainder to the county treasurer of the county that was the plaintiff in the action or to the city that was the plaintiff in the action. Of the amount received from the clerk, the state court administrator shall allocate seventeen percent to be deposited in the victim compensation fund established in section 915.94, and eighty-three percent to be deposited in the general fund.

4. The clerk of the district court shall remit all moneys collected from the drug abuse resistance education surcharge provided in section 911.2 to the state court administrator for deposit in the general fund of the state and the amount deposited is appropriated to the governor's office of drug control policy for use by the drug abuse resistance education program and other programs directed for a similar purpose.

5. The clerk of the district court shall remit all moneys collected from the assessment of the law enforcement initiative surcharge provided in section 911.3 to the state court administrator no later than the fifteenth day of each month for deposit in the general fund of the state.

6. The clerk of the district court shall remit all moneys collected from the county enforcement surcharge pursuant to section 911.4 to the county where the citation was issued for deposit in the county general fund no later than the fifteenth day of each month.

7. A court technology and modernization fund is established as a separate fund in the state treasury. The state court administrator shall allocate one million dollars of the moneys received under subsection 2 to be deposited in the fund, which shall be administered by the supreme court and shall be used to enhance the ability of the judicial branch to process cases more quickly and efficiently, to electronically transmit information to state government, local governments, law enforcement agencies, and the public, and to improve public access to the court system.

8. The state court administrator shall allocate all of the fines and fees attributable to commercial vehicle violation citations issued by motor vehicle division personnel of the state department of transportation to the treasurer of state for deposit

in the road use tax fund.

9. The state court administrator shall allocate fifty percent of all of the fines attributable to littering citations issued pursuant to sections 321.369, 321.370, and 461A.43 to the treasurer of state for deposit in the general fund of the state and such moneys are appropriated to the state department of transportation for purposes of the cleanup of litter and illegally discarded solid waste.

2007 Acts, ch 215, §65  
Use of enhanced court collections funds; 2002 Acts, ch 1166, §21; 2002 Acts, 2nd Ex, ch 1003, §173; 2003 Acts, ch 173, §1; 2004 Acts, ch 1175, §176; 2005 Acts, ch 171, §1; 2006 Acts, ch 1174, §1; 2007 Acts, ch 210, §1  
Subsections 8 – 11 stricken and former subsections 12 and 13 renumbered as 8 and 9

#### **602.8108A Prison infrastructure fund.**

1. The Iowa prison infrastructure fund is created and established as a separate and distinct fund in the state treasury. Notwithstanding any other provision of this chapter to the contrary, the first eight million dollars and, beginning July 1, 1997, the first nine million five hundred thousand dollars, of moneys remitted to the treasurer of state from fines, fees, costs, and forfeited bail collected by the clerks of the district court in criminal cases, including those collected for both scheduled and nonscheduled violations, collected in each fiscal year commencing with the fiscal year beginning July 1, 1995, shall be deposited in the fund. Interest and other income earned by the fund shall be deposited in the fund. However, beginning with the fiscal year beginning July 1, 1998, all fines and fees attributable to commercial vehicle violation citations issued after July 1, 1998, shall be deposited as provided in section 602.8108, subsection 8. If the treasurer of state determines pursuant to 1994 Iowa Acts, ch. 1196, that bonds can be issued pursuant to this section and section 16.177, then the moneys in the fund are appropriated to and for the purpose of paying the principal of, premium, if any, and interest on bonds issued by the Iowa finance authority under section 16.177. Except as otherwise provided in subsection 2, amounts in the funds shall not be subject to appropriation for any purpose by the general assembly, but shall be used only for the purposes set forth in this section. The treasurer of state shall act as custodian of the fund and disburse amounts contained in it as directed by the department of corrections including the automatic disbursement of funds pursuant to the terms of bond indentures and documents and security provisions to trustees and custodians. The treasurer of state is authorized to invest the funds deposited in the fund subject to any limitations contained in any applicable bond proceedings. Any amounts remaining in the fund at the end of each fiscal year shall be transferred to the general fund of the state.

2. If the treasurer of state determines that bonds cannot be issued pursuant to this section

and section 16.177, the treasurer of state shall deposit the moneys in the prison infrastructure fund into the general fund of the state.

Section not amended; internal reference change applied

#### **602.8109 Settlement of accounts of cities and counties.**

1. A city or a county shall pay court costs and other fees payable to the clerk of the district court for services rendered upon receipt of a statement from the clerk disclosing the amount due.

2. The clerk of the district court shall deliver a statement to the county auditor no later than the fifteenth day of each month disclosing all of the following:

*a.* The specific amounts of statutory fees and costs that are payable by the county to the clerk for services rendered by the clerk or other state officers or employees during the preceding month in connection with each civil or criminal action, and the total of all of these fees and costs.

*b.* Any amounts collected by the clerk of the district court during the preceding month as costs in an action when these amounts are payable by law to the county as reimbursement for costs incurred by the county in connection with a civil or criminal action, and the total of all of these amounts.

3. If the amount owed by the county under subsection 2, paragraph “*a*” for a calendar month is greater than the amount due to the county under subsection 2, paragraph “*b*” for that month, the county shall remit the difference to the clerk of the district court no later than the last day of the month in which the statement under subsection 2 is received.

4. If the amount due to the county under subsection 2, paragraph “*b*” for a calendar month is greater than the amount owed by the county under subsection 2, paragraph “*a*” for that month, the clerk of the district court shall remit the difference to the county treasurer no later than the last day of the month in which the statement under subsection 2 is delivered.

5. The clerk of the district court shall deliver a statement to the city clerk no later than the fifteenth day of each month disclosing all of the following:

*a.* The specific amounts of statutory fees and costs that are payable by the city to the clerk of the district court for services rendered by the clerk or other state officers or employees during the preceding month in connection with each civil or criminal action, and the total of all such fees and costs.

*b.* Any amounts collected by the clerk of the district court during the preceding month as costs in an action when such amounts are payable by law to the city as reimbursement for costs incurred by the city in connection with a civil or criminal action, and the total of all such amounts.

6. If the amount owed by the city under subsection 5, paragraph "a", for a calendar month is greater than the amount due to the city under subsection 5, paragraph "b", for that month, the city shall remit the difference to the clerk of the district court no later than the last of the month in which the statement under subsection 5 is received.

7. If the amount due the city under subsection 5, paragraph "b", for a calendar month is greater than the amount owed by the city under subsection 5, paragraph "a", for that month, the clerk of the district court shall remit the difference to the city clerk no later than the last day of the month in which the statement under subsection 5 is delivered.

8. Amounts not paid as required under subsection 3, 4, 6, or 7 shall bear interest for each day of delinquency at the rate in effect as of the day of delinquency for time deposits of public funds for eighty-nine days, as established under section 12C.6.

2007 Acts, ch 196, §12 – 14  
 Subsection 2, unnumbered paragraph 1 amended  
 Subsections 5 and 6 stricken and rewritten  
 NEW subsection 7 and former subsection 7 amended and renumbered as 8

#### **602.9111 Investment of fund.**

1. So much of the judicial retirement fund as may not be necessary to be kept on hand for the making of disbursements under this article shall be invested by the treasurer of state in any investments authorized for the Iowa public employees' retirement system in section 97B.7A and subject to the requirements of chapter 12F, and the earnings therefrom shall be credited to the fund. The treasurer of state may execute contracts and agreements with investment advisors, consultants, and investment management and benefit consultant firms in the administration of the judicial retirement fund.

2. Investment management expenses shall be charged to the investment income of the fund and there is appropriated from the fund an amount required for the investment management expenses. The court administrator shall report the investment management expenses for the fiscal year as a percent of the market value of the system.

3. For purposes of this section, investment management expenses are limited to the following:

- a. Fees for investment advisors, consultants, and investment management and benefit consultant firms hired by the treasurer of state in administering the fund.
- b. Fees and costs for safekeeping fund assets.
- c. Costs for performance and compliance monitoring, and accounting for fund investments.
- d. Any other costs necessary to prudently invest or protect the assets of the fund.

4. The state court administrator and the treasurer of state, and their employees, are not person-

ally liable for claims based upon an act or omission of the person performed in the discharge of the person's duties concerning the judicial retirement fund, except for acts or omissions which involve malicious or wanton misconduct.

2007 Acts, ch 39, §13  
 Subsection 1 amended

#### **602.9116 Actuarial valuation.**

1. The court administrator shall cause an actuarial valuation to be made of the assets and liabilities of the judicial retirement fund at least once every four years commencing with the fiscal year beginning July 1, 1981. For each fiscal year in which an actuarial valuation is not conducted, the court administrator shall cause an annual actuarial update to be prepared for the purpose of determining the adequacy of the contribution rates specified in section 602.9104. The court administrator shall adopt mortality tables and other necessary factors for use in the actuarial calculations required for the valuation upon the recommendation of the actuary. Following the actuarial valuation or annual actuarial update, the court administrator shall determine the condition of the system and shall report any findings and recommendations to the general assembly.

2. The cost of the actuarial valuation or annual actuarial update shall be paid from the judicial retirement fund.

2007 Acts, ch 22, §102  
 Subsection 1 amended

#### **602.11101 Implementation by court component.**

The state shall assume responsibility for components of the court system according to the following schedule:

1. On October 1, 1983, the state shall assume the responsibility for and the costs of jury fees and mileage as provided in section 607A.8 and on July 1, 1984, the state shall assume the responsibility for and the costs of prosecution witness fees and mileage and other witness fees and mileage assessed against the prosecution in criminal actions prosecuted under state law as provided in sections 622.69 and 622.72.

2. Court reporters shall become court employees on July 1, 1984. The state shall assume the responsibility for and the costs of court reporters on July 1, 1984.

3. Bailiffs who perform services for the court, other than law enforcement services, shall become court employees on January 1, 1985, and shall be called court attendants. The state shall assume the responsibility for and the costs of court attendants on January 1, 1985. Section 602.6601 takes effect on January 1, 1985.

4. Juvenile probation officers shall become court employees on July 1, 1985. The state shall assume the responsibility for and the costs of juvenile probation officers on July 1, 1985.

Until July 1, 1985, the county shall remain re-

sponsible for the compensation of juvenile court referees. Effective July 1, 1985, the state shall assume the responsibility for the compensation of juvenile court referees.

5. Clerks of the district court shall become court employees on July 1, 1986. The state shall assume the responsibility for and the costs of the offices of the clerks of the district court on July 1, 1986. Persons who are holding office as clerks of the district court on July 1, 1986, are entitled to continue to serve in that capacity until the expiration of their respective terms of office. The district judges of a judicial election district shall give first and primary consideration for appointment of a clerk of the district court to serve the court beginning in 1989 to a clerk serving on and after July 1, 1986, until the expiration of the clerk's elected term of office. A vacancy in the office of clerk of the district court occurring on or after July 1, 1986, shall be filled as provided in section 602.1215.

Until July 1, 1986, the county shall remain responsible for the compensation of and operating costs for court employees not presently designated for state financing and for miscellaneous costs of the judicial branch related to furnishings, supplies, and equipment purchased, leased, or maintained for the use of judicial officers, referees, and their staff. Effective July 1, 1986, the state shall assume the responsibility for the compensation of and operating costs for court employees presently designated for state financing and for miscellaneous costs of the judicial branch related to furnishings, supplies, and equipment purchased, leased, or maintained for the use of judicial officers, referees, and their staff. However, the county shall at all times remain responsible for the provision of suitable courtrooms, offices, and other physical facilities pursuant to section 602.1303, subsection 1, including paint, wall covering, and fixtures in the facilities.

Until July 1, 1986, the county shall remain responsible for the compensation of and operating costs for probate referees and judicial hospitalization referees and their staffs. Effective July 1, 1986, the state shall assume the responsibility for the compensation of and operating costs for probate referees and judicial hospitalization referees and their staffs.

Until July 1, 1986, the county shall remain responsible for necessary fees and costs related to certain court reporters. Effective July 1, 1986, the state shall assume the responsibility for necessary fees and costs related to certain court reporters.

6. The county shall remain responsible for the

court-ordered costs of conciliation procedures under section 598.16.

For the period beginning July 1, 1983, and ending June 30, 1987, the provisions of division I (articles 1 through 10) take effect only to the extent that the provisions do not conflict with the scheduled state assumption of responsibility for the components of the court system, and the amendments and repeals of divisions II and III take effect only to the extent necessary to implement that scheduled state assumption of responsibility. If an amendment or repeal to a Code section in division II or III is not effective during the period beginning July 1, 1983, and ending June 30, 1987, the Code section remains in effect for that period. On July 1, 1987, this Act\* takes effect in its entirety.

However, if the state does not fully assume the costs for a fiscal year of a component of the court system in accordance with the scheduled assumption of responsibility, the state shall not assume responsibility for that component, and the schedule of state assumption of responsibility shall be delayed. The delayed schedule of state assumption of responsibility shall again be followed for the fiscal year in which the state fully assumes the costs of that component. For the fiscal year for which the state's assumption of the responsibility for a court component is delayed, the clerk of the district court shall not reduce the percentage remittance to the counties from the court revenue distribution account under section 602.8108. The clerk shall resume the delayed schedule of reductions in county remittances for the fiscal year in which the state fully assumes the costs of that court component. If the schedules of state assumption of responsibility and reductions in county remittances are delayed, the transition period beginning July 1, 1983, and ending June 30, 1987, is correspondingly lengthened, and this Act\* takes effect in its entirety only at the end of the lengthened transition period.

The supreme court shall prescribe temporary rules, prior to the dates on which the state assumes responsibility for the components of the court system, as necessary to implement the administrative and supervisory provisions of this Act\*, and as necessary to determine the applicability of specific provisions of this Act\* in accordance with the scheduled state assumption of responsibility for the components of the court system.

2007 Acts, ch 126, §100

\*See 83 Acts, ch 186

Subsection 6 stricken and former subsection 7 renumbered as 6

## CHAPTER 607A

### JURIES

#### 607A.8 Fees and expenses for jurors.

1. A grand juror and a petit juror in all courts shall receive thirty dollars as compensation for each day's service or attendance, including attendance required for the purpose of being considered for service. The supreme court may adopt rules that allow additional compensation for jurors whose attendance and service exceeds seven days.

2. A grand juror and a petit juror in all courts shall receive reimbursement for mileage expenses at the rate specified in section 602.1509 for each mile traveled each day to and from the residence of the juror to the place of service or attendance, and shall receive reimbursement for actual expenses of parking, as determined by the clerk of the district court. A juror who is a person with a disability may receive reimbursement for the costs of alternate transportation from the residence of the juror to the place of service or attendance. A juror shall not receive reimbursement

for mileage expenses or actual expenses of parking when the juror travels in a vehicle for which another juror is receiving reimbursement for mileage and parking expenses.

3. A grand juror or a petit juror in all courts may waive the right of the juror to receive compensation under subsection 1 or reimbursement under subsection 2.

2007 Acts, ch 210, §4  
Section stricken and rewritten

#### 607A.47 Juror questionnaire.

The court may, on its own motion, or upon the motion of a party to the case or upon the request of a juror, order the sealing or partial sealing of a completed juror questionnaire, if the court finds that it is necessary to protect the safety or privacy of a juror or a family member of a juror.

2007 Acts, ch 210, §5  
NEW section

## CHAPTER 613

### PARTIES — CAUSES OF ACTION — LIABILITY

#### 613.15A Injury to or death of a child.

A parent or the parents of a child may recover for the expense and actual loss of services, companionship, and society resulting from injury to or death of a minor child and may recover for the expense and actual loss of services, companionship,

and society resulting from the death of an adult child.

2007 Acts, ch 132, §1, 3  
Section applies to all actions filed on or after July 1, 2007; 2007 Acts, ch 132, §3  
NEW section

## CHAPTER 614

### LIMITATIONS OF ACTIONS

#### 614.1 Period.

Actions may be brought within the times herein limited, respectively, after their causes accrue, and not afterwards, except when otherwise specially declared:

1. *Penalties or forfeitures under ordinance.* Those to enforce the payment of a penalty or forfeiture under an ordinance, within one year.

2. *Injuries to person or reputation — relative rights — statute penalty.* Those founded on injuries to the person or reputation, including injuries to relative rights, whether based on contract or tort, or for a statute penalty, within two years.

2A. *With respect to products.*

a. Those founded on the death of a person or injuries to the person or property brought against

the manufacturer, assembler, designer, supplier of specifications, seller, lessor, or distributor of a product based upon an alleged defect in the design, inspection, testing, manufacturing, formulation, marketing, packaging, warning, labeling of the product, or any other alleged defect or failure of whatever nature or kind, based on the theories of strict liability in tort, negligence, or breach of an implied warranty shall not be commenced more than fifteen years after the product was first purchased, leased, bailed, or installed for use or consumption unless expressly warranted for a longer period of time by the manufacturer, assembler, designer, supplier of specifications, seller, lessor, or distributor of the product. This subsection shall not affect the time during which a person found li-

able may seek and obtain contribution or indemnity from another person whose actual fault caused a product to be defective. This subsection shall not apply if the manufacturer, assembler, designer, supplier of specifications, seller, lessor, or distributor of the product intentionally misrepresents facts about the product or fraudulently conceals information about the product and that conduct was a substantial cause of the claimant's harm.

b. (1) The fifteen-year limitation in paragraph "a" shall not apply to the time period in which to discover a disease that is latent and caused by exposure to a harmful material, in which event the cause of action shall be deemed to have accrued when the disease and such disease's cause have been made known to the person or at the point the person should have been aware of the disease and such disease's cause. This subsection shall not apply to cases governed by subsection 11 of this section.

(2) As used in this paragraph, "harmful material" means silicone gel breast implants, which were implanted prior to July 12, 1992; and chemical substances commonly known as asbestos, dioxins, tobacco, or polychlorinated biphenyls, whether alone or as part of any product; or any substance which is determined to present an unreasonable risk of injury to health or the environment by the United States environmental protection agency pursuant to the federal Toxic Substance Control Act, 15 U.S.C. § 2601 et seq., or by this state, if that risk is regulated by the United States environmental protection agency or this state.

3. *Against sheriff or other public officer.* Those against a sheriff or other public officer for the nonpayment of money collected on execution within three years of collection.

4. *Unwritten contracts — injuries to property — fraud — other actions.* Those founded on unwritten contracts, those brought for injuries to property, or for relief on the ground of fraud in cases heretofore solely cognizable in a court of chancery, and all other actions not otherwise provided for in this respect, within five years, except as provided by subsections 8 and 10.

5. *Written contracts — judgments of courts not of record — recovery of real property.* Those founded on written contracts, or on judgments of any courts except those provided for in the next subsection, and those brought for the recovery of real property, within ten years.

6. *Judgments of courts of record.* Those founded on a judgment of a court of record, whether of this or of any other of the United States, or of the federal courts of the United States, within twenty years, except that a time period limitation shall not apply to an action to recover a judgment for child support, spousal support, or a judgment of distribution of marital assets.

7. *Judgment quieting title.* No action shall be brought to set aside a judgment or decree quieting title to real estate unless the same shall be com-

menced within ten years from and after the rendition thereof.

8. *Wages.* Those founded on claims for wages or for a liability or penalty for failure to pay wages, within two years.

9. *Malpractice.*

a. Except as provided in paragraph "b", those founded on injuries to the person or wrongful death against any physician and surgeon, osteopath, osteopathic physician and surgeon, dentist, podiatric physician, optometrist, pharmacist, chiropractor, physician assistant, or nurse, licensed under chapter 147, or a hospital licensed under chapter 135B, arising out of patient care, within two years after the date on which the claimant knew, or through the use of reasonable diligence should have known, or received notice in writing of the existence of, the injury or death for which damages are sought in the action, whichever of the dates occurs first, but in no event shall any action be brought more than six years after the date on which occurred the act or omission or occurrence alleged in the action to have been the cause of the injury or death unless a foreign object unintentionally left in the body caused the injury or death.

b. An action subject to paragraph "a" and brought on behalf of a minor who was under the age of eight years when the act, omission, or occurrence alleged in the action occurred shall be commenced no later than the minor's tenth birthday or as provided in paragraph "a", whichever is later.

10. *Secured interest in farm products.* Those founded on a secured interest in farm products, within two years from the date of sale of the farm products against the secured interest of the creditor.

11. *Improvements to real property.* In addition to limitations contained elsewhere in this section, an action arising out of the unsafe or defective condition of an improvement to real property based on tort and implied warranty and for contribution and indemnity, and founded on injury to property, real or personal, or injury to the person or wrongful death, shall not be brought more than fifteen years after the date on which occurred the act or omission of the defendant alleged in the action to have been the cause of the injury or death. However, this subsection does not bar an action against a person solely in the person's capacity as an owner, occupant, or operator of an improvement to real property.

12. *Sexual abuse or sexual exploitation by a counselor, therapist, or school employee.* An action for damages for injury suffered as a result of sexual abuse, as defined in section 709.1, by a counselor, therapist, or school employee, as defined in section 709.15, or as a result of sexual exploitation by a counselor, therapist, or school employee shall be brought within five years of the date the victim was last treated by the counselor or therapist, or within five years of the date the victim was last enrolled in or attended the school.

13. *Public bonds or obligations.* Those founded on the cancellation, transfer, redemption, or replacement of public bonds or obligations by an issuer, trustee, transfer agent, registrar, depository, paying agent, or other agent of the public bonds or obligations, within eleven years of the cancellation, transfer, redemption, or replacement of the public bonds or obligations.

14. *County collection of taxes.* No time limitation shall apply to an action brought by a county under section 445.3 to collect delinquent real property taxes levied on or after April 1, 1992.

2007 Acts, ch 40, §1  
NEW subsection 14

#### **614.8 Minors and persons with mental illness.**

1. The times limited for actions in this chapter, or chapter 216, 669, or 670, except those brought for penalties and forfeitures, are extended in favor of persons with mental illness, so that they shall have one year from and after the termination of the disability within which to file a complaint pursuant to chapter 216, to make a claim pursuant to chapter 669, or to otherwise commence an action.

2. Except as provided in section 614.1, subsection 9, the times limited for actions in this chapter, or chapter 216, 669, or 670, except those brought for penalties and forfeitures, are extended in favor of minors, so that they shall have one year from and after attainment of majority within which to file a complaint pursuant to chapter 216, to make a claim pursuant to chapter 669, or to otherwise commence an action.

2007 Acts, ch 110, §2

2007 amendments to this section apply to all complaints, claims, and actions arising out of an alleged death, loss, or injury occurring on or after July 1, 2007; 2007 Acts, ch 110, §6

Section amended

#### **614.17 Claims to real estate antedating 1980.**

1. An action based upon a claim arising or existing prior to January 1, 1980, shall not be maintained, either at law or in equity, in any court to recover real estate in this state or to recover or establish any interest in or claim to real estate, legal or equitable, against the holder of the record title to the real estate in possession, when the holder of the record title and the holder's immediate or remote grantors are shown by the record to have held chain of title to the real estate, since January 1, 1980, unless the claimant in person, or by the claimant's attorney or agent, or if the claimant is a minor or under legal disability, by the claimant's guardian, trustee, or either parent, within one year from and after July 1, 1991, files in the office of the recorder of deeds of the county in which the real estate is situated, a statement in writing, which is duly acknowledged, definitely describing the real estate involved, the nature and extent of the right or interest claimed, and stating the facts upon which the claim is based.

2. For the purposes of this section, section 614.17A, and sections 614.18 to 614.20, a person who holds title to real estate by will or descent from a person who held the title of record to the real estate at the date of that person's death or who holds title by decree or order of a court, or under a tax deed, trustee's, referee's, guardian's, executor's, administrator's, receiver's, assignee's, master's in chancery, or sheriff's deed, holds chain of title the same as though holding by direct conveyance.

3. For the purposes of this section and section 614.17A, such possession of real estate may be shown of record by affidavits showing the possession, and when the affidavits have been filed and recorded, it is the duty of the recorder to index the applicable entries specified in sections 558.49 and 558.52 and to index the name of the owner in possession, as named in the affidavits, and in like manner, the affidavits may be filed and recorded where any action was barred on any claim by this section as in force prior to July 1, 1991.

2007 Acts, ch 101, §5

Unnumbered paragraphs 1 – 3 editorially designated as subsections 1

– 3

Subsection 3 amended

#### **614.18 Claim recorded and indexed.**

Any such claim so filed shall be recorded, and the entries required in section 614.17A and any applicable entries specified in sections 558.49 and 558.52 indexed, in the office of the recorder of the county where such real estate is situated.

2007 Acts, ch 101, §6

Section amended

#### **614.24 Reversion or use restrictions on land — preservation.**

1. No action based upon any claim arising or existing by reason of the provisions of any deed or conveyance or contract or will reserving or providing for any reversion, reverted interests or use restrictions in and to the land therein described shall be maintained either at law or in equity in any court to recover real estate in this state or to recover or establish any interest therein or claim thereto, legal or equitable, against the holder of the record title to such real estate in possession after twenty-one years from the recording of such deed of conveyance or contract or after twenty-one years from the admission of said will to probate unless the claimant shall, personally, or by the claimant's attorney or agent, or if the claimant is a minor or under legal disability, by the claimant's guardian, trustee, or either parent or next friend, file a verified claim with the recorder of the county wherein said real estate is located within said twenty-one year period. In the event said deed was recorded or will was admitted to probate more than twenty years prior to July 4, 1965, then said claim may be filed on or before one year after July 4, 1965. Such claims shall set forth the nature thereof, also the time and manner in which such

interest was acquired. For the purposes of this section, the claimant shall be any person or persons claiming any interest in and to said land or in and to such reversion, reverter interest or use restriction, whether the same is a present interest or an interest which would come into existence if the happening or contingency provided in said deed or will were to happen at once. Said claimant further shall include any member of a class of persons entitled to or claiming such rights or interests.

2. The provisions of this section requiring the filing of a verified claim shall not apply to the reversion of railroad property if the reversion is caused by the property being abandoned for railway purposes and the abandonment occurs after July 1, 1980. The holder of such a reversionary interest may bring an action based upon the interest regardless of whether a verified claim has been filed under this section at any time after July 4, 1965.

3. This section shall not impair the validity of an environmental covenant established pursuant to chapter 455I.

2007 Acts, ch 22, §103  
Unnumbered paragraph 1 amended and editorially numbered as subsection 1  
Unnumbered paragraphs 2 and 3 editorially numbered as subsections 2 and 3

### 614.35 Recording interest.

To be effective and to be entitled to record, the notice above referred to shall contain an accurate and full description of all land affected by such notice which description shall be set forth in particular terms and not by general inclusions; but if the claim is founded upon a recorded instrument, then the description in such notice may be the same as that contained in such recorded instrument. Such notice shall be filed for record in the office of the county recorder of the county or counties where the land described in the notice is situated. The recorder of each county shall accept all such notices presented to the recorder which describe land located in the county in which the recorder serves and shall enter and record full copies of the notices and shall index the applicable entries specified in sections 558.49 and 558.52, and each recorder shall be entitled to charge the same fees for the recording of the notices as are charged for recording deeds. In indexing such notices in the recorder's office each recorder shall enter such notices under the grantee indexes of deeds in the names of the claimants appearing in such notices.

2007 Acts, ch 101, §7  
Section amended

## CHAPTER 617

### COMMENCING ACTIONS

#### 617.3 Foreign corporations or nonresidents contracting or committing torts in Iowa.

1. If the action is against any corporation or person owning or operating any railway or canal, steamboat or other rivercraft, or any telegraph, telephone, stage, coach, or carline, or against any express company, or against any foreign corporation, service may be made upon any general agent of such corporation, company, or person, wherever found, or upon any station, ticket, or other agent, or person transacting the business thereof or selling tickets therefor in the county where the action is brought; if there is no such agent in said county, then service may be had upon any such agent or person transacting said business in any other county.

2. If a foreign corporation makes a contract with a resident of Iowa to be performed in whole or in part by either party in Iowa, or if such foreign corporation commits a tort in whole or in part in Iowa against a resident of Iowa, such acts shall be deemed to be doing business in Iowa by such foreign corporation for the purpose of service of process or original notice on such foreign corporation under this section, and, if the corporation does not have a registered agent or agents in the state of Iowa, shall be deemed to constitute the appoint-

ment of the secretary of state of the state of Iowa to be its true and lawful attorney upon whom may be served all lawful process or original notice in actions or proceedings arising from or growing out of such contract or tort. If a nonresident person makes a contract with a resident of Iowa to be performed in whole or in part by either party in Iowa, or if such person commits a tort in whole or in part in Iowa against a resident of Iowa, such acts shall be deemed to be doing business in Iowa by such person for the purpose of service of process or original notice on such person under this section, and shall be deemed to constitute the appointment of the secretary of state of the state of Iowa to be the true and lawful attorney of such person upon whom may be served all lawful process or original notice in actions or proceedings arising from or growing out of such contract or tort. The term "nonresident person" shall include any person who was, at the time of the contract or tort, a resident of the state of Iowa but who removed from the state before the commencement of such action or proceedings and ceased to be a resident of Iowa or, a resident who has remained continuously absent from the state for at least a period of six months following commission of the tort. The making of the contract or the committing of the tort shall be deemed to be the agreement of such corporation or



such person that any process or original notice so served shall be of the same legal force and effect as if served personally upon such defendant within the state of Iowa. The term "resident of Iowa" shall include any Iowa corporation, any foreign corporation holding a certificate of authority to transact business in Iowa, any individual residing in Iowa, and any partnership or association one or more of whose members is a resident of Iowa.

3. Service of such process or original notice shall be made (1) by filing duplicate copies of said process or original notice with said secretary of state, together with a fee of ten dollars, and (2) by mailing to the defendant and to each of them if more than one, by registered or certified mail, a notification of said filing with the secretary of state, the same to be so mailed within ten days after such filing with the secretary of state. Such notification shall be mailed to each foreign corporation at the address of its principal office in the state or country under the laws of which it is incorporated and to each such nonresident person at an address in the state of residence. The defendant shall have sixty days from the date of such filing with the secretary of state within which to appear. Proof of service shall be made by filing in court the duplicate copy of the process or original notice with the secretary of state's certificate of filing, and the affidavit of the plaintiff or the plaintiff's attorney of compliance herewith.

4. The secretary of state shall keep a record of all processes or original notices so served upon the secretary of state, recording therein the time of service and the secretary of state's actions with reference thereto, and the secretary of state shall promptly return one of said duplicate copies to the plaintiff or the plaintiff's attorney, with a certificate showing the time of filing thereof in the secretary of state's office.

5. The original notice of suit filed with the secretary of state shall be in form and substance the same as provided in rule of civil procedure 1.1901, form 3, Iowa court rules.

6. The notification of filing shall be in substantially the following form, to wit:

To . . . . . (Here insert the name of each defendant with proper address.) You will take notice that an original notice of suit or process against you, a copy of which is hereto attached, was duly served upon you at Des Moines, Iowa by filing a copy of said notice or process on the . . . . . day of . . . . . (month), . . . . . (year), with the secretary of state of the state of Iowa.

Dated at . . . . ., Iowa, this . . . . . day of . . . . . (month), . . . . . (year)

.....  
Plaintiff  
By  
.....  
Attorney for Plaintiff

7. Actions against foreign corporations or non-resident persons as contemplated by this law may be brought in the county of which plaintiff is a resident, or in the county in which any part of the contract is or was to be performed or in which any part of the tort was committed.

2007 Acts, ch 126, §101  
Unnumbered paragraphs 1 - 4 editorially numbered as subsections 1 - 4  
4 Former unnumbered paragraph 5 amended and editorially numbered as subsection 5  
Former unnumbered paragraphs 6 and 7 editorially numbered as subsections 6 and 7

**617.10 Real estate — action indexed.**

1. When a petition affecting real estate is filed, the clerk of the district court where the petition is filed shall index the petition in an index book under the tract number which describes the property, entering in each instance the case number as a guide to the record of court proceedings which affect the real estate. If the petition is amended to include other parties or other lands, the amended petition shall be similarly indexed. When a final result is determined in the case, the result shall be indicated in the index book wherever indexed.

2. As used in this section, "book" means any mode of permanent recording, including but not limited to card files, microfilm, microfiche, and electronic records.

2007 Acts, ch 71, §4  
Section amended

**CHAPTER 622**

**EVIDENCE**

**622.10 Communications in professional confidence — exceptions — required consent to release of medical records after commencement of legal action — application to court.**

1. A practicing attorney, counselor, physician, surgeon, physician assistant, advanced registered nurse practitioner, mental health professional, or the stenographer or confidential clerk of any such

person, who obtains information by reason of the person's employment, or a member of the clergy shall not be allowed, in giving testimony, to disclose any confidential communication properly entrusted to the person in the person's professional capacity, and necessary and proper to enable the person to discharge the functions of the person's office according to the usual course of practice or discipline.

2. The prohibition does not apply to cases where the person in whose favor the prohibition is made waives the rights conferred; nor does the prohibition apply to physicians or surgeons, physician assistants, advanced registered nurse practitioners, mental health professionals, or to the stenographer or confidential clerk of any physicians or surgeons, physician assistants, advanced registered nurse practitioners, or mental health professionals, in a civil action in which the condition of the person in whose favor the prohibition is made is an element or factor of the claim or defense of the person or of any party claiming through or under the person. The evidence is admissible upon trial of the action only as it relates to the condition alleged.

3. *a.* In a civil action in which the condition of the plaintiff in whose favor the prohibition is made is an element or factor of the claim or defense of the adverse party or of any party claiming through or under the adverse party, the adverse party shall make a written request for records relating to the condition alleged upon the plaintiff's counsel for a legally sufficient patient's waiver under federal and state law. Upon receipt of a written request, the plaintiff shall execute the patient's waiver and release it to the adverse party making the request within sixty days of receipt of the written request. The patient's waiver may require a physician or surgeon, physician assistant, advanced registered nurse practitioner, or mental health professional to do all of the following:

(1) Provide a complete copy of the patient's records including, but not limited to, any reports or diagnostic imaging relating to the condition alleged.

(2) Consult with the attorney for the adverse party prior to providing testimony regarding the plaintiff's medical history and the condition alleged and opinions regarding health etiology and prognosis for the condition alleged subject to the limitations in paragraph "c".

*b.* If a plaintiff fails to sign a waiver within the prescribed time period, the court may order disclosure or compliance. The failure of a party to comply with the court's order may be grounds for dismissal of the action or any other relief authorized under the rules of civil procedure.

*c.* Any physician or surgeon, physician assistant, advanced registered nurse practitioner, or mental health professional who provides records, provides information during consultation, or otherwise responds in good faith to a request pursuant to paragraph "a" shall be immune with respect to all civil or criminal penalties, claims, or actions of any kind with respect to this section.

*d.* Any physician or surgeon, physician assistant, advanced registered nurse practitioner, or mental health professional who provides records or consults with the counsel for the adverse party shall be entitled to charge a reasonable fee for production of the records, diagnostic imaging, and

consultation. Any party seeking consultation shall be responsible for payment of all charges. The fee for copies of any records shall be based upon actual cost of production.

*e.* Defendant's counsel shall provide a written notice to plaintiff's counsel in a manner consistent with the Iowa rules of civil procedure providing for notice of deposition at least ten days prior to any meeting with plaintiff's physician or surgeon, physician assistant, advanced registered nurse practitioner, or mental health professional. Plaintiff's counsel has the right to be present at all such meetings, or participate in telephonic communication with the physician or surgeon, physician assistant, advanced registered nurse practitioner, or mental health professional and counsel for the defendant. Plaintiff's counsel may seek a protective order structuring all communication by making application to the court at any time.

*f.* The provisions of this subsection do not apply to actions or claims brought pursuant to chapter 85, 85A, or 85B.

4. If an adverse party desires the oral deposition, either discovery or evidentiary, of a physician or surgeon, physician assistant, advanced registered nurse practitioner, or mental health professional to which the prohibition would otherwise apply or the stenographer or confidential clerk of a physician or surgeon, physician assistant, advanced registered nurse practitioner, or mental health professional or desires to call a physician or surgeon, physician assistant, advanced registered nurse practitioner, or mental health professional as a witness at the trial of the action, the adverse party shall file an application with the court for permission to do so. The court upon hearing, which shall not be ex parte, shall grant permission unless the court finds that the evidence sought does not relate to the condition alleged and shall fix a reasonable fee to be paid to the physician or surgeon, physician assistant, advanced registered nurse practitioner, or mental health professional by the party taking the deposition or calling the witness.

5. For the purposes of this section, "*mental health professional*" means a psychologist licensed under chapter 154B, a registered nurse licensed under chapter 152, a social worker licensed under chapter 154C, a marital and family therapist licensed under chapter 154D, a mental health counselor licensed under chapter 154D, or an individual holding at least a master's degree in a related field as deemed appropriate by the board of behavioral science.

6. A qualified school guidance counselor, who has met the certification and accreditation standards of the department of education as provided in section 256.11, subsection 10, who obtains infor-

mation by reason of the counselor's employment as a qualified school guidance counselor shall not be allowed, in giving testimony, to disclose any confidential communications properly entrusted to the counselor by a pupil or the pupil's parent or guardian in the counselor's capacity as a qualified school guidance counselor and necessary and proper to enable the counselor to perform the counselor's duties as a qualified school guidance counselor.

2007 Acts, ch 10, §179  
Wounds and burn injuries connected to criminal offenses; §147.112 and 147.113A

Disclosures of mental health and psychological information, see chapter 228

Subsection 5 amended

### **622.31 Evidence of regret or sorrow.**

In any civil action for professional negligence, personal injury, or wrongful death or in any arbitration proceeding for professional negligence, personal injury, or wrongful death against a person in a profession regulated by one of the boards

listed in section 272C.1 or in any other licensed profession recognized in this state, a hospital licensed pursuant to chapter 135B, or a health care facility licensed pursuant to chapter 135C, based upon the alleged negligence in the practice of that profession or occupation, that portion of a statement, affirmation, gesture, or conduct expressing sorrow, sympathy, commiseration, condolence, compassion, or a general sense of benevolence that was made by the person to the plaintiff, relative of the plaintiff, or decision maker for the plaintiff that relates to the discomfort, pain, suffering, injury, or death of the plaintiff as a result of an alleged breach of the applicable standard of care is inadmissible as evidence. Any response by the plaintiff, relative of the plaintiff, or decision maker for the plaintiff to such statement, affirmation, gesture, or conduct is similarly inadmissible as evidence.

2007 Acts, ch 10, §180; 2007 Acts, ch 126, §102  
See Code editor's note to §29A.28  
Section amended

## CHAPTER 622A

### INTERPRETERS IN LEGAL PROCEEDINGS

#### **622A.1 Definitions.**

As used in this chapter, unless the context otherwise requires:

1. "*Administrative agency*" means any department, board, commission, or agency of the state or any political subdivision of the state.
2. "*Legal proceeding*" means any action before any court, or any legal action preparatory to ap-

pearing before any court, whether civil, criminal, or juvenile in nature; and any proceeding before any administrative agency which is quasi-judicial in nature and which has direct legal implications to any person.

2007 Acts, ch 126, §103  
Section amended

## CHAPTER 624

### TRIAL AND JUDGMENT

#### **624.24 When judgment lien attaches.**

When the real estate lies in the county wherein the judgment of the district court of this state or of the circuit or district courts of the United States was entered in the judgment docket and lien index kept by the clerk of the court having jurisdiction, the lien shall attach from the date of such entry of judgment, but if in another it will not attach until an attested copy of the judgment is filed in the office of the clerk of the district court of the county in which the real estate lies except for foreign judgments pursuant to chapters 626A and 626B and tribal judgments as defined in section 626D.2, which shall not attach until an appeal is concluded, the time for the appeal has expired, or the stay of execution has expired or was vacated pursuant to section 626A.4, 626B.3, 626B.5, or

626D.7. In such cases, the lien shall attach on the date the clerk of court files an attested copy of the judgment in the office of the clerk of the district court of the county in which the real estate lies in any of the following circumstances:

1. The foreign or tribal judgment has not been appealed and the time for filing an appeal has expired.
2. The foreign or tribal judgment has been appealed and the judgment has been affirmed on appeal and is not subject to further appeal.
3. An appeal from a foreign or tribal judgment has been filed and a stay from such judgment has not been granted by the district court to the appealing party.

2007 Acts, ch 192, §1  
Section amended

## CHAPTER 626A

### ENFORCEMENT OF FOREIGN JUDGMENTS

#### 626A.3 Notice of filing.

1. At the time of the filing of the foreign judgment, the judgment creditor or the creditor's lawyer shall make and file with the clerk of court an affidavit setting forth the name and last known post office address of the judgment debtor, and the judgment creditor.

2. Promptly upon the filing of the foreign judgment and the affidavit as provided in subsection 1, the clerk shall mail notice of the filing of the foreign judgment to the judgment debtor at the address given and shall make a note of the mailing in the docket. The notice shall include the name and post office address of the judgment creditor

and the judgment creditor's lawyer, if any, in this state.

3. No execution or other process for enforcement of a foreign judgment filed under this chapter shall issue until the expiration of twenty days after the date the judgment is filed.

4. The filing of a foreign judgment under this chapter shall not create a lien upon any real estate until after the expiration of the time provided for in this chapter for challenging the conclusiveness of the foreign judgment and pursuant to section 624.24.

2007 Acts, ch 192, §2  
NEW subsection 4

## CHAPTER 626B

### UNIFORM FOREIGN MONEY-JUDGMENTS RECOGNITION ACT

#### 626B.6 Other foreign judgments.

1. This chapter does not prevent the recognition of a foreign judgment by a court of this state in a situation not specifically covered in this chapter.

2. The filing of a foreign judgment shall not create a lien upon any real estate until all challenges, if any, to the conclusiveness of the foreign

judgment are concluded pursuant to section 626B.3. Upon final determination of the conclusiveness of the foreign judgment, such judgment shall constitute a lien on real estate pursuant to section 624.24.

2007 Acts, ch 192, §3  
Section amended

## CHAPTER 626D

### RECOGNITION AND ENFORCEMENT OF TRIBAL COURT CIVIL JUDGMENTS

#### 626D.1 Title.

This chapter shall be cited as the "*Recognition and Enforcement of Tribal Court Civil Judgments Act*".

2007 Acts, ch 192, §4  
NEW section

#### 626D.2 Definitions.

As used in this chapter:

1. "*Tribal court*" means any court of any Indian or Alaska native tribe, band, nation, pueblo, village, or community that the United States secretary of the interior recognizes as an Indian tribe.

2. "*Tribal judgment*" means a written, civil judgment, order, or decree of a tribal court of record duly authenticated in accordance with the laws and procedures of the tribe or tribal court of record and in accordance with this chapter. For purposes of this subsection, a "*tribal court of rec-*

*ord*" is considered a court of record if the court maintains a permanent record of the tribal court's proceedings, maintains either a transcript or electronic record of the tribal court's proceedings, and provides that a final judgment of a tribal court is reviewable on appeal.

2007 Acts, ch 192, §5  
NEW section

#### 626D.3 Filing procedures.

1. A copy of any tribal judgment may be filed in the office of the clerk of court in any county in this state.

2. The person filing the tribal judgment shall make and file with the clerk of court an affidavit setting forth the name and last known address of the party seeking enforcement and the responding party. Upon the filing of the tribal judgment and accompanying affidavit, the enforcing party shall

serve upon the responding party a notice of filing of the tribal judgment together with a copy of the tribal judgment in accordance with rule 1.442 of the Iowa rules of civil procedure. The enforcing party shall file proof of service or mailing with the clerk of court. The notice of filing shall include the name and address of the enforcing party and the enforcing party's attorney, if any, and shall include the text contained in sections 626D.4 and 626D.5.

3. The filing of a tribal judgment shall not create a lien upon any real estate until such time as all challenges, if any, to the recognition and enforcement of the tribal judgment are concluded pursuant to sections 626D.4 and 626D.5. Upon a final and conclusive determination of enforceability of the tribal judgment, the judgment shall constitute a lien upon real estate pursuant to section 624.24.

2007 Acts, ch 192, §6  
NEW section

#### **626D.4 Responses.**

Any objection to the enforcement of a tribal judgment shall be filed within thirty days of receipt of the mailing of the notice of filing the tribal judgment. If an objection is filed within such time period, the court shall set a time period for a formal response to the objection and may set the matter for hearing.

2007 Acts, ch 192, §7  
NEW section

#### **626D.5 Recognition and enforcement of tribal judgments.**

1. Unless objected to pursuant to section 626D.4, a tribal judgment shall be recognized and enforced by the courts of this state to the same extent and with the same effect as any judgment, order, or decree of a court of this state.

2. If no objections are timely filed, the clerk shall issue a certification that no objections were timely filed and the tribal judgment shall be enforceable in the same manner as if issued by a valid court of this state.

3. A tribal judgment shall not be recognized and enforced if the objecting party demonstrates by a preponderance of the evidence at least one of the following:

*a.* The tribal court did not have personal or subject matter jurisdiction.

*b.* A party was not afforded due process.

4. The court may recognize and enforce or decline to recognize and enforce a tribal judgment on equitable grounds for any of the following reasons:

*a.* The tribal judgment was obtained by extrinsic fraud.

*b.* The tribal judgment conflicts with another

filed judgment that is entitled to recognition in this state.

*c.* The tribal judgment is inconsistent with the parties' contractual choice of forum provided the contractual choice of forum issue was timely raised in the tribal court.

*d.* The tribal court does not recognize and enforce judgments of the courts of this state under standards similar to those provided in this chapter.

*e.* The cause of action or defense upon which the tribal judgment is based is repugnant to the fundamental public policy of the United States or this state.

2007 Acts, ch 192, §8  
NEW section

#### **626D.6 Stay — bond requirement on appeal.**

1. If the objecting party demonstrates to the court that an appeal from the tribal judgment is pending or will be taken or that a stay of execution has been granted, the court may stay enforcement of the tribal judgment until the appeal is concluded, the time for appeal expires, or the stay of execution expires or is vacated.

2. If a party appeals a district court's ruling on the recognition and enforcement of a tribal judgment, the court, upon application of the opposing party, shall require the same security for satisfaction of the judgment which is required in this state.

2007 Acts, ch 192, §9  
NEW section

#### **626D.7 Contacting courts.**

The district court, after notice to the parties, may attempt to resolve any issues raised regarding a tribal judgment pursuant to section 626D.3 or 626D.5, by contacting the tribal court judge who issued the judgment.

2007 Acts, ch 192, §10  
NEW section

#### **626D.8 Applicability.**

This chapter shall govern the procedures for the recognition and enforcement by the courts of this state of a civil judgment, order, or decree issued by a tribal court of any federally recognized Indian tribe emanating from a cause of action that accrued on or after July 1, 2007. The date that a cause of action accrues shall be determined under the appropriate laws of this state. This chapter does not impair the right of a party to seek enforcement under any other existing laws or procedures.

2007 Acts, ch 192, §11  
NEW section

## CHAPTER 627

## EXEMPTIONS

**627.6 General exemptions.**

A debtor who is a resident of this state may hold exempt from execution the following property:

1. The debtor's interest in:
  - a. Any wedding or engagement ring owned or received by the debtor or the debtor's dependents. However, any interest acquired in one or more wedding or engagement rings owned or received by the debtor or the debtor's dependents after the date of marriage and within two years of the date the execution is issued or an exemption is claimed shall not exceed a value equal to seven thousand dollars in the aggregate minus the amount claimed by the debtor for any other jewelry claimed in paragraph "b".
  - b. All jewelry of the debtor and the debtor's dependents owned or received by the debtor or the debtor's dependents, not to exceed in value two thousand dollars in the aggregate.
2. One shotgun, and either one rifle or one musket.
3. Private libraries, family bibles, portraits, pictures and paintings not to exceed in value one thousand dollars in the aggregate.
4. An interment space or an interest in a public or private burying ground, not exceeding one acre for any defendant.
5. The debtor's interest in all wearing apparel of the debtor and the debtor's dependents kept for actual use and the trunks or other receptacles necessary for the wearing apparel, musical instruments, household furnishings, and household goods which include, but are not limited to, appliances, radios, television sets, record or tape playing machines, compact disc players, satellite dishes, cable television equipment, computers, software, printers, digital video disc players, video players, and cameras held primarily for the personal, family, or household use of the debtor and the debtor's dependents, not to exceed in value seven thousand dollars in the aggregate.
6. The interest of an individual in any accrued dividend or interest, loan or cash surrender value of, or any other interest in a life insurance policy owned by the individual if the beneficiary of the policy is the individual's spouse, child, or dependent. However, the amount of the exemption shall not exceed ten thousand dollars in the aggregate of any interest or value in insurance acquired within two years of the date execution is issued or exemptions are claimed, or for additions within the same time period to a prior existing policy which additions are in excess of the amount necessary to fund the amount of face value coverage of the policies for the two-year period. For purposes of this paragraph, acquisitions shall not include such interest in new policies used to replace prior

policies to the extent of any accrued dividend or interest, loan or cash surrender value of, or any other interest in the prior policies at the time of their cancellation.

In the absence of a written agreement or assignment to the contrary, upon the death of the insured any benefit payable to the spouse, child, or dependent of the individual under a life insurance policy shall inure to the separate use of the beneficiary independently of the insured's creditors.

A benefit or indemnity paid under an accident, health, or disability insurance policy is exempt to the insured or in case of the insured's death to the spouse, child, or dependent of the insured, from the insured's debts.

In case of an insured's death the avails of all matured policies of life, accident, health, or disability insurance payable to the surviving spouse, child, or dependent are exempt from liability for all debts of the beneficiary contracted prior to death of the insured, but the amount thus exempted shall not exceed fifteen thousand dollars in the aggregate.

7. Professionally prescribed health aids for the debtor or a dependent of the debtor.

8. The debtor's rights in:

- a. A social security benefit, unemployment compensation, or any public assistance benefit.
- b. A veteran's benefit.
- c. A disability or illness benefit.
- d. Alimony, support, or separate maintenance, to the extent reasonably necessary for the support of the debtor and dependents of the debtor.
- e. A payment or a portion of a payment under a pension, annuity, or similar plan or contract on account of illness, disability, death, age, or length of service, unless the payment or a portion of the payment results from contributions to the plan or contract by the debtor within one year prior to the filing of a bankruptcy petition, which contributions are above the normal and customary contributions under the plan or contract, in which case the portion of the payment attributable to the contributions above the normal and customary rate is not exempt.

f. Contributions and assets, including the accumulated earnings and market increases in value, in any of the plans or contracts as follows:

- (1) All transfers, in any amount, from a trust forming part of a stock, bonus, pension, or profit-sharing plan of an employer defined in section 401(a) of the Internal Revenue Code and of which the trust assets are exempt from taxation under section 501(a) of the Internal Revenue Code and covered by the Employee Retirement Income Security Act of 1974 (ERISA), as codified at 29 U.S.C. 1001 et seq., to either of the following:

(a) A succeeding trust authorized under federal law on or after April 25, 2001.

(b) An individual retirement account or individual retirement annuity established under section 408(d)(3) of the Internal Revenue Code, from which the total value, including accumulated earnings and market increases in value, may be contributed to a succeeding trust authorized under federal law on or after April 25, 2001. For purposes of this subparagraph, transfers, in any amount, from an individual retirement account or individual retirement annuity established under section 408(d)(3) of the Internal Revenue Code to an individual retirement account or individual retirement annuity established under section 408(d)(3) of the Internal Revenue Code, or an individual retirement account established under section 408(a) of the Internal Revenue Code, or an individual retirement annuity established under section 408(b) of the Internal Revenue Code, or a Roth individual retirement account, or a Roth individual retirement annuity established under section 408A of the Internal Revenue Code are exempt.

(2) All transfers, in any amount, from an eligible retirement plan to an individual retirement account, an individual retirement annuity, a Roth individual retirement account, or a Roth individual retirement annuity established under section 408A of the Internal Revenue Code shall be exempt from execution and from the claims of creditors.

As used in this subparagraph, “*eligible retirement plan*” means the funds or assets in any retirement plan established under state or federal law that meet all of the following requirements:

(a) Can be transferred to an individual retirement account or individual retirement annuity established under sections 408(a) and 408(b) of the Internal Revenue Code or Roth individual retirement accounts and Roth individual retirement annuities established under section 408A of the Internal Revenue Code.

(b) Are either exempt from execution under state or federal law or are excluded from a bankruptcy estate under 11 U.S.C. § 541(c)(2) et seq.

(3) Retirement plans established pursuant to qualified domestic relations orders, as defined in 26 U.S.C. § 414. However, nothing in this section shall be construed as making any retirement plan exempt from the claims of the beneficiary of a qualified domestic relations order or from claims for child support or alimony.

(4) For simplified employee pension plans, self-employed pension plans (also known as Keogh plans or H.R. 10 plans), individual retirement accounts established under section 408(a) of the Internal Revenue Code, individual retirement annuities established under section 408(b) of the Internal Revenue Code, savings incentive matched plans for employees, salary reduction simplified employee pension plans (also known as

SARSEPs), and similar plans for retirement investments authorized in the future under federal law, the exemption for contributions shall not exceed, for each tax year of contributions, the actual amount of the contribution deducted on the debtor’s tax return or the maximum amount which could be contributed to an individual retirement account established under section 408(a) of the Internal Revenue Code and deducted in the tax year of the contribution, whichever is less. The exemption for accumulated earnings and market increases in value of plans under this subparagraph shall be limited to an amount determined by multiplying all the accumulated earnings and market increases in value by a fraction, the numerator of which is the total amount of exempt contributions as determined by this subparagraph, and the denominator of which is the total of exempt and nonexempt contributions to the plan.

(5) For Roth individual retirement accounts and Roth individual retirement annuities established under section 408A of the Internal Revenue Code and similar plans for retirement investments authorized in the future under federal law, the exemption for contributions shall not exceed, for each tax year of contributions, the actual amount of the contribution or the maximum amount which federal law allows to be contributed to such plans. The exemption for accumulated earnings and market increases in value of plans under this subparagraph shall be limited to an amount determined by multiplying all of the accumulated earnings and market increases in value by a fraction, the numerator of which is the total amount of exempt contributions as determined by this subparagraph, and the denominator of which is the total of exempt and nonexempt contributions to the plan.

(6) For all contributions to plans described in subparagraphs (4) and (5), the maximum contribution in each of the two tax years preceding the claim of exemption or filing of a bankruptcy shall be limited to the maximum deductible contribution to an individual retirement account established under section 408(a) of the Internal Revenue Code, regardless of which plan for retirement investment has been chosen by the debtor.

(7) Exempt assets transferred from any individual retirement account, individual retirement annuity, Roth individual retirement account, or Roth individual retirement annuity to any other individual retirement account, individual retirement annuity, Roth individual retirement annuity, or Roth individual retirement account established under section 408A of the Internal Revenue Code shall continue to be exempt regardless of the number of times transferred between individual retirement accounts, individual retirement annuities, Roth individual retirement annuities, or Roth individual retirement accounts.

For purposes of this paragraph “*f*”, “*market increases in value*” shall include, but shall not be lim-

ited to, dividends, stock splits, interest, and appreciation. "Contributions" means contributions by the debtor and by the debtor's employer.

9. The debtor's interest in one motor vehicle, not to exceed in value seven thousand dollars.

10. In the event of a bankruptcy proceeding, the debtor's interest in accrued wages and in state and federal tax refunds as of the date of filing of the petition in bankruptcy, not to exceed one thousand dollars in the aggregate. This exemption is in addition to the limitations contained in sections 642.21 and 537.5105.

11. If the debtor is engaged in any profession or occupation other than farming, the proper implements, professional books, or tools of the trade of the debtor or a dependent of the debtor, not to exceed in value ten thousand dollars in the aggregate.

12. If the debtor is engaged in farming and does not exercise the delay of the enforceability of a deficiency judgment or general execution under section 654.6 in relation to the execution under which the exemption is claimed, any combination of the following, not to exceed a value of ten thousand dollars in the aggregate:

a. Implements and equipment reasonably related to a normal farming operation. This exemption is in addition to a motor vehicle held exempt under subsection 9.

b. Livestock and feed for the livestock reasonably related to a normal farming operation.

13. If the debtor is engaged in farming the agricultural land upon the commencement of an action for the foreclosure of a mortgage on the agricultural land or for the enforcement of an obligation secured by a mortgage on the agricultural land, if a deficiency judgment is issued against the debtor, and if the debtor does not exercise the delay of the enforceability of the deficiency judgment or general execution under section 654.6 in relation to the execution under which the exemption is claimed, the disposable earnings of the debtor are exempt from garnishment to enforce the deficiency judgment after two years from the entry of the deficiency judgment, sections 642.21 and 642.22 notwithstanding. However, earnings

paid to the debtor directly or indirectly by the debtor are not exempt.

14. The debtor's interest, not to exceed one thousand dollars in the aggregate, in any cash on hand, bank deposits, credit union share drafts, or other deposits, wherever situated, or other personal property not otherwise specifically provided for in this chapter.

15. The debtor's interest, not to exceed five hundred dollars in the aggregate, in any combination of the following property:

a. Any residential rental deposit held by a landlord as a security deposit, as well as any interest earned on such deposit as a result of any statute or rule requiring that such deposit be placed in an interest-bearing account.

b. Any residential utility deposit held by any electric, gas, telephone, or water company as a condition for initiation or reinstatement of such utility service, as well as any interest earned on such deposit as a result of any statute or rule requiring that such deposit be placed in an interest-bearing account.

c. Any rent paid to the landlord in advance of the date due under any unexpired residential lease.

Notwithstanding the provisions of this subsection, a debtor shall not be permitted to claim these exemptions against a landlord or utility company, with regard to sums held under the terms of a rental agreement, or for utility services furnished to the debtor.

16. The debtor's interest in payments reasonably necessary for the support of the debtor or the debtor's dependents to or for the benefit of the debtor or the debtor's dependents, including structured settlements, resulting from personal injury to the debtor or the debtor's dependents or the wrongful death of a decedent upon which the debtor or the debtor's dependents were dependent.

2007 Acts, ch 114, §1; 2007 Acts, ch 126, §104  
Exemptions denied, §123.113  
Judgment for exempt property, §643.22  
Subsection 9 amended and divided into subsections 9 and 10 and former subsections 10 - 14 renumbered as 11 - 15  
Former subsection 15 amended and renumbered as 16

## CHAPTER 633

### PROBATE CODE

#### 633.31 Calendar — fees in probate.

1. The clerk shall keep a court calendar, and enter thereon such matters as the court may prescribe.

2. The clerk shall charge and collect the following fees in connection with probate matters, which shall be deposited in the account established under section 602.8108:

a. For services performed in short form probates pursuant to sections 450.22 and 450.44	\$ 15.00
b. For services performed in probate of will without administration	15.00
c. For filing and indexing a transcript	50.00
d. For taking and approving a bond, or the sureties on a bond	20.00



- e. For entering a rule or order . . . . . 10.00
- f. For certificate and seal . . . . . 10.00
- g. For making a complete record where real estate is sold . . . per 100 words . . . . . 20
- h. For making a transcript or copies of orders or records filed in the clerk's office . . . . . per 100 words . . . . . 50
- i. For certifying change of title . . . . . 20.00
- j. For issuing commission to appraisers . . . . . 2.00
- k. For other services performed in the settlement of the estate of any decedent, minor, person with mental illness, or other persons laboring under legal disability, except where actions are brought by the administrator, guardian, trustee, or person acting in a representative capacity or against that person, or as may be otherwise provided herein, where the value of the personal property and real estate of such a person falls within the following indicated amounts, the fee opposite such amount shall be charged.

Up to \$3,000.00 . . . . .	5.00
3,000.00 to 5,000.00 . . . . .	10.00
5,000.00 to 7,000.00 . . . . .	15.00
7,000.00 to 10,000.00 . . . . .	20.00
10,000.00 to 15,000.00 . . . . .	25.00
15,000.00 to 25,000.00 . . . . .	30.00
For each additional \$25,000.00 or major fraction thereof . . . . .	25.00

- l. For services performed in small estate administration . . . . . 15.00

3. The fee set forth in subsection 2, paragraph "k", shall not be charged on any property transferred to a testamentary trust from an estate that has been administered in this state and for which court costs have been assessed and paid.

2007 Acts, ch 180, §3  
Subsection 2, paragraph c amended

**633.123 Prudent investments — fiduciaries.**

1. When investing, reinvesting, purchasing, acquiring, exchanging, selling, or managing property for the benefit of another, a fiduciary shall consider all of the following circumstances along with the circumstances identified in section 633A.4302, if applicable:

a. The length of time the fiduciary will have control over the estate assets and the anticipated costs of complying with the provisions of this section.

b. The unique nature of all of the following:

(1) The duties of a personal representative or conservator.

(2) The assets, income, expenses, and distribution requirements of the estate.

(3) The needs and rights of the beneficiaries or the ward.

c. The express provisions of a will, codicil, or other controlling instrument.

2. The standards identified in this section shall be applied differently than similar standards for investment and management of trust property. Special consideration shall be given to the expected term of estates. Because some estates will have limited duration, there may be situations where an investment or a change in an investment is not warranted.

2007 Acts, ch 134, §7, 28  
Section applies to all estates, conservatorships, and trusts under court supervision and in existence on or after July 1, 2007; 2007 Acts, ch 134, §28  
NEW section

**633.168 Oath — certification.**

Every fiduciary, before entering upon the duties of the fiduciary's office, shall subscribe an oath or certify under penalties of perjury that the fiduciary will faithfully discharge the duties imposed by law, according to the best of the fiduciary's ability.

2007 Acts, ch 134, §8, 28  
2007 amendment to this section applies to fiduciaries appointed on or after July 1, 2007; 2007 Acts, ch 134, §28  
Section amended

**633.178 Letters.**

Upon the filing of an oath of office or certification and a bond, if any is required, the clerk shall issue letters under the seal of the court, giving the fiduciary the powers authorized by law.

2007 Acts, ch 134, §9, 28  
2007 amendment to this section applies to fiduciaries appointed on or after July 1, 2007; 2007 Acts, ch 134, §28  
Section amended

**633.199 Expenses and extraordinary services.**

Such further allowances as are just and reasonable may be made by the court to personal representatives and their attorneys for actual necessary and extraordinary expenses and services. Necessary and extraordinary services shall be construed to include but not be limited to services in connection with real estate, tax issues, disputed matters, nonprobate assets, reopening the estate, location of unknown and lost heirs and beneficiaries, and management and disposition of unusual assets. Relevant factors to be considered in determining the value of such services shall include but not be limited to the following:

1. Time necessarily spent by the personal representatives and their attorneys.

2. Nature of the matters or issues and the extent of the services provided.

3. Complexity of the issues and the importance of the issues to the estate.

4. Responsibilities assumed.

5. Resolution.

6. Experience and expertise of the personal representatives and their attorneys.

2007 Acts, ch 134, §10, 28  
2007 amendments to this section apply to estates of decedents dying on or after July 1, 2007; 2007 Acts, ch 134, §28  
Section amended

**633.201 Court officers as fiduciaries.**

Judges, clerks, and deputy clerks serving as fiduciaries shall not be allowed any compensation for services as such fiduciaries. A judge, clerk, or deputy clerk serving as a fiduciary may be compensated for fiduciary services if the services are for a family member's estate, trust, guardianship, or conservatorship. For purposes of this section, "family member" means a spouse, child, grandchild, parent, grandparent, sibling, niece, nephew, cousin, or other relative or individual with significant personal ties to the fiduciary.

2007 Acts, ch 86, §9  
Section amended

**633.231 Notice in intestate estates — medical assistance claims.**

1. Upon opening administration of an intestate estate, the administrator shall, in accordance with section 633.410, provide by ordinary mail to the entity designated by the department of human services, a notice of opening administration of the estate and of the appointment of the administrator, which shall include a notice to file claims with the clerk within the later to occur of four months from the second publication of the notice to creditors or six months from the date of mailing of this notice, or thereafter be forever barred.

2. The notice shall be in substantially the following form:

**NOTICE OF OPENING ADMINISTRATION OF ESTATE, OF APPOINTMENT OF ADMINISTRATOR, AND NOTICE TO CREDITOR**

In the District Court of Iowa  
In and for ..... County.  
In the Estate of ....., Deceased  
Probate No. ....

To the Department of Human Services Who May Be Interested in the Estate of ....., Deceased, who died on or about ..... (date):

You are hereby notified that on the ..... day of ..... (month), ..... (year), an intestate estate was opened in the above-named court and that ..... was appointed administrator of the estate.

You are further notified that the birthdate of the deceased is ..... and the deceased's social security number is ..... The name of the spouse is ..... The birthdate of the spouse is ..... and the spouse's social security number is ....., and that the spouse of the deceased is alive as of the date of this notice, or deceased as of ..... (date).

You are further notified that the deceased was/was not a disabled or a blind child of the medical assistance recipient by the name of ....., who had a birthdate of ..... and a social secu-

rity number of ....., and the medical assistance debt of that medical assistance recipient was waived pursuant to section 249A.5, subsection 2, paragraph "a", subparagraph (1), and is now collectible from this estate pursuant to section 249A.5, subsection 2, paragraph "b".

Notice is hereby given that if the department of human services has a claim against the estate for the deceased person or persons named in this notice, the claim shall be filed with the clerk of the above-named district court, as provided by law, duly authenticated, for allowance, and unless so filed by the later to occur of four months from the second publication of the notice to creditors or six months from the date of the mailing of this notice, unless otherwise allowed or paid, the claim is thereafter forever barred.

Dated this ..... day of ..... (month), ..... (year)

.....  
Administrator of estate  
.....  
Address

.....  
Attorney for administrator  
.....  
Address

Date of second publication  
..... day of ..... (month), ..... (year)

2007 Acts, ch 134, §11  
Section amended and unnumbered paragraphs 1 and 2 editorially numbered as subsections 1 and 2

**633.272 Partial intestacy.**

If part but not all of the estate of a decedent is validly disposed of by will, the part not disposed of by will shall be distributed as provided herein for intestate estates. If the testator left a surviving spouse, and the spouse does not take an elective share, the spouse shall receive, in addition to the property given to the spouse by the will, so much of the intestate property subject to the payment of its proportionate share of debts and charges as the spouse would receive pursuant to section 633.211 or 633.212.

2007 Acts, ch 134, §12, 28  
2007 amendments to this section apply to estates of decedents dying on or after July 1, 2007; 2007 Acts, ch 134, §28  
Section amended

**633.304A Notice of probate of will — medical assistance claims.**

1. On admission of a will to probate, the executor shall, in accordance with section 633.410, provide by ordinary mail to the entity designated by the department of human services, a notice of admission of the will to probate and of the appointment of the executor, which shall include a notice to file claims with the clerk within the later to occur of four months from the second publication of the notice to creditors or six months from the date of mailing of this notice, or thereafter be forever barred.

2. The notice shall be in substantially the following form:

NOTICE OF PROBATE OF WILL, OF APPOINTMENT OF EXECUTOR, AND NOTICE TO CREDITORS

In the District Court of Iowa In and for . . . . . County. In the Estate of . . . . ., Deceased Probate No. . . . .

To the Department of Human Services, Who May Be Interested in the Estate of . . . . ., Deceased, who died on or about . . . . . (date):

You are hereby notified that on the . . . . day of . . . . . (month), . . . . (year), the last will and testament of . . . . ., deceased, bearing date of the . . . . day of . . . . . (month), . . . . (year), was admitted to probate in the above-named court and that . . . . . was appointed executor of the estate.

You are further notified that the birthdate of the deceased is . . . . . and the deceased's social security number is . . . . . The name of the spouse is . . . . . The birthdate of the spouse is . . . . . and the spouse's social security number is . . . . ., and that the spouse of the deceased is alive as of the date of this notice, or deceased as of . . . . . (date).

You are further notified that the deceased was/was not a disabled or a blind child of the medical assistance recipient by the name of . . . . ., who had a birthdate of . . . . . and a social security number of . . . . ., and the medical assistance debt of that medical assistance recipient was waived pursuant to section 249A.5, subsection 2, paragraph "a", subparagraph (1), and is now collectible from this estate pursuant to section 249A.5, subsection 2, paragraph "b".

Notice is hereby given that if the department of human services has a claim against the estate for the deceased person or persons named in this notice, the claim shall be filed with the clerk of the above-named district court, as provided by law, duly authenticated, for allowance, and unless so filed by the later to occur of four months from the second publication of the notice to creditors or six months from the date of mailing of this notice, unless otherwise allowed or paid, the claim is thereafter forever barred.

Dated this . . . . day of . . . . . (month), . . . . (year)

Executor of estate

Address

Attorney for executor

Address

Date of second publication . . . . day of . . . . . (month), . . . . (year)

2007 Acts, ch 134, §13 Section amended and unnumbered paragraphs 1 and 2 editorially numbered as subsections 1 and 2

633.336 Damages for wrongful death.

When a wrongful act produces death, damages recovered as a result of the wrongful act shall be disposed of as personal property belonging to the estate of the deceased; however, if the damages include damages for loss of services and support of a deceased spouse, parent, or child, the damages shall be apportioned by the court among the surviving spouse, children, and parents of the decedent in a manner as the court may deem equitable consistent with the loss of services and support sustained by the surviving spouse, children, and parents respectively. Any recovery by a parent for the death of a child shall be subordinate to the recovery, if any, of the spouse or a child of the decedent. If the decedent leaves a spouse, child, or parent, damages for wrongful death shall not be subject to debts and charges of the decedent's estate, except for amounts to be paid to the department of human services for payments made for medical assistance pursuant to chapter 249A, paid on behalf of the decedent from the time of the injury which gives rise to the decedent's death up until the date of the decedent's death.

2007 Acts, ch 132, §2, 3 2007 amendments to this section apply to all actions filed on or after July 1, 2007; 2007 Acts, ch 132, §3 Section amended

633.410 Limitation on filing claims against decedent's estate.

1. All claims against a decedent's estate, other than charges, whether due or to become due, absolute or contingent, liquidated or unliquidated, founded on contract or otherwise, are forever barred against the estate, the personal representative, and the distributees of the estate, unless filed with the clerk within the later to occur of four months after the date of the second publication of the notice to creditors or, as to each claimant whose identity is reasonably ascertainable, one month after service of notice by ordinary mail to the claimant's last known address.

2. Notwithstanding subsection 1, claims for debts created under section 249A.5, subsection 2, relating to the recovery of medical assistance payments shall be barred under this section unless filed with the clerk within the later to occur of four months after the date of the second publication of the notice to creditors, or six months after service of notice by ordinary mail, on the form prescribed in section 633.231 for intestate estates or on the form prescribed in section 633.304A for testate estates, to the entity designated by the department of human services to receive notice.

3. Notice is not required to be given by mail to any creditor whose claim will be paid or otherwise satisfied during administration and the personal representative may waive the limitation on filing provided under this section. This section does not bar claims for which there is insurance coverage, to the extent of the coverage, or claimants entitled to equitable relief due to peculiar circumstances.

2007 Acts, ch 134, §14  
Subsection 2 amended

**633.551 Guardianships and conservatorships — general provisions.**

1. The determination of incompetency of the proposed ward or ward and the determination of the need for the appointment of a guardian or conservator or of the modification or termination of a guardianship or conservatorship shall be supported by clear and convincing evidence.

2. The burden of persuasion is on the petitioner in an initial proceeding to appoint a guardian or conservator. In a proceeding to modify or terminate a guardianship or conservatorship, if the guardian or conservator is the petitioner, the burden of persuasion remains with the guardian or conservator. In a proceeding to terminate a guardianship or conservatorship, if the ward is the petitioner, the ward shall make a prima facie showing of some decision-making capacity. Once a prima facie showing is made, the burden of persuasion is on the guardian or conservator to show by clear and convincing evidence that the ward is incompetent.

3. In determining whether a guardianship or conservatorship is to be established, modified, or terminated, the district court shall consider if a limited guardianship or conservatorship pursuant to section 633.635 or 633.637 is appropriate. In making the determination, the court shall make findings of fact to support the powers conferred on the guardian or conservator.

4. In proceedings to establish, modify, or terminate a guardianship or conservatorship, in determining if the proposed ward or ward is incompetent as defined in section 633.3, the court shall consider credible evidence from any source to the effect of third-party assistance in meeting the needs of the proposed ward or ward. However, neither party to the action shall have the burden to produce such evidence relating to third-party assistance.

5. Except as otherwise provided in sections 633.672 and 633.673, in proceedings to establish a guardianship or conservatorship, the costs, including attorney fees and expert witness fees, shall be assessed against the ward or the ward's estate unless the proceeding is dismissed either voluntarily or involuntarily, in which case fees and costs may be assessed against the petitioner for

good cause shown.

2007 Acts, ch 134, §15, 28  
2007 amendment adding new subsection 5 applies to petitions filed on or after July 1, 2007; 2007 Acts, ch 134, §28  
NEW subsection 5

**633.669 Reporting requirements — assistance by clerk.**

1. A guardian appointed under this chapter shall file with the court the following written verified reports:

a. An initial report within sixty days of the guardian's appointment.

b. An annual report, within ninety days of the close of the reporting period, unless the court otherwise orders on good cause shown.

c. A final report within thirty days of the termination of the guardianship under section 633.675 unless that time is extended by the court.

2. Reports required by this section must include:

a. The current mental and physical condition of the ward.

b. The present living arrangement of the ward, including a description of each residence where the ward has resided during the reporting period.

c. A summary of the medical, educational, vocational and other professional services provided for the ward.

d. A description of the guardian's visits with and activities on behalf of the ward.

e. A recommendation as to the need for continued guardianship.

f. Other information requested by the court or useful in the opinion of the guardian.

3. The court shall develop a simplified uniform reporting form for use in filing the required reports.

4. The clerk of the court shall notify the guardian in writing of the reporting requirements and shall provide information and assistance to the guardian in filing the reports.

5. Reports of guardians shall be reviewed and approved by a district court judge or referee.

6. Reports required by this section shall, if requested, be served on the attorney appointed to represent the ward in the guardianship proceeding and all other parties appearing in the proceeding.

2007 Acts, ch 134, §16, 28  
2007 amendment to subsection 1, paragraph b, applies to annual reports of guardians due on or after September 30, 2007; 2007 Acts, ch 134, §28  
Subsection 1, paragraph b amended

**633.670 Inventory — reporting requirements.**

1. A conservator appointed under this chapter shall file with the court:

a. An inventory within sixty days of the con-

servator's appointment. This inventory shall include all property of the ward that has come into the conservator's possession or of which the conservator has knowledge. When additional property comes into the possession of the conservator or to the knowledge of the conservator, a supplemental inventory shall be filed within thirty days.

b. Written verified reports and accountings as follows:

(1) Annually, within ninety days of the close of the reporting period, unless the court otherwise orders on good cause shown.

(2) Within thirty days following the date of removal.

(3) Upon filing resignation and before the resignation is accepted by the court.

(4) Within sixty days following the date of termination.

(5) At other times as the court may order.

2. The clerk of court shall notify the conservator in writing of the reporting requirements.

3. Reports of conservators shall be reviewed and approved by a district court judge or referee.

2007 Acts, ch 134, §17, 28

2007 amendment to subsection 1, paragraph b, subparagraph (1), applies to annual reports of conservators due on or after September 30, 2007;

2007 Acts, ch 134, §28

Subsection 1, paragraph b, subparagraph (1) amended

### **633.700 Intermediate report of trustees.**

Unless specifically relieved from so doing, by the instrument creating the trust, or by order of the court, the trustee shall make a written report, under oath, to the court, once each year, within ninety days of the close of the reporting period, and more often, if required by the court. Such report shall state:

1. The period covered by the report.

2. All changes in beneficiaries since the last previous report.

3. Any changes in investments since the last previous report, including a list of all assets, and recommendations of the trustee for the retention or disposition of any property held by the trustee.

4. A detailed accounting for all cash receipts and disbursements, and for all property of the trust, unless such accounting shall be waived in writing by all beneficiaries.

2007 Acts, ch 134, §18, 28

2007 amendment to unnumbered paragraph 1 applies to annual reports for court-supervised trusts due on or after September 30, 2007; 2007 Acts, ch 134, §28

Unnumbered paragraph 1 amended

## CHAPTER 633A

### IOWA TRUST CODE

#### **633A.4703 General order for abatement.**

Except as otherwise provided by the governing instrument, where necessary to abate shares of the beneficiaries of a trust for the payment of debts and charges, federal and state estate taxes, bequests, the share of the surviving spouse who takes an elective share, and the shares of children born or adopted after the execution of the trust, abatement shall occur in the following order:

1. Shares allocated to the residuary beneficiaries of the trust shall be abated first, on a pro rata basis.

2. Shares defined by a dollar amount, on a pro rata basis.

3. Shares described as specific items of proper-

ty whether tangible or intangible shall be abated last, and such abatement shall be done as equitably by the trustee among the various beneficiaries as circumstances reasonably allow.

4. Notwithstanding subsections 1, 2, or 3, a disposition in favor of the settlor's surviving spouse who does not take an elective share shall not be abated where such abatement would have the effect of increasing the amount of federal estate or federal gift taxes payable by a person or an entity.

2007 Acts, ch 134, §19, 20, 28

2007 amendments to unnumbered paragraph 1 and subsection 4 apply to estates of decedents dying on or after July 1, 2007; 2007 Acts, ch 134, §28

Unnumbered paragraph 1 and subsection 4 amended

## CHAPTER 633C

### MEDICAL ASSISTANCE TRUSTS

#### **633C.3 Disposition of medical assistance income trusts.**

1. Regardless of the terms of a medical assistance income trust, if the beneficiary's total monthly income is less than the average statewide charge for nursing facility services to a private pay resident of a nursing facility, then, during the life

of the beneficiary, any property received or held by the trust shall be expended only as follows, as applicable, and in the following order of priority:

a. A reasonable amount may be paid or set aside each month for necessary expenses of the trust, not to exceed ten dollars per month without court approval.

b. From the remaining principal or income of the trust, amounts may be paid for expenses that qualify as required deductions from income pursuant to 42 C.F.R. § 435.725(c) or 435.726(c) for purposes of determining the amount by which medical assistance payments under chapter 249A for institutional services or for home and community-based services provided under a federal waiver will be reduced based on the beneficiary's income.

c. If the beneficiary is an institutionalized individual or receiving home and community-based services provided under a federal waiver, the remaining principal or income of the trust shall be paid directly to the provider of institutional care or home and community-based services, on a monthly basis, for any cost not paid under paragraph "b", to reduce any amount paid as medical assistance under chapter 249A.

d. Any remaining principal or income of the trust may, at the trustee's discretion or as directed by the terms of the trust, be paid directly to providers of other medical care or services that would otherwise be covered by medical assistance, paid to the state as reimbursement for medical assistance paid on behalf of the beneficiary, or retained by the trust.

2. Regardless of the terms of a medical assistance income trust, if the beneficiary's total monthly income is at or above the average statewide charge for nursing facility services to a private-pay resident, then, during the life of the beneficiary, any property received or held by the trust shall be expended only as follows, as applicable, in the following order of priority:

a. A reasonable amount may be paid or set aside each month for necessary expenses of the trust, not to exceed ten dollars per month without court approval.

b. All remaining property received or held by the trust shall be paid to or otherwise made available to the beneficiary on a monthly basis, to be counted as income or a resource in determining eligibility for medical assistance under chapter 249A.

3. Subsections 1 and 2 shall apply to the fol-

lowing beneficiaries; however, the following amounts indicated shall be applied in lieu of the statewide average charge for nursing facility services:

a. For a beneficiary who meets the medical assistance level of care requirements for services in an intermediate care facility for persons with mental retardation and who either resides in an intermediate care facility for persons with mental retardation or is eligible for services under the medical assistance home and community-based services waiver except that the beneficiary's income exceeds the allowable maximum, the applicable rate is the maximum monthly medical assistance payment rate for services in an intermediate care facility for persons with mental retardation.

b. For a beneficiary who meets the medical assistance level of care requirements for services in a psychiatric medical institution for children and who resides in a psychiatric medical institution for children, the applicable rate is the statewide average charge to private-pay patients for psychiatric medical institution for children care.

c. For a beneficiary who meets the medical assistance level of care requirements for services in a state mental health institute and who either resides in a state mental health institute or is eligible for services under a medical assistance home and community-based services waiver except that the beneficiary's income exceeds the allowable maximum, the applicable rate is the statewide average charge for state mental health institute care.

d. For a beneficiary who meets the medical assistance level of care requirements for services in a nursing facility and is receiving care or is receiving specialized care such as an adult receiving Alzheimer's care, a child receiving skilled nursing facility care, or an adult or child receiving skilled nursing facility care for neurological disorders, the applicable rate is the statewide average charge for nursing facility services for the services or specialized services provided.

2007 Acts, ch 136, §1  
Subsection 1 amended

## CHAPTER 635

### ADMINISTRATION OF SMALL ESTATES

#### 635.1 When applicable.

When the gross value of the probate assets of a decedent subject to the jurisdiction of this state does not exceed one hundred thousand dollars, and upon a petition as provided in section 635.2 of an authorized petitioner in accordance with section 633.227, 633.228, or 633.290, the clerk shall issue letters of appointment for administration to

the proposed personal representative named in the petition, if qualified to serve. Unless otherwise provided in this chapter, the provisions of chapter 633 apply to an estate probated pursuant to this chapter.

2007 Acts, ch 134, §21, 28  
2007 amendment to this section applies to estates of decedents dying on or after July 1, 2007; 2007 Acts, ch 134, §28  
Section stricken and rewritten

### 635.2 Petition requirements.

The petition for administration of a small estate must contain the following:

1. The name, domicile, and date of death of the decedent.
2. The name and address of the surviving spouse, if any.
3. Whether the decedent died intestate or testate, and, if testate, the date the will was executed.
4. A statement that the probate property of the decedent subject to the jurisdiction of this state does not have an aggregate gross value of more than the amount permitted under the provisions of section 635.1.
5. The name and address of the proposed personal representative.

2007 Acts, ch 134, §22, 28  
2007 amendment to this section applies to estates of decedents dying on or after July 1, 2007; 2007 Acts, ch 134, §28  
Section amended

### 635.3 through 635.6 Repealed by 2007 Acts, ch 134, § 26, 28.

2007 repeal of these sections applies to estates of decedents dying on or after July 1, 2007; 2007 Acts, ch 134, §28

### 635.7 Report and inventory — value and conversion.

1. The personal representative is required to file the report and inventory for which provision is made in section 633.361, including all probate and nonprobate assets. This chapter does not exempt the personal representative from complying with the requirements of section 422.27, 450.22, 450.58, 633.480, or 633.481, and the administration of an estate whether converted to or from a small estate shall be considered one proceeding pursuant to section 633.330.

2. If the inventory and report shows the gross value of probate assets subject to the jurisdiction of this state which exceed the amount permitted a small estate under section 635.1, the estate shall be administered as provided in chapter 633.

3. If the inventory report in an estate probated pursuant to chapter 633 indicates the gross value of the probate assets subject to the jurisdiction of this state does not exceed the amount permitted under section 635.1, the estate shall be administered as a small estate upon the filing of a statement by the personal representative that the estate is a small estate.

4. Other interested parties may convert proceedings from a small estate to a regular estate or from a regular estate to a small estate only upon good cause shown with approval from the court.

2007 Acts, ch 134, §23, 28  
2007 amendment to this section applies to estates of decedents dying on or after July 1, 2007; 2007 Acts, ch 134, §28  
Section amended

### 635.8 Closing by sworn statement.

1. The personal representative shall file with the court a closing statement within a reasonable

time from the date of issuance of the letters of appointment, and the closing statement shall be verified or affirmed under penalty of perjury, stating all of the following:

*a.* To the best knowledge of the personal representative, the gross value of the probate assets subject to the jurisdiction of this state does not exceed the amount permitted under section 635.1.

*b.* The estate has been fully administered and will be disbursed and distributed to persons entitled to the estate if no objection is filed to the closing statement after the requisite time period has expired as provided in subsection 2.

*c.* A description of the disbursement and distribution of the estate including an accurate description of all the real estate of which the decedent died seized, stating the nature and extent of the interest in the real estate and its disposition.

*d.* A copy of the closing statement and an opportunity to object and request a hearing has been sent by proper notice, as provided in section 633.40, to all interested parties.

*e.* The personal representative has complied with all statutory requirements pertaining to taxes, including whether federal estate tax was paid or a return was filed, whether Iowa inheritance tax was paid or a return was filed, whether the decedent's final personal income taxes were filed, whether fiduciary income tax returns for the estate were filed, and whether a lien continues to exist for any federal or state tax.

2. If no actions or proceedings involving the estate are pending in the court thirty days after notice of the closing statement is filed, the estate shall close after distribution and the personal representative shall be discharged.

3. The closing statement shall include a statement as to the amount of fees to be paid for services rendered by the personal representative and the personal representative's attorney in administration of the estate. The fees for the personal representative shall not exceed three percent of the gross value of the probate assets of the estate, unless the personal representative itemizes the personal representative's services to the estate. The personal representative's attorney shall be paid reasonable fees as agreed to in writing by the personal representative at or before the time of filing the probate inventory or as approved by the court. All interested parties shall have the opportunity to object and request a hearing as to all fees reported in the closing statement.

4. If a closing statement is not filed within twelve months of the date of issuance of a letter of appointment, an interlocutory report shall be filed within such time period. Such report shall be provided to all interested parties at least once every six months until the closing statement has been filed unless excused by the court for good cause shown. A closing statement filed under this section has the same effect as final settlement of the

estate under chapter 633.

2007 Acts, ch 134, §24, 28  
2007 amendment to this section applies to estates of decedents dying on or after July 1, 2007; 2007 Acts, ch 134, §28  
Section amended

**635.9 and 635.10** Repealed by 2007 Acts, ch 134, § 26, 28.

2007 repeal of these sections applies to estates of decedents dying on or after July 1, 2007; 2007 Acts, ch 134, §28

**635.12** Repealed by 2007 Acts, ch 134, § 26, 28.

2007 repeal of this section applies to estates of decedents dying on or after July 1, 2007; 2007 Acts, ch 134, §28

**635.13 Notice — claims.**

If a petition for administration of a small estate is granted, the notice as provided in section

633.237, and either sections 633.230 and 633.231 or sections 633.304 and 633.304A shall be given. Creditors having claims against the estate must file them with the clerk within the applicable time periods provided in such notices. The notice has the same force and effect as in chapter 633. Claimants of the estate shall be interested parties of the estate as long as the claims are pending in the estate.

2007 Acts, ch 134, §25, 28  
2007 amendment to this section applies to estates of decedents dying on or after July 1, 2007; 2007 Acts, ch 134, §28  
Section amended

**635.14** Repealed by 2007 Acts, ch 134, § 26, 28.

2007 repeal of this section applies to estates of decedents dying on or after July 1, 2007; 2007 Acts, ch 134, §28

## CHAPTER 654

### FORECLOSURE OF REAL ESTATE MORTGAGES

**654.15 Continuance — moratorium.**

1. In all actions for the foreclosure of real estate mortgages, deeds of trust of real property, and contracts for the purchase of real estate, when the owner enters an appearance and files an answer admitting some indebtedness and breach of the terms of the designated instrument, which admissions cannot be withdrawn or denied after a continuance is granted, the owner may apply for a continuance of the foreclosure action if the default or inability of the owner to pay or perform is mainly due or brought about by reason of drought, flood, heat, hail, storm, or other climatic conditions or by reason of the infestation of pests which affect the land in controversy. The application must be in writing and filed at or before final decree. Upon the filing of the application the court shall set a day for hearing on the application and provide by order for notice to be given to the plaintiff of the time fixed for the hearing. If the court finds that the application is made in good faith and is supported by competent evidence showing that default in payment or inability to pay is due to drought, flood, heat, hail, storm, or other climatic conditions or due to infestation of pests, the court may continue the foreclosure proceeding as follows:

*a.* If the default or breach of terms of the written instrument on which the action is based occurs on or before the first day of March of any year by reason of any of the causes specified in this subsection, causing the loss and failure of crops on the land involved in the previous year, the continuance shall end on the first day of March of the succeeding year.

*b.* If the default or breach of terms of the written instrument occurs after the first day of March, but during that crop year and that year's crop fails

by reason of any of the causes set out in this subsection, the continuance shall end on the first day of March of the second succeeding year.

*c.* Only one continuance shall be granted, except upon a showing of extraordinary circumstances in which event the court may grant a second continuance for a further period as the court deems just and equitable, not to exceed one year.

*d.* The order shall provide for the appointment of a receiver to take charge of the property and to rent the property. The owner or person in possession shall be given preference in the occupancy of the property. The receiver, who may be the owner or person in possession, shall collect the rents and income and distribute the proceeds as follows:

(1) For the payment of the costs of receivership.

(2) For the payment of taxes due or becoming due during the period of receivership.

(3) For the payment of insurance on the buildings on the premises.

(4) The remaining balance shall be paid to the owner of the written instrument upon which the foreclosure is based, to be credited on the instrument.

An owner of a small business may apply for a continuance as provided in this subsection if the real estate subject to foreclosure is used for the small business. The court may continue the foreclosure proceeding if the court finds that the application is made in good faith and is supported by competent evidence showing that the default in payment or inability to pay is due to the economic condition of the customers of the small business, because the customers of the small business have been significantly economically distressed as a result of drought, flood, heat, hail, storm, or other climatic conditions or due to infestation of pests.



The length of the continuance shall be determined by the court, but shall not exceed two years.

2. In all actions for the foreclosure of real estate mortgages, deeds of trust of real estate, and contracts for the purchase of real estate, an owner of real estate may apply for a moratorium as provided in this subsection if the governor declares a state of economic emergency. The governor shall state in the declaration the types of real estate eligible for a moratorium continuance, which may include real estate used for farming; designated types of real estate not used for farming, including real estate used for small business; or all real estate. Only property of a type specified in the declaration which is subject to a mortgage, deed of trust, or contract for purchase entered into before the date of the declaration is eligible for a moratorium. In an action for the foreclosure of a mortgage, deed of trust, or contract for purchase of real estate eligible for a moratorium, the owner may apply for a continuation of the foreclosure if the owner has entered an appearance and filed an answer admitting some indebtedness and breach of the terms of the designated instrument. The admissions cannot be withdrawn or denied after a continuance is granted. Applications for continuance made pursuant to this subsection must be filed within one year of the governor's declaration of economic emergency. Upon the filing of an application as provided in this subsection, the court shall set a date for hearing and provide by order for notice to the parties of the time for the hearing. If the court finds that the application is made in good faith and the owner is unable to pay or perform, the court may continue the foreclosure proceeding as follows:

*a.* If the application is made in regard to real estate used for farming, the continuance shall terminate two years from the date of the order. If the application is made in regard to real estate not used for farming, the continuance shall terminate one year from the date of the order.

*b.* Only one continuance shall be granted the applicant for each written instrument or contract under each declaration.

*c.* The court shall appoint a receiver to take charge of the property and to rent the property. The applicant shall be given preference in the occupancy of the property. The receiver, who may be the applicant, shall collect the rents and income and distribute the proceeds as follows:

(1) For the payment of the costs of receivership, including the required interest on the written instrument and the costs of operation.

(2) For the payment of taxes due or becoming due during the period of receivership.

(3) For the payment of insurance deemed necessary by the court including but not limited to insurance on the buildings on the premises and liability insurance.

(4) The remaining balance shall be paid to the owner of the written instrument upon which the

foreclosure was based, to be credited against the principal due on the written instrument.

*d.* A continuance granted under this subsection may be terminated if the court finds, after notice and hearing, all of the following:

(1) The party seeking foreclosure has made reasonable efforts in good faith to work with the applicant to restructure the debt obligations of the applicant.

(2) The party seeking foreclosure has made reasonable efforts in good faith to work with the applicant to utilize state and federal programs designed and implemented to provide debtor relief options. For the purposes of subparagraph (1) and this subparagraph, the determination of reasonableness shall take into account the financial condition of the party seeking foreclosure, and the financial strength and the long-term financial survivorship potential of the applicant.

(3) The applicant has failed to pay interest due on the written instrument.

2007 Acts, ch 54, §43  
Subsection 3 stricken

#### **654.15A Notice of sale to junior creditors.**

A junior creditor may file and serve on the judgment creditor a request for notice of the sheriff's sale. Such request for notice shall include a facsimile number or electronic mail address where the creditor shall be notified of the sale. At least ten days prior to the date of sale, the attorney for the junior creditor shall file proof of service of such request for notice. Upon motion filed within thirty days of the sale, the court may set aside a sale in which a junior creditor who requests notice is damaged by the failure of the sheriff or the judgment creditor to give notice pursuant to this section.

2007 Acts, ch 126, §105  
Section applies to actions commenced on or after July 1, 2006; 2006 Acts, ch 1132, §16  
Section amended

#### **654.17 Recision of foreclosure.**

1. At any time prior to the recording of the sheriff's deed, and before the mortgagee's rights become unenforceable by operation of the statute of limitations, the judgment creditor, or the judgment creditor who is the successful bidder at the sheriff's sale, with the written consent of the mortgagor may rescind the foreclosure action by filing a notice of recision with the clerk of court in the county in which the property is located along with a filing fee of fifty dollars. In addition, if the original loan documents are contained in the court file, the mortgagor shall pay a fee of twenty-five dollars to the clerk of the district court. Upon the payment of the fee, the clerk shall make copies of the original loan documents for the court file, and return the original loan documents to the mortgagor.

2. Upon the filing of the notice of recision, the mortgage loan shall be enforceable according to the original terms of the mortgage loan and the

rights of all persons with an interest in the property may be enforced as if the foreclosure had not been filed. However, any findings of fact or law shall be preclusive for purposes of any future action unless the court, upon hearing, rules otherwise. The mortgagor shall be assessed costs, including reasonable attorney fees, of foreclosure

and recision if provided by the mortgage agreement.

2007 Acts, ch 71, §5; 2007 Acts, ch 126, §106  
Section applies to actions commenced on or after July 1, 2006; 2006 Acts, ch 1132, §16

See Code editor's note to §29A.28  
Section amended

## CHAPTER 655

### SATISFACTION OF MORTGAGES

#### 655.5 Instrument of satisfaction.

When the judgment is paid in full, the mortgagee shall file with the clerk a satisfaction of judgment which shall release the mortgage underlying the action. A mortgagee who fails to file a satisfaction within thirty days of receiving a written request shall be subject to reasonable damages and

a penalty of one hundred dollars plus reasonable attorney fees incurred by the aggrieved party, to be recovered in an action for the satisfaction by the party aggrieved.

2007 Acts, ch 85, §1  
Section amended

## CHAPTER 655A

### NONJUDICIAL FORECLOSURE OF NONAGRICULTURAL MORTGAGES

#### 655A.3 Notice.

1. *a.* The nonjudicial foreclosure is initiated by the mortgagee by serving on the mortgagor a written notice which shall:

(1) Reasonably identify by a document reference number the mortgage and accurately describe the real estate covered.

(2) Specify the terms of the mortgage with which the mortgagor has not complied. The terms shall not include any obligation arising from acceleration of the indebtedness secured by the mortgage.

(3) State that, unless within thirty days after the completed service of the notice the mortgagor performs the terms in default or files with the recorder of the county where the mortgaged property is located a rejection of the notice pursuant to section 655A.6 and serves a copy of the rejection upon the mortgagee, the mortgage will be foreclosed.

*b.* The notice shall contain the following in capital letters of the same type or print size as the rest of the notice:

WITHIN THIRTY DAYS AFTER YOUR RECEIPT OF THIS NOTICE, YOU MUST EITHER CURE THE DEFAULTS DESCRIBED IN THIS NOTICE OR FILE WITH THE RECORDER OF THE COUNTY WHERE THE MORTGAGED PROPERTY IS LOCATED A REJECTION OF THIS NOTICE AND SERVE A COPY OF YOUR REJECTION ON THE MORTGAGEE IN THE

MANNER PROVIDED BY THE RULES OF CIVIL PROCEDURE FOR SERVICE OF ORIGINAL NOTICES. IF YOU WISH TO REJECT THIS NOTICE, YOU SHOULD CONSULT AN ATTORNEY AS TO THE PROPER MANNER TO MAKE THE REJECTION.

IF YOU DO NOT TAKE EITHER OF THE ACTIONS DESCRIBED ABOVE WITHIN THE THIRTY-DAY PERIOD, THE FORECLOSURE WILL BE COMPLETE AND YOU WILL LOSE TITLE TO THE MORTGAGED PROPERTY. AFTER THE FORECLOSURE IS COMPLETE THE DEBT SECURED BY THE MORTGAGED PROPERTY WILL BE EXTINGUISHED.

2. The mortgagee shall also serve a copy of the notice required in subsection 1 on the person in possession of the real estate, if different than the mortgagor, and on all junior lienholders of record.

3. The mortgagee may file a written notice required in subsection 1 together with proof of service on the mortgagor with the recorder of the county where the mortgaged property is located. Such a filing shall have the same force and effect on third parties as an indexed notation entered by the clerk of the district court pursuant to section 617.10, commencing from the filing of proof of service on the mortgagors and terminating on the filing of a rejection pursuant to section 655A.6, an affidavit of completion pursuant to section 655A.7, or the expiration of ninety days from completion of

service on the mortgagors, whichever occurs first.

4. As used in this chapter, “mortgagee” and “mortgagor” include a successor in interest.

2007 Acts, ch 126, §107

Subsection 1, unnumbered paragraph 1 editorially designated as sub-

section 1, paragraph a, unnumbered paragraph 1

Subsection 1, former paragraphs a – c editorially redesignated as subparagraphs (1) – (3) of paragraph a

Subsection 1, former unnumbered paragraph 2 editorially designated as paragraph b

Subsection 3 amended

## CHAPTER 664A

### NO-CONTACT ORDERS — ENFORCEMENT OF PROTECTIVE ORDERS

#### 664A.1 Definitions.

For purposes of this chapter:

1. “No-contact order” means a court order issued in a criminal proceeding requiring the defendant to have no contact with the alleged victim, persons residing with the alleged victim, or members of the alleged victim’s immediate family, and to refrain from harassing the alleged victim, persons residing with the alleged victim, or members of the alleged victim’s family.

2. “Protective order” means a protective order issued pursuant to chapter 232, a court order or court-approved consent agreement entered pursuant to chapter 236, including a valid foreign protective order under section 236.19, subsection 3, a temporary or permanent protective order or order to vacate the homestead under chapter 598, or an order that establishes conditions of release or is a protective order or sentencing order in a criminal prosecution arising from a domestic abuse assault under section 708.2A, or a civil injunction issued pursuant to section 915.22.

3. “Victim” means a person who has suffered physical, emotional, or financial harm as a result of a public offense, as defined in section 701.2, committed in this state.

2007 Acts, ch 180, §4

Subsection 2 amended

#### 664A.2 Applicability.

1. This chapter applies to no-contact orders issued for violations or alleged violations of sections 708.2A, 708.7, 708.11, 709.2, 709.3, and 709.4, and any other public offense for which there is a victim.

2. A protective order issued in a civil proceeding shall be issued pursuant to chapter 232, 236, 598, or 915. Punishment for a violation of a protective order shall be imposed pursuant to section 664A.7.

2007 Acts, ch 180, §5

Subsection 2 amended

#### 664A.3 Entry of temporary no-contact order.

1. When a person is taken into custody for contempt proceedings pursuant to section 236.11 or arrested for any public offense referred to in section 664A.2, subsection 1, and the person is brought before a magistrate for initial appearance, the magistrate shall enter a no-contact order if the magistrate finds both of the following:

a. Probable cause exists to believe that any public offense referred to in section 664A.2, subsection 1, or a violation of a no-contact order, protective order, or consent agreement has occurred.

b. The presence of or contact with the defendant poses a threat to the safety of the alleged victim, persons residing with the alleged victim, or members of the alleged victim’s family.

2. Notwithstanding chapters 804 and 805, a person taken into custody pursuant to section 236.11 or arrested pursuant to section 236.12 may be released on bail or otherwise only after initial appearance before a magistrate as provided in chapter 804 and the rules of criminal procedure or section 236.11, whichever is applicable.

3. A no-contact order issued pursuant to this section shall be issued in addition to any other conditions of release imposed by a magistrate pursuant to section 811.2. The no-contact order has force and effect until it is modified or terminated by subsequent court action in a contempt proceeding or criminal or juvenile court action and is reviewable in the manner prescribed in section 811.2. Upon final disposition of the criminal or juvenile court action, the court shall terminate or modify the no-contact order pursuant to section 664A.5.

4. A no-contact order requiring the defendant to have no contact with the alleged victim’s children shall prevail over any existing order which may be in conflict with the no-contact order.

5. A no-contact order issued pursuant to this section shall restrict the defendant from having contact with the victim, persons residing with the victim, or the victim’s immediate family.

2007 Acts, ch 180, §6

NEW subsection 2 and former subsections 2 – 4 redesignated as subsections 3 – 5

#### 664A.5 Modification — entry of permanent no-contact order.

If a defendant is convicted of, receives a deferred judgment for, or pleads guilty to a public offense referred to in section 664A.2, subsection 1, or is held in contempt for a violation of a no-contact order issued under section 664A.3 or for a violation of a protective order issued pursuant to chapter 232, 236, 598, or 915, the court shall either terminate or modify the temporary no-contact order issued by the magistrate. The court may enter a no-contact order or continue the no-contact order al-

ready in effect for a period of five years from the date the judgment is entered or the deferred judgment is granted, regardless of whether the defendant is placed on probation.

2007 Acts, ch 180, §7  
Section amended

**664A.6 Mandatory arrest for violation of no-contact order — immunity for actions.**

1. If a peace officer has probable cause to believe that a person has violated a no-contact order issued under this chapter, the peace officer shall take the person into custody and shall take the person without unnecessary delay before the nearest or most accessible magistrate in the judicial district in which the person was taken into custody.

2. If the peace officer is investigating a domestic abuse assault pursuant to section 708.2A, the officer shall also comply with sections 236.11 and 236.12.

3. A peace officer shall not be held civilly or criminally liable for acting pursuant to this section provided the peace officer acts in good faith and on reasonable grounds and the peace officer's acts do not constitute a willful or wanton disregard for the rights or safety of another.

2007 Acts, ch 180, §8  
NEW subsection 3

**664A.7 Violation of no-contact order or protective order — contempt or simple misdemeanor penalties.**

1. Violation of a no-contact order issued under this chapter or a protective order issued pursuant to chapter 232, 236, or 598, including a modified no-contact order, is punishable by summary contempt proceedings.

2. A hearing in a contempt proceeding brought pursuant to this section shall be held not less than five and not more than fifteen days after the issuance of a rule to show cause, as determined by the court.

3. If convicted of or held in contempt for a violation of a no-contact order or a modified no-contact order for a public offense referred to in section 664A.2, subsection 1, or held in contempt of a no-contact order issued during a contempt proceeding brought pursuant to section 236.11, the person shall be confined in the county jail for a minimum of seven days. A jail sentence imposed pursuant to this subsection shall be served on consecutive

days. No portion of the mandatory minimum term of confinement imposed by this subsection shall be deferred or suspended. A deferred judgment, deferred sentence, or suspended sentence shall not be entered for a violation of a no-contact order, modified no-contact order, or protective order and the court shall not impose a fine in lieu of the minimum sentence, although a fine may be imposed in addition to the minimum sentence.

4. If convicted or held in contempt for a violation of a civil protective order referred to in section 664A.2, the person shall serve a jail sentence. A jail sentence imposed pursuant to this subsection shall be served on consecutive days. A person who is convicted of or held in contempt for a violation of a protective order referred to in section 664A.2 may be ordered by the court to pay the plaintiff's attorney's fees and court costs.

5. Violation of a no-contact order entered for the offense or alleged offense of domestic abuse assault in violation of section 708.2A or a violation of a protective order issued pursuant to chapter 232, 236, 598, or 915 constitutes a public offense and is punishable as a simple misdemeanor. Alternatively, the court may hold a person in contempt of court for such a violation, as provided in subsection 3.

6. A person shall not be held in contempt or convicted of violations under multiple no-contact orders, protective orders, or consent agreements, for the same set of facts and circumstances that constitute a single violation.

2007 Acts, ch 180, §9, 10  
Subsection 3 amended  
NEW subsection 4  
Former subsection 4 amended and renumbered as 5  
Former subsection 5 renumbered as 6

**664A.8 Extension of no-contact order.**

Upon the filing of an application by the state or by the victim of any public offense referred to in section 664A.2, subsection 1 which is filed within ninety days prior to the expiration of a modified no-contact order, the court shall modify and extend the no-contact order for an additional period of five years, unless the court finds that the defendant no longer poses a threat to the safety of the victim, persons residing with the victim, or members of the victim's family. The number of modifications extending the no-contact order permitted by this section is not limited.

2007 Acts, ch 180, §11  
Section amended

## CHAPTER 668

### LIABILITY IN TORT — COMPARATIVE FAULT

**668.10 Governmental exemptions.**

1. In any action brought pursuant to this chapter, the state or a municipality shall not be as-

signed a percentage of fault for any of the following:

a. The failure to place, erect, or install a stop

sign, traffic control device, or other regulatory sign as defined in the uniform manual for traffic control devices adopted pursuant to section 321.252. However, once a regulatory device has been placed, created, or installed, the state or municipality may be assigned a percentage of fault for its failure to maintain the device.

b. The failure to remove natural or unnatural accumulations of snow or ice, or to place sand, salt, or other abrasive material on a highway, road, or street if the state or municipality establishes that it has complied with its policy or level of service for

snow and ice removal or placing sand, salt, or other abrasive material on its highways, roads, or streets.

2. In any action brought pursuant to this chapter, the state shall not be assigned a percentage of fault for contribution unless the party claiming contribution has given the state notice of the claim pursuant to section 669.13.

2007 Acts, ch 110, §3

2007 amendments to this section apply to complaints, claims, and actions arising out of an alleged death, loss, or injury occurring on or after July 1, 2007; 2007 Acts, ch 110, §6

Section amended

## CHAPTER 669

### STATE TORT CLAIMS

#### 669.13 Limitation of actions.

1. Except as provided in section 614.8, a claim or suit otherwise permitted under this chapter shall be forever barred, unless within two years after the claim accrued, the claim is made in writing and filed with the director of the department of management under this chapter. The time to begin a suit under this chapter shall be extended for a period of six months from the date of mailing of notice to the claimant by the attorney general as to the final disposition of the claim or from the date of withdrawal of the claim under section 669.5, if the time to begin suit would otherwise expire before the end of the period.

2. If a claim is made or filed under any other law of this state and a determination is made by a state agency or court that this chapter provides the exclusive remedy for the claim, the two-year

period authorized in subsection 1 to make a claim and to begin a suit under this chapter shall be extended for a period of six months from the date of the court order making such determination or the date of mailing of notice to the claimant of such determination by a state agency, if the time to make the claim and to begin the suit under this chapter would otherwise expire before the end of the two-year period. The time to begin a suit under this chapter may be further extended as provided in subsection 1.

3. This section is the only statute of limitations applicable to claims as defined in this chapter.

2007 Acts, ch 110, §4

2007 amendment to subsection 1 applies to complaints, claims, and actions arising out of an alleged death, loss, or injury occurring on or after July 1, 2007; 2007 Acts, ch 110, §6

Subsection 1 amended

## CHAPTER 670

### TORT LIABILITY OF GOVERNMENTAL SUBDIVISIONS

#### 670.5 Limitation of actions.

Except as provided in section 614.8, a person who claims damages from any municipality or any officer, employee or agent of a municipality for or on account of any wrongful death, loss, or injury within the scope of section 670.2 or section 670.8 or under common law shall commence an action

therefor within two years after the alleged wrongful death, loss, or injury.

2007 Acts, ch 110, §5

2007 amendments to this section apply to complaints, claims, and actions arising out of an alleged death, loss, or injury occurring on or after July 1, 2007; 2007 Acts, ch 110, §6

Section amended

CHAPTER 674  
CHANGING NAMES

**674.11 County clerk's record.** Repealed  
by 2007 Acts, ch 71, § 6.

CHAPTER 680  
RECEIVERS

**680.8 Nonapplicability.**

The provisions of section 680.7 shall not apply to the receivership of state banks, as defined in section 524.105, trust companies, or private banks. In addition, in the receivership of such state banks and trust companies, or private banks, no prefer-

ence or priority shall be allowed as is provided in section 680.7 except for labor or wage claims as provided by statute.

2007 Acts, ch 22, §104  
Labor or wage claims preferred, §626.69, 633.425, 681.13  
Section amended

CHAPTER 692

CRIMINAL HISTORY AND INTELLIGENCE DATA

**692.3 Redissemination of arrest data and other information.**

A criminal or juvenile justice agency may disseminate arrest data, and the name, photograph, physical description, and other identifying information concerning a person who is wanted or being sought if a warrant for the arrest of that person has been issued. Information relating to any threat the person may pose to the public may also be disseminated. The information may be disseminated through any written, audio, or visual means utilized by a criminal or juvenile justice agency. Any dissemination of information pursuant to this section shall also include the statement provided in section 692.2, subsection 1, paragraph "b", subparagraph (5).

2007 Acts, ch 38, §5  
NEW section

**692.6 Civil remedy.**

Any person may institute a civil action for damages under chapter 669 or 670 or to restrain the dissemination of the person's criminal history data or intelligence data in violation of this chapter. Notwithstanding any provisions of chapter 669 or 670 to the contrary, any person, agency, or governmental body proven to have disseminated or to have requested and received criminal history data or intelligence data in violation of this chapter shall be liable for actual damages and exemplary damages for each violation and shall be liable for court costs, expenses, and reasonable attorneys' fees incurred by the party bringing the action. In no case shall the award for damages be

less than one hundred dollars.

2007 Acts, ch 38, §6  
Section amended

**692.8A Dissemination of intelligence data.**

1. A criminal or juvenile justice agency, state or federal regulatory agency, or a peace officer shall not disseminate intelligence data, which has been received from the department or division or from any other source, outside the agency or the peace officer's agency unless all of the following apply:

a. The intelligence data is for official purposes in connection with prescribed duties of a criminal or juvenile justice agency.

b. The agency maintains a list of the agencies, organizations, or persons receiving the intelligence data and the date and purpose of the dissemination.

c. The agency disseminating the intelligence data is satisfied that the need to know and the intended use are reasonable.

2. Notwithstanding subsection 1, a criminal or juvenile justice agency, state or federal regulatory agency, or peace officer may disseminate intelligence data to an agency, organization, or person when disseminated for an official purpose, and in order to protect a person or property from a threat of imminent serious harm, and if the dissemination complies with paragraphs "b" and "c" of subsection 1.

3. An agency, organization, or person receiving intelligence data from a criminal or juvenile jus-

tice agency, state or federal regulatory agency, or a peace officer pursuant to this chapter may only disseminate the intelligence data if authorized by the agency or peace officer providing the data. A criminal or juvenile justice agency, state or federal regulatory agency, or a peace officer who disseminates intelligence data pursuant to this chapter may limit the type of data released in order to protect the intelligence methods and sources used to gather the data, and may also place restrictions on the dissemination by the agency, organization, or person receiving the intelligence data. An agency, organization, or person receiving intelligence data is also subject to the provisions of this chapter and shall comply with any administrative rules adopted pursuant to this chapter.

4. An intelligence assessment and intelligence data shall be deemed a confidential record of the department under section 22.7, subsection 55, except as otherwise provided in this subsection. This section shall not be construed to prohibit the dissemination of an intelligence assessment to any agency or organization if necessary for carrying out the official duties of the agency or organization, or to a person if disseminated for an official purpose, and to a person if necessary to protect a person or property from a threat of imminent serious harm. This section shall also not be construed to prohibit the department from disseminating a public health and safety threat advisory or alert by press release or other method of public communication.

2007 Acts, ch 22, §105  
Subsection 4 amended

#### **692.15 Reports to department.**

1. If it comes to the attention of a sheriff, police department, or other law enforcement agency that a public offense or delinquent act has been committed in its jurisdiction, the law enforcement agency shall report information concerning the public offense or delinquent act to the department on a form to be furnished by the department not more than thirty-five days from the time the public offense or delinquent act first comes to the attention of the law enforcement agency. The reports shall be used to generate crime statistics. The department shall submit statistics to the governor, the general assembly, and the division of criminal and juvenile justice planning of the department of human rights on a quarterly and yearly basis.

2. If a sheriff, police department, or other law enforcement agency makes an arrest or takes a juvenile into custody which is reported to the department, the law enforcement agency making the arrest or taking the juvenile into custody and any other law enforcement agency which obtains custody of the arrested person or juvenile taken into

custody shall furnish a disposition report to the department if the arrested person or juvenile taken into custody is transferred to the custody of another law enforcement agency or is released without having a complaint or information or petition under section 232.35 filed with any court.

3. The law enforcement agency making an arrest and securing fingerprints pursuant to section 690.2 or taking a juvenile into custody and securing fingerprints pursuant to section 232.148 shall fill out a final disposition report on each arrest or taking into custody on a form and in the manner prescribed by the commissioner of public safety. The final disposition report shall be forwarded to the county attorney, or at the discretion of the county attorney, to the clerk of the district court, in the county where the arrest or taking into custody occurred, or to the juvenile court officer who received the referral, whichever is deemed appropriate under the circumstances.

4. The county attorney of each county or juvenile court officer who received the referral shall complete the final disposition report and submit it to the department within thirty days if a preliminary information or citation is dismissed without a new charge being filed. If an indictment is returned or a county attorney's information is filed, or a petition is filed under section 232.35, the final disposition form shall be forwarded to either the clerk of the district court or juvenile court of that county.

5. If a criminal complaint or information or petition under section 232.35 is filed in any court, the clerk shall furnish a disposition report of the case.

6. Any disposition report shall be sent to the department within thirty days after disposition on a form provided by the department.

7. The hate crimes listed in section 729A.2 are subject to the reporting requirements of this section.

8. The fact that a person was convicted for a sexually predatory offense under chapter 901A shall be reported with other conviction data regarding that person.

2007 Acts, ch 38, §7  
Subsection 3 amended

#### **692.16 Review and removal.**

At least every year the division shall review and determine current status of all Iowa arrests or takings into custody reported, which are at least four years old with no disposition data. Any Iowa arrest or taking of a juvenile into custody recorded within a computer data storage system which has no disposition data after four years shall be removed unless there is an outstanding arrest warrant or detainer on such charge.

2007 Acts, ch 38, §8  
Section amended

## CHAPTER 707

## HOMICIDE AND RELATED CRIMES

**707.8A Partial-birth abortion prohibited — exceptions — penalties.**

1. As used in this section, unless the context otherwise requires:

*a.* “Abortion” means abortion as defined in section 146.1.

*b.* “Fetus” means a human fetus.

*c.* “Partial-birth abortion” means an abortion in which a person partially vaginally delivers a living fetus before killing the fetus and completing the delivery.

*d.* “Vaginally delivers a living fetus before killing the fetus” means deliberately and intentionally delivering into the vagina a living fetus or a substantial portion of a living fetus for the purpose of performing a procedure the person knows will kill the fetus, and then killing the fetus.

2. A person shall not knowingly perform or attempt to perform a partial-birth abortion. This prohibition shall not apply to a partial-birth abortion that is necessary to save the life of the mother whose life is endangered by a physical disorder, physical illness, or physical injury.

3. This section shall not be construed to create a right to an abortion.

4. *a.* The mother on whom a partial-birth abortion is performed, the father of the fetus, or, if the mother is less than eighteen years of age or unmarried at the time of the partial-birth abortion, a maternal grandparent of the fetus may bring an action against a person violating subsection 2 to obtain appropriate relief, unless the pregnancy re-

sulted from the plaintiff’s criminal conduct or the plaintiff consented to the partial-birth abortion.

*b.* In an action brought under this subsection, appropriate relief may include any of the following:

(1) Statutory damages which are equal to three times the cost of the partial-birth abortion.

(2) Compensatory damages for all injuries, psychological and physical, resulting from violation of subsection 2.

5. A person who violates subsection 2 is guilty of a class “C” felony.

6. A mother upon whom a partial-birth abortion is performed shall not be prosecuted for violation of subsection 2 or for conspiracy to violate subsection 2.

7. *a.* A licensed physician subject to the authority of the board of medicine who is accused of a violation of subsection 2 may seek a hearing before the board on whether the physician’s conduct was necessary to save the life of the mother whose life was endangered by a physical disorder, physical illness, or physical injury.

*b.* The board’s findings concerning the physician’s conduct are admissible at the criminal trial of the physician. Upon a motion of the physician, the court shall delay the beginning of the trial for not more than thirty days to permit the hearing before the board of medicine to take place.

2007 Acts, ch 10, §181  
Subsection 7 amended

## CHAPTER 707B

## HUMAN CLONING

Repealed by 2007 Acts, ch 6, §5; see chapter 707C

## CHAPTER 707C

## HUMAN STEM CELL RESEARCH AND CLONING

**707C.1 Title.**

This chapter shall be known and may be cited as the “*Iowa Stem Cell Research and Cures Initiative*”.

2007 Acts, ch 6, §1  
NEW section

**707C.2 Purpose.**

It is the purpose of this chapter to ensure that Iowa patients have access to stem cell therapies and cures and that Iowa researchers may conduct

stem cell research and develop therapies and cures in the state, and to prohibit human reproductive cloning.

2007 Acts, ch 6, §2  
NEW section

**707C.3 Definitions.**

As used in this chapter, unless the context otherwise requires:

1. “*Human reproductive cloning*” means human asexual reproduction, using somatic cell nu-



clear transfer, for implantation or attempted implantation into a woman's uterus or substitute for a woman's uterus. "Human reproductive cloning" does not include somatic cell nuclear transfer performed for the purpose of creating embryonic stem cells.

2. "Human somatic cell" means a diploid cell having a complete set of chromosomes obtained or derived from a living or deceased human body at any stage of development.

3. "Oocyte" means a human ovum.

4. "Somatic cell nuclear transfer" means a technique in which the nucleus of a human somatic cell is injected or transplanted into a fertilized or unfertilized oocyte from which the nucleus has been removed.

2007 Acts, ch 6, §3  
NEW section

#### **707C.4 Human reproductive cloning — prohibitions — penalty.**

1. A person shall not intentionally or knowingly do any of the following:

a. Perform or attempt to perform human re-

productive cloning.

b. Participate in performing or in an attempt to perform human reproductive cloning.

c. Transfer or receive, in whole or in part, for the purpose of shipping, receiving, or importing, the product of human reproductive cloning.

2. a. A person who violates subsection 1, paragraph "a" or "b", is guilty of a class "C" felony.

b. A person who violates subsection 1, paragraph "c", is guilty of an aggravated misdemeanor.

3. A person who violates this section in a manner that results in a pecuniary gain to the person is subject to a civil penalty in an amount that is twice the amount of the gross gain.

4. A person who violates this section and who is licensed pursuant to chapter 148, 150, or 150A is subject to revocation of the person's license.

5. A violation of this section is grounds for denial of an application for, denial of renewal of, or revocation of any license, permit, certification, or any other form of permission required to practice or engage in any trade, occupation, or profession regulated by the state.

2007 Acts, ch 6, §4  
NEW section

## CHAPTER 709

### SEXUAL ABUSE

#### **709.18 Abuse of a corpse.**

1. A person commits abuse of a human corpse if the person knowingly and intentionally engages in a sex act, as defined in section 702.17, with a human corpse.

2. A person commits abuse of a human corpse if the person mutilates, disfigures, or dismembers a human corpse with the intent to conceal a crime.

3. A person commits abuse of a human corpse if the person hides or buries a human corpse with the intent to conceal a crime.

4. A person who violates this section commits a class "D" felony.

2007 Acts, ch 91, §2  
Section amended

## CHAPTER 714

### THEFT, FRAUD, AND RELATED OFFENSES

#### **714.16C Consumer education and litigation fund.**

1. A consumer education and litigation fund is created as a separate fund in the state treasury to be administered by the attorney general. Moneys credited to the fund shall include amounts received as a result of a state or federal civil consumer fraud judgment or settlement, civil penalties, costs, or attorney fees, and amounts which are specifically directed to the credit of the fund by the judgment or settlement, and amounts which are designated by the judgment or settlement for use by the attorney general for consumer litigation or education purposes. Moneys designated for consumer reimbursement shall not be credited to the

fund, except to the extent that such moneys are permitted to be used for enforcement of section 714.16.

2. For each fiscal year, not more than one million one hundred twenty-five thousand dollars is appropriated from the fund to the department of justice to be used for public education relating to consumer fraud and for enforcement of section 714.16 and federal consumer laws, and not more than seventy-five thousand dollars is appropriated from the fund to the department of justice to be used for investigation, prosecution, and consumer education relating to consumer and criminal fraud committed against older Iowans.

3. Notwithstanding section 8.33, moneys cred-

ited to the fund shall not revert to any other fund. Notwithstanding section 12C.7, interest or earnings on the moneys in the fund shall be credited to the fund.

2007 Acts, ch 213, §24  
NEW section

**714.25 Disclosure.**

1. For purposes of this chapter, unless the context otherwise requires, “*proprietary school*” means a person offering a course of instruction at the postsecondary level, for profit, that is more than four months in length and leads to a degree, diploma, or license.

2. A proprietary school shall, prior to the time a student is obligated for payment of any moneys, inform the student, the college student aid commission, and in the case of a school licensed under section 157.8, the board of cosmetology arts and sciences or in the case of a school licensed under section 158.7, the board of barbering, of all of the following:

a. The total cost of the course of instruction as charged by the school.

b. An estimate of any fees which may be charged the student by others which would be required if the student is to successfully complete the course and, if applicable, obtain a degree, diploma, or license.

c. The percentage of students who successfully complete the course, the percentage who terminate prior to completing the course, and the period of time upon which the school has based these per-

centages. The reporting period shall not be less than one year in length and shall not extend more than five years into the past.

d. If claims are made by the school as to successful placement of students in jobs upon completion of the course of study, the school shall provide the student with all of the following:

(1) The percentage of graduating students who were placed in jobs in fields related to the course of instruction.

(2) The percentage of graduating students who went on to further education immediately upon graduation.

(3) The percentage of students who, ninety days after graduation, were without a job and had not gone on to further education.

(4) The period of time upon which the reports required by paragraphs “a” through “c” were based. The reporting period shall not be less than one year in length and shall not extend more than five years into the past.

e. If claims are made by the school as to income levels of students who have graduated and are working in fields related to the school’s course of instruction, the school shall inform the student of the method used to derive such information.

2007 Acts, ch 10, §182  
Unnumbered paragraph 1 editorially designated as subsection 1  
Former unnumbered paragraph 2 amended and editorially designated as subsection 2, unnumbered paragraph 1, and former subsections 1 – 3 editorially redesignated as paragraphs a – c of subsection 2  
Former subsection 4 and paragraphs a – d editorially redesignated as paragraph d, unnumbered paragraph 1 and subparagraphs (1) – (4) of subsection 2  
Former subsection 5 editorially redesignated as paragraph e of subsection 2

**CHAPTER 715**

**COMPUTER SPYWARE AND MALWARE PROTECTION**

**715.6 Exceptions.**

Sections 715.4 and 715.5 shall not apply to the monitoring of, or interaction with, an owner’s or an operator’s internet or other network connection, service, or computer, by a telecommunications carrier, cable operator, computer hardware or software provider, or provider of information service or interactive computer service for network or computer security purposes, diagnostics, technical support, maintenance, repair, authorized updates of computer software or system firmware, authorized remote system manage-

ment, or detection, criminal investigation, or prevention of the use of or fraudulent or other illegal activities prohibited in this chapter in connection with a network, service, or computer software, including scanning for and removing computer software prescribed under this chapter. Nothing in this chapter shall limit the rights of providers of wire and electronic communications under 18 U.S.C. § 2511.

2007 Acts, ch 126, §108; 2007 Acts, ch 215, §257  
Section amended

## CHAPTER 716

### DAMAGE AND TRESPASS TO PROPERTY

#### 716.7 Trespass defined.

1. The term “*property*” shall include any land, dwelling, building, conveyance, vehicle, or other temporary or permanent structure whether publicly or privately owned.

2. The term “*trespass*” shall mean one or more of the following acts:

*a.* Entering upon or in property without the express permission of the owner, lessee, or person in lawful possession with the intent to commit a public offense, to use, remove therefrom, alter, damage, harass, or place thereon or therein anything animate or inanimate, or to hunt, fish or trap on or in the property, including the act of taking or attempting to take a deer, other than a farm deer as defined in section 170.1 or preserve whitetail as defined in section 484C.1, which is on or in the property by a person who is outside the property. This paragraph does not prohibit the unarmed pursuit of game or fur-bearing animals by a person who lawfully injured or killed the game or fur-bearing animal which comes to rest on or escapes to the property of another.

*b.* Entering or remaining upon or in property without justification after being notified or requested to abstain from entering or to remove or vacate therefrom by the owner, lessee, or person in lawful possession, or the agent or employee of the owner, lessee, or person in lawful possession, or by any peace officer, magistrate, or public employee whose duty it is to supervise the use or maintenance of the property.

*c.* Entering upon or in property for the purpose or with the effect of unduly interfering with the lawful use of the property by others.

*d.* Being upon or in property and wrongfully using, removing therefrom, altering, damaging, harassing, or placing thereon or therein anything animate or inanimate, without the implied or actual permission of the owner, lessee, or person in lawful possession.

*e.* Entering or remaining upon or in railway property without lawful authority or without the consent of the railway corporation which owns, leases, or operates the railway property. This paragraph does not apply to passage over a railroad right-of-way, other than a track, railroad roadbed, viaduct, bridge, trestle, or railroad yard, by an unarmed person if the person has not been notified or requested to abstain from entering on to the right-of-way or to vacate the right-of-way and the passage over the right-of-way does not interfere with the operation of the railroad.

3. The term “*trespass*” shall not mean entering upon the property of another for the sole purpose

of retrieving personal property which has accidentally or inadvertently been thrown, fallen, strayed, or blown onto the property of another, provided that the person retrieving the property takes the most direct and accessible route to and from the property to be retrieved, quits the property as quickly as is possible, and does not unduly interfere with the lawful use of the property.

4. The term “*trespass*” does not mean the entering upon the right-of-way of a public road or highway.

5. For purposes of this section, “*railway property*” means all tangible real and personal property owned, leased, or operated by a railway corporation with the exception of any administrative building or offices of the railway corporation.

For purposes of this section, “*railway corporation*” means a corporation, company, or person owning, leasing, or operating any railroad in whole or in part within this state.

6. This section shall not apply to the following persons:

*a.* Representatives of the state department of transportation, the federal railroad administration, or the national transportation safety board who enter or remain upon or in railway property while engaged in the performance of official duties.

*b.* Employees of a railway corporation who enter or remain upon or in railway property while acting in the course of employment.

*c.* Any person who is engaged in the operation of a lawful business on railway station grounds or in the railway depot.

2007 Acts, ch 28, §20  
Subsection 2, paragraph a amended

#### 716.8 Penalties.

1. Any person who knowingly trespasses upon the property of another commits a simple misdemeanor.

2. Any person committing a trespass as defined in section 716.7 which results in injury to any person or damage in an amount more than two hundred dollars to anything, animate or inanimate, located thereon or therein commits a serious misdemeanor.

3. A person who knowingly trespasses on the property of another with the intent to commit a hate crime, as defined in section 729A.2, commits a serious misdemeanor.

4. A person committing a trespass as defined in section 716.7 with the intent to commit a hate crime which results in injury to any person or damage in an amount more than two hundred dol-

lars to anything, animate or inanimate, located thereon or therein commits an aggravated misdemeanor.

5. A person who commits a trespass as defined in section 716.7, subsection 2, paragraph “a”, and takes a deer, other than a farm deer as defined in section 170.1 or preserve whitetail as defined in

section 484C.1, shall also be subject to civil penalties as provided in sections 481A.130 and 481A.131. A deer taken by a person while committing such a trespass shall be subject to seizure as provided in section 481A.12.

2007 Acts, ch 28, §21  
NEW subsection 5

## CHAPTER 717F

### DANGEROUS WILD ANIMALS

#### 717F.1 Definitions.

As used in this chapter, unless the context otherwise requires:

1. “*Agricultural animal*” means an agricultural animal as defined in section 717A.1 other than swine which is a member of the species *sus scrofa linnaeus*, including but not limited to swine commonly known as Russian boar or European boar of either sex.

2. “*Assistive animal*” means the same as defined in section 216C.11.

3. *a.* “*Circus*” means a person who is all of the following:

(1) The holder of a class “C” license issued by the United States department of agriculture as provided in 9 C.F.R. pt. 2, subpt. A.

(2) Is temporarily in this state as an exhibitor as defined in 9 C.F.R. pt. 1, for purposes of providing skilled performances by dangerous wild animals, clowns, or acrobats for public entertainment.

*b.* “*Circus*” does not include a person, regardless of whether the person is a holder of a class “C” license as provided in paragraph “a”, who uses a dangerous wild animal for any of the following purposes:

(1) A presentation to children at a public or nonpublic school as defined in section 280.2.

(2) Entertainment that involves an activity in which a member of the public is in close proximity to the dangerous wild animal, including but not limited to a contest or a photographic opportunity.

4. “*Custody*” means to possess, control, keep, or harbor a dangerous wild animal in this state by a public agency.

5. *a.* “*Dangerous wild animal*” means any of the following:

(1) A member of the family *canidae* of the order *carnivora*, including but not limited to wolves, coyotes, and jackals. However, a dangerous wild animal does not include a domestic dog.

(2) A member of the family *hyaenidae* of the order *carnivora*, including but not limited to hyenas.

(3) A member of the family *felidae* of the order *carnivora*, including but not limited to lions, tigers, cougars, leopards, cheetahs, ocelots, and ser-

vals. However, a dangerous wild animal does not include a domestic cat.

(4) A member of the family *ursidae* of the order *carnivora*, including bears and pandas.

(5) A member of the family *rhinocerotidae* order *perissodactyla*, which is a rhinoceros.

(6) A member of the order *proboscidea*, which are any species of elephant.

(7) A member of the order of primates other than humans, and including the following families: *callitrichiidae*, *cebidae*, *cercopithecidae*, *cheirogaleidae*, *daubentoniidae*, *galagonidae*, *hominidae*, *hylobatidae*, *indridae*, *lemuridae*, *loridae*, *megaladapidae*, or *tarsiidae*. A member includes but is not limited to marmosets, tamarins, monkeys, lemurs, galagos, bushbabies, great apes, gibbons, lesser apes, indris, sifakas, and tarsiers.

(8) A member of the order *crocodylia*, including but not limited to alligators, caimans, crocodiles, and gharials.

(9) A member of the family *varanidae* of the order *squamata*, which are limited to water monitors and crocodile monitors.

(10) A member of the order *squamata* which is any of the following:

(a) A member of the family *varanidae*, which are limited to water monitors and crocodile monitors.

(b) A member of the family *atractaspidae*, including but not limited to mole vipers and burrowing asps.

(c) A member of the family *helodermatidae*, including but not limited to beaded lizards and gila monsters.

(d) A member of the family *elapidae*, *viperidae*, *crotalidae*, *atractaspidae*, or *hydrophidae* which are venomous, including but not limited to cobras, mambas, coral snakes, kraits, adders, vipers, rattlesnakes, copperheads, pit vipers, keelbacks, cottonmouths, and sea snakes.

(e) A member of the superfamily *henophidia*, which are limited to reticulated pythons, anacondas, and African rock pythons.

(11) Swine which is a member of the species *sus scrofa linnaeus*, including but not limited to swine commonly known as Russian boar or Euro-

pean boar of either sex.

b. “*Dangerous wild animal*” includes an animal which is the offspring of an animal provided in paragraph “a”, and another animal provided in that paragraph or any other animal. It also includes animals which are the offspring of each subsequent generation. However, a dangerous wild animal does not include the offspring of a domestic dog and a wolf, or the offspring from each subsequent generation in which at least one parent is a domestic dog.

6. “*Department*” means the department of agriculture and land stewardship.

7. “*Electronic identification device*” means a device which when installed is designed to store information regarding an animal or the animal’s owner in a digital format which may be accessed by a computer for purposes of reading or manipulating the information.

8. “*Possess*” means to own, keep, or control a dangerous wild animal, or supervise or provide for the care and feeding of a dangerous wild animal, including any activity relating to confining, handling, breeding, transporting, or exhibiting the dangerous wild animal.

9. “*Public agency*” means the same as defined in section 28E.2.

10. “*Research facility*” means any of the following:

a. A federal research facility as provided in 9 C.F.R. ch. I.

b. A research facility that is required to be registered by the United States department of agriculture pursuant to 9 C.F.R. ch. I.

c. A research facility which is certified by the department of agriculture and land stewardship as provided in section 162.10.

11. “*Wildlife sanctuary*” means an organization exempt from taxation pursuant to section 501(c) of the Internal Revenue Code that operates a place of refuge where abused, neglected, unwanted, impounded, abandoned, orphaned, or displaced wildlife are provided care for their lifetime, if all of the following apply:

a. The organization does not buy, sell, trade, auction, lease, loan, or breed any animal of which the organization is an owner.

b. The organization is accredited by the American sanctuary association, the association of sanctuaries, or another similar organization recognized by the department.

2007 Acts, ch 195, §1; 2007 Acts, ch 215, §118 – 120  
NEW section

#### **717F.2 Rulemaking — chapter 28E agreements — assistance of animal warden.**

1. The department shall administer this chapter by doing all of the following:

a. Adopting rules as provided in chapter 17A for the administration and enforcement of this chapter.

b. Entering into agreements with public agen-

cies pursuant to chapter 28E as the department determines necessary for the administration and enforcement of this chapter.

2. An animal warden as defined in section 162.2 shall assist the department in seizing and maintaining custody of dangerous wild animals.

2007 Acts, ch 195, §2  
NEW section

#### **717F.3 Dangerous wild animals — prohibitions.**

Except as otherwise provided in this chapter, a person shall not do any of the following:

1. Own or possess a dangerous wild animal.

2. Cause or allow a dangerous wild animal owned by a person or in the person’s possession to breed.

3. Transport a dangerous wild animal into this state.

2007 Acts, ch 195, §3  
NEW section

#### **717F.4 Owning or possessing dangerous wild animals on July 1, 2007.**

A person who owns or possesses a dangerous wild animal on July 1, 2007, may continue to own or possess the dangerous wild animal subject to all of the following:

1. The person must be eighteen years old or older.

2. a. The person must not have been convicted of an offense involving the abuse or neglect of an animal pursuant to a law of this state or another state, including but not limited to chapter 717, 717B, 717C, or 717D or an ordinance adopted by a city or county.

b. The department, another state, or the federal government must not have suspended an application for a permit or license or revoked a permit or license required to operate a commercial establishment for the care, breeding, or sale of animals, including as provided in chapter 162.

c. The person must not have been convicted of a felony for an offense committed within the last ten years, as provided by this Code, under the laws of another state, or under federal law.

d. The person must not have been convicted of a misdemeanor or felony for an offense committed within the last ten years involving a controlled substance as defined in section 124.101 in this state, under the laws of another state, or under federal law.

3. Within sixty days after July 1, 2007, the person must have an electronic identification device implanted beneath the skin or hide of the dangerous wild animal, unless a licensed veterinarian states in writing that the implantation would endanger the comfort or health of the dangerous wild animal. In such case, an electronic identification device may be otherwise attached to the dangerous wild animal as required by the department.

4. Not later than December 31, 2007, the person must notify the department using a registra-

tion form prepared by the department. The registration form shall include all of the following information:

*a.* The person's name, address, and telephone number.

*b.* A sworn affidavit that the person meets the requirements necessary to own or possess a dangerous wild animal as provided in this section.

*c.* A complete inventory of each dangerous wild animal which the person owns or possesses. The inventory shall include all of the following information:

(1) The number of the dangerous wild animals according to species.

(2) The manufacturer and manufacturer's number of the electronic device implanted in or attached to each dangerous wild animal.

(3) The location where each dangerous wild animal is kept. The person must notify the department in writing within ten days of a change of address or location where the dangerous wild animal is kept.

(4) The approximate age, sex, color, weight, scars, and any distinguishing marks of each dangerous wild animal.

(5) The name, business mailing address, and business telephone number of the licensed veterinarian who is responsible for providing care to the dangerous wild animal. The information shall include a statement signed by the licensed veterinarian certifying that the dangerous wild animal is in good health.

(6) A color photograph of the dangerous wild animal.

(7) A copy of a current liability insurance policy as required in this section. The person shall send a copy of the current liability policy to the department each year.

5. The person must pay the department a registration fee as provided in section 717F.8.

6. The person must maintain health and ownership records for the dangerous wild animal for the life of the dangerous wild animal.

7. The person must confine the dangerous wild animal in a primary enclosure as required by the department on the person's premises. The person must not allow the dangerous wild animal outside of the primary enclosure unless the dangerous wild animal is moved pursuant to any of the following:

*a.* To receive veterinary care from a licensed veterinarian.

*b.* To comply with the directions of the department or an animal warden.

*c.* To transfer ownership and possession of the dangerous wild animal to a wildlife sanctuary or provide for its destruction by euthanasia as required by the department.

8. The person must display at least one sign on the person's premises where the dangerous wild animal is kept warning the public that the dangerous wild animal is confined there. The sign must

include a symbol warning children of the presence of the dangerous wild animal.

9. The person must immediately notify an animal warden or other local law enforcement official of any escape of a dangerous wild animal.

10. The person must maintain liability insurance coverage in an amount of not less than one hundred thousand dollars with a deductible of not more than two hundred fifty dollars, for each occurrence of property damage, bodily injury, or death caused by each dangerous wild animal kept by the person.

11. The person who owns or possesses the dangerous wild animal is strictly liable for any damages, injury, or death caused by the dangerous wild animal. The person must reimburse the department or other public agency for actual expenses incurred by capturing and maintaining custody of the dangerous wild animal.

12. If the person is no longer able to care for the dangerous wild animal, all of the following apply:

*a.* The person must so notify the department, stating the planned disposition of the dangerous wild animal.

*b.* The person must dispose of the dangerous wild animal by transferring ownership and possession to a wildlife sanctuary or providing for its destruction by euthanasia as required by the department.

2007 Acts, ch 195, §4  
NEW section

#### **717F.5 Seizure, custody, and disposal of dangerous wild animals.**

1. *a.* Except as provided in paragraph "b", the department shall seize a dangerous wild animal which is in the possession of a person if the person is not in compliance with the requirements of this chapter.

*b.* Upon request, the department may provide that the person retain possession of the dangerous wild animal for not more than fourteen days, upon conditions required by the department. During that period, the person shall take all necessary actions to comply with this chapter. The department shall inspect the premises where the dangerous wild animal is kept during reasonable times to ensure that the person is complying with the conditions.

2. If the person fails to comply with the conditions of the department at any time or is not in compliance with this chapter following the fourteen-day period, the department shall seize the dangerous wild animal.

*a.* The dangerous wild animal shall be considered to be a threatened animal which has been rescued as provided in chapter 717B. The court may authorize the return of the dangerous wild animal to the person from whom the dangerous wild animal was seized if the court finds all of the following:

(1) The person is capable of providing the care required for the dangerous wild animal.

(2) There is a substantial likelihood that the person will provide the care required for the dangerous wild animal.

(3) The dangerous wild animal has not been abused, neglected, or tortured, as provided in chapter 717B.

b. If the court orders a permanent disposition of the dangerous wild animal, the dangerous wild animal shall be subject to disposition as provided in section 717B.4 and the responsible party shall be assessed costs associated with its seizure, custody, and disposition as provided in that section. The department may find long-term placement for the dangerous wild animal with a wildlife sanctuary or institution accredited or certified by the American zoo and aquarium association.

2007 Acts, ch 195, §5  
NEW section

#### **717F.6 Cause of the escape of a dangerous wild animal — prohibition.**

A person shall not intentionally cause a dangerous wild animal to escape from its place of confinement, including as provided in section 717F.4.

2007 Acts, ch 195, §6  
NEW section

#### **717F.7 Exemptions.**

This chapter does not apply to any of the following:

1. An institution accredited or certified by the American zoo and aquarium association.

2. A wildlife sanctuary.

3. A person who keeps falcons, if the person has been issued a falconry license by the department of natural resources pursuant to section 483A.1.

4. A person who owns or possesses a dangerous wild animal as an agricultural animal. The person shall not transfer the dangerous wild animal to another person, unless the person to whom the dangerous wild animal is transferred will own or possess it as an agricultural animal or the person is a wildlife sanctuary.

5. A person who owns or possesses a dangerous wild animal as an assistive animal. The person shall not transfer the dangerous wild animal to another person, unless the person to whom the dangerous wild animal is transferred will own or possess it as an assistive animal or the person is a wildlife sanctuary.

6. A person who harvests the dangerous wild animal as a hunter or trapper pursuant to state law and as regulated by the department of natural resources.

7. A person who has been issued a wildlife rehabilitation permit by the department of natural resources pursuant to section 481A.65.

8. A circus that obtains a permit from a city in

which it will be temporarily operating, if the city issues permits.

9. A city.

10. A nonprofit corporation governed under chapter 504 that is an organization described in section 501(c)(3) of the Internal Revenue Code and that is exempt from taxation under section 501(a) of the Internal Revenue Code if the nonprofit corporation was a party to a contract executed with a city prior to July 1, 2007, to provide for the exhibition of dangerous wild animals at a municipal zoo. The nonprofit corporation shall not transfer the dangerous wild animal to another person, unless the person to whom the dangerous wild animal is transferred is a wildlife sanctuary.

11. The state fair as provided in chapter 173 or any fair as provided in chapter 174.

12. A research facility.

13. A location operated by a person licensed to practice veterinary medicine pursuant to chapter 169. However, this subsection shall not apply to a swine which is a member of the species *sus scrofa linnaeus*, including but not limited to swine commonly known as Russian boar or European boar of either sex.

14. A pound as defined in section 162.2.

15. An animal shelter as defined in section 162.2.

16. A county conservation board as provided in chapter 350.

17. An employee of the department responsible for the administration of this chapter, an animal warden as defined in section 162.2, or an animal care provider or law enforcement officer as defined in section 717B.1.

18. A person temporarily transporting a dangerous wild animal through this state if the transit time is not more than ninety-six hours and the dangerous wild animal is maintained within a confined area sufficient to prevent its escape or injuring members of the traveling public.

19. A public agency which maintains permanent custody of a dangerous wild animal, if the person to whom the public agency assigns the duty to manage the custody of the dangerous wild animal complies with the provisions of section 717F.4.

20. A person who keeps a dangerous wild animal pursuant to all of the following conditions:

a. The person is licensed by the United States department of agriculture as provided in 9 C.F.R. ch. I.

b. The person is registered by the department of agriculture and land stewardship. Upon a complaint filed with the department of agriculture and land stewardship, the department may inspect the premises or investigate the practices of the registered person and suspend or revoke the registration for the same causes and in the same manner as provided in section 162.12.

2007 Acts, ch 195, §7; 2007 Acts, ch 215, §121, 122  
NEW section

**717F.8 Dangerous wild animal registration fees.**

The department may charge a registration fee for each dangerous wild animal owned or possessed by a person required to be registered pursuant to section 717F.4.

1. The department shall collect an annual registration fee which is an original registration fee or a renewal of an original registration fee. The amount of the renewal registration fee is one-half of the amount of the original registration fee. Moneys collected in registration fees shall be deposited in the dangerous wild animal registration fund created in section 717F.9.

2. The amount of the original registration fees shall be as follows:

*a.* Five hundred dollars for a member of the order proboscidea, which are any species of elephant.

*b.* Five hundred dollars for a member of the family rhinocerotidae order perissodactyla, which is a rhinoceros.

*c.* Three hundred dollars for a member of the family ursidae of the order carnivora, which is limited to bears.

*d.* For a member of the family felidae of the order carnivora, all of the following:

(1) Three hundred dollars for a member of the subfamily pantherinae, limited to leopards other than snow leopards, lions, and tigers; and for a member of the subfamily felinae limited to pumas, jaguars, and cougars.

(2) Two hundred dollars for a member of the subfamily felinae limited to bobcats, clouded leopards, cheetahs, and lynx.

(3) One hundred dollars for a member of the subfamily felinae limited to caracals, desert cats, Geoffroy's cats, jungle cats, margays, ocelots, servals, and wild cats.

*e.* For a member of the order of primates other than humans, all of the following:

(1) Three hundred dollars for a member commonly referred to as an ape, belonging to the hylobatidae family such as gibbons and siamangs, or to the pongidae family including gorillas, orangutans, or chimpanzees.

(2) One hundred fifty dollars for a member commonly referred to as an old world monkey, belonging to the family cercopithecidae, including but not limited to macaques, rhesus, mangabeys, mandrills, guenons, patas monkeys, langurs, and proboscis monkeys.

(3) Fifty dollars for a member commonly referred to as a new world monkey belonging to the family cebidae, including but not limited to cebids, including capuchin monkeys, howlers, woolly monkeys, squirrel monkeys, night monkeys, titis, uakaris, or to the family callitrichidae, including but not limited to marmosets and tamarins.

*f.* One hundred dollars for a member of the order crocodilia, including but not limited to alliga-

tors, caimans, crocodiles, and gharials.

*g.* Fifty dollars for a member of the family varanidae of the order squamata, which are limited to water monitors and crocodile monitors.

*h.* Fifty dollars for a member of the family atractaspidae, including but not limited to mole vipers and burrowing asps.

*i.* Fifty dollars for a member of the family helodermatidae, including but not limited to beaded lizards and gila monsters.

*j.* Fifty dollars for a member of the family elapidae, viperidae, crotalidae, atractaspidae, or hydrophidae which are venomous, including but not limited to cobras, mambas, coral snakes, kraits, adders, vipers, rattlesnakes, copperheads, pit vipers, keelbacks, cottonmouths, and sea snakes.

*k.* One hundred dollars for a member of the superfamily henophidia, which are limited to reticulated pythons, anacondas, and African rock pythons.

*l.* Ten dollars for swine which is a member of the species *sus scrofa linnaeus*, including but not limited to swine commonly known as Russian boar or European boar of either sex.

2007 Acts, ch 195, §8; 2007 Acts, ch 215, §123  
NEW section

**717F.9 Dangerous wild animal registration fund.**

1. A dangerous wild animal registration fund is created in the state treasury under the control of the department. The fund is composed of moneys appropriated by the general assembly and moneys available to and obtained or accepted by the department from the United States or private sources for placement in the fund. The fund shall include moneys deposited into the fund from registration fees collected by the department pursuant to section 717F.8.

2. Moneys in the dangerous wild animal registration fund are appropriated to the department exclusively to administer and enforce the provisions of this chapter. The moneys shall not be transferred, used, obligated, appropriated, or otherwise encumbered except as provided in this subsection.

3. Section 8.33 shall not apply to moneys in the dangerous wild animal registration fund. Notwithstanding section 12C.7, moneys earned as income or interest from the fund shall remain in the fund until expended as provided in this section.

2007 Acts, ch 195, §9  
NEW section

**717F.10 Enforcement.**

The department is the principal agency charged with enforcing the provisions of this chapter. An animal warden as defined in section 162.2, or an animal care provider or law enforcement officer as defined in section 717B.1, shall enforce this chapter as directed by the department.

2007 Acts, ch 195, §10  
NEW section



**717F.11 Civil penalty.**

A person owning or possessing a dangerous wild animal who violates a provision of this chapter is subject to a civil penalty of not less than two hundred dollars and not more than two thousand dollars for each dangerous wild animal involved in the violation. Each day that a violation continues shall be considered as a separate offense. The civil penalties shall be deposited into the general fund of the state.

2007 Acts, ch 195, §11  
NEW section

**717F.12 Injunctive relief.**

The courts of this state may prevent and re-

strain violations of this chapter through the issuance of an injunction. The attorney general or a county attorney may institute suits on behalf of the state to prevent and restrain violations of this chapter.

2007 Acts, ch 195, §12  
NEW section

**717F.13 Criminal penalties.**

A person who intentionally causes a dangerous wild animal to escape in violation of this chapter is guilty of an aggravated misdemeanor.

2007 Acts, ch 195, §13  
NEW section

## CHAPTER 718A

### DESECRATION OF FLAG OR OTHER INSIGNIA

**718A.1 Definitions.**

As used in this section:\*

1. *“Contempt”* means an intentional lack of respect or reverence by treating in a rough manner.
2. *“Deface”* means to intentionally mar the external appearance.
3. *“Defile”* means to intentionally make physically unclean.
4. *“Mutilate”* means to intentionally cut up or alter so as to make imperfect.
5. *“Trample”* means to intentionally tread upon or intentionally cause a machine, vehicle, or animal to tread upon.

2007 Acts, ch 202, §13  
Former §718A.1 transferred to §718A.1A  
\*The word “chapter” probably intended; corrective legislation is pending  
NEW section

**718A.1A Desecration of flag or insignia.**

Any person who in any manner, for exhibition or display, shall place or cause to be placed, any word, figure, mark, picture, design, drawing, or any advertisement of any nature, upon any flag, standard, color, ensign, shield, or other insignia of the United States, or upon any flag, ensign, great seal, or other insignia of this state, or shall expose or cause to be exposed to public view, any such flag, standard, color, ensign, shield, or other insignia of the United States, or any such flag, ensign, great seal, or other insignia of this state, upon which shall have been printed, painted, or otherwise placed, or to which shall be attached, appended, affixed, or annexed, any word, figure, mark, pic-

ture, design, or drawing, or any advertisement of any nature, or who shall expose to public view, manufacture, sell, expose for sale, give away, or have in possession for sale, or to give away, or for use for any purpose any article or substance, being an article of merchandise or a receptacle of merchandise or article or thing for carrying or transporting merchandise, upon which shall have been printed, painted, attached or otherwise placed, a representation of any such flag, standard, color, ensign, shield, or other insignia of the United States, or any such flag, ensign, great seal, or other insignia of this state, to advertise, call attention to, decorate, mark, or distinguish the article or substance on which so placed, or who shall publicly mutilate, deface, defile or defy, trample upon, cast contempt upon, satirize, deride or burlesque, either by words or act, such flag, standard, color, ensign, shield, or other insignia of the United States, or flag, ensign, great seal, or other insignia of this state, or who shall, for any purpose, place such flag, standard, color, ensign, shield, or other insignia of the United States, or flag, ensign, great seal, or other insignia of this state, upon the ground or where the same may be trod upon, shall be deemed guilty of a simple misdemeanor.

Section transferred from §718A.1 in Code Supplement 2007

**718A.7 Retirement ceremony.**

This chapter does not apply to a flag retirement ceremony conducted pursuant to federal law.

2007 Acts, ch 202, §14  
NEW section

## CHAPTER 719

### OBSTRUCTING JUSTICE

#### 719.7 Possessing contraband.

1. “*Contraband*” includes but is not limited to any of the following:

*a.* A controlled substance or a simulated or counterfeit controlled substance, hypodermic syringe, or intoxicating beverage.

*b.* A dangerous weapon, offensive weapon, pneumatic gun, stun gun, firearm ammunition, knife of any length or any other cutting device, explosive or incendiary material, instrument, device, or other material fashioned in such a manner as to be capable of inflicting death or injury.

*c.* Rope, ladder components, key or key pattern, metal file, instrument, device, or other material designed or intended to facilitate escape of an inmate.

2. The sheriff may x-ray a person committed to the jail, or the department of corrections may x-ray a person under the control of the department, if there is reason to believe that the person is in possession of contraband. A licensed physician or x-ray technician under the supervision of a licensed physician must x-ray the person.

3. A person commits the offense of possessing contraband if the person, not authorized by law, does any of the following:

*a.* Knowingly introduces contraband into, or onto, the grounds of a secure facility for the detention or custody of juveniles, detention facility, jail, correctional institution, or institution under the management of the department of corrections.

*b.* Knowingly conveys contraband to any person confined in a secure facility for the detention or custody of juveniles, detention facility, jail, correctional institution, or institution under the management of the department of corrections.

*c.* Knowingly makes, obtains, or possesses contraband while confined in a secure facility for the detention or custody of juveniles, detention facility, jail, correctional institution, or institution under the management of the department of corrections, or while being transported or moved incidental to confinement.

4. A person who possesses contraband or fails to report an offense of possessing contraband commits the following:

*a.* A class “C” felony for the possession of contraband if the contraband is of the type described in subsection 1, paragraph “b”.

*b.* A class “D” felony for the possession of contraband if the contraband is any other type of contraband.

*c.* An aggravated misdemeanor for failing to report a known violation or attempted violation of this section to an official or officer at a secure facility for the detention or custody of juveniles, detention facility, jail, correctional institution, or institution under the management of the department of corrections.

5. Nothing in this section is intended to limit the authority of the administrator of any secure facility for the detention or custody of juveniles, detention facility, jail, correctional institution, or institution under the management of the department of corrections to prescribe or enforce rules concerning the definition of contraband, and the transportation, making, or possession of substances, devices, instruments, materials, or other items.

2007 Acts, ch 89, §1  
Section amended

## CHAPTER 723

### PUBLIC DISORDER

#### 723.4 Disorderly conduct.

A person commits a simple misdemeanor when the person does any of the following:

1. Engages in fighting or violent behavior in any public place or in or near any lawful assembly of persons, provided, that participants in athletic contests may engage in such conduct which is reasonably related to that sport.

2. Makes loud and raucous noise in the vicinity of any residence or public building which causes unreasonable distress to the occupants thereof.

3. Directs abusive epithets or makes any threatening gesture which the person knows or

reasonably should know is likely to provoke a violent reaction by another.

4. Without lawful authority or color of authority, the person disturbs any lawful assembly or meeting of persons by conduct intended to disrupt the meeting or assembly.

5. By words or action, initiates or circulates a report or warning of fire, epidemic, or other catastrophe, knowing such report to be false or such warning to be baseless.

6. *a.* Knowingly and publicly uses the flag of the United States in such a manner as to show disrespect for the flag as a symbol of the United

States, with the intent or reasonable expectation that such use will provoke or encourage another to commit trespass or assault.

b. As used in this section:

(1) “*Deface*” means to intentionally mar the external appearance.

(2) “*Defile*” means to intentionally make physically unclean.

(3) “*Flag*” means a piece of woven cloth or other material designed to be flown from a pole or mast.

(4) “*Mutilate*” means to intentionally cut up or alter so as to make imperfect.

(5) “*Show disrespect*” means to deface, defile,

mutilate, or trample.

(6) “*Trample*” means to intentionally tread upon or intentionally cause a machine, vehicle, or animal to tread upon.

c. This subsection does not apply to a flag retirement ceremony conducted pursuant to federal law.

7. Without authority or justification, the person obstructs any street, sidewalk, highway, or other public way, with the intent to prevent or hinder its lawful use by others.

2007 Acts, ch 202, §15  
Subsection 6 amended

## CHAPTER 725

### VICE

#### **725.9 Possession of gambling devices prohibited — exception for manufacturing.**

1. “*Antique slot machine*” means a slot machine which is twenty-five years old or older.

2. “*Gambling device*” means a device used or adapted or designed to be used for gambling and includes, but is not limited to, roulette wheels, klondike tables, punchboards, faro layouts, keno layouts, numbers tickets, slot machines, pachislo skill-stop machine or any other similar machine or device, push cards, jar tickets and pull-tabs. However, “*gambling device*” does not include an antique slot machine, or any device regularly manufactured and offered for sale and sold as a toy, except that any use of such a toy or antique slot machine for gambling purposes constitutes unlawful

gambling.

3. A person who, in any manner or for any purpose, except under a proceeding to destroy the device, has in possession or control a gambling device is guilty of a serious misdemeanor.

4. This chapter does not prohibit the possession of gambling devices by a manufacturer or distributor if the possession is solely for sale out of the state in another jurisdiction where possession of the device is legal or for sale in the state or use in the state if the use is licensed pursuant to either chapter 99B or chapter 99G.

2007 Acts, ch 38, §9, 10  
See chapter 99A  
Subsection 2 stricken and former subsection 3 amended and renumbered as 2  
Former subsections 4 and 5 renumbered as 3 and 4

## CHAPTER 726

### PROTECTION OF THE FAMILY AND DEPENDENT PERSONS

#### **726.6 Child endangerment.**

1. A person who is the parent, guardian, or person having custody or control over a child or a minor under the age of eighteen with a mental or physical disability, or a person who is a member of the household in which a child or such a minor resides, commits child endangerment when the person does any of the following:

a. Knowingly acts in a manner that creates a substantial risk to a child or minor’s physical, mental or emotional health or safety.

b. By an intentional act or series of intentional acts, uses unreasonable force, torture or cruelty that results in bodily injury, or that is intended to cause serious injury.

c. By an intentional act or series of intentional acts, evidences unreasonable force, torture or

cruelty which causes substantial mental or emotional harm to a child or minor.

d. Willfully deprives a child or minor of necessary food, clothing, shelter, health care or supervision appropriate to the child or minor’s age, when the person is reasonably able to make the necessary provisions and which deprivation substantially harms the child or minor’s physical, mental or emotional health. For purposes of this paragraph, the failure to provide specific medical treatment shall not for that reason alone be considered willful deprivation of health care if the person can show that such treatment would conflict with the tenets and practice of a recognized religious denomination of which the person is an adherent or member. This exception does not in any manner restrict the right of an interested party to petition

the court on behalf of the best interest of the child or minor.

*e.* Knowingly permits the continuing physical or sexual abuse of a child or minor. However, it is an affirmative defense to this subsection if the person had a reasonable apprehension that any action to stop the continuing abuse would result in substantial bodily harm to the person or the child or minor.

*f.* Abandons the child or minor to fend for the child or minor's self, knowing that the child or minor is unable to do so.

*g.* Knowingly permits a child or minor to be present at a location where amphetamine, its salts, isomers, or salts of isomers, or methamphetamine, its salts, isomers, or salts of isomers, is manufactured in violation of section 124.401, subsection 1, or where a product is possessed in violation of section 124.401, subsection 4.

*h.* Cohabits with a person after knowing the person is required to register or is on the sex offender registry as a sex offender under chapter 692A. However, this paragraph does not apply to a person who is a parent, guardian, or a person having custody or control over a child or a minor who is required to register as a sex offender, or to a person who is married to and living with a person required to register as a sex offender.

2. A parent or person authorized by the parent shall not be prosecuted for a violation of subsection 1, paragraph "f", relating to abandonment, if the parent or person authorized by the parent has voluntarily released custody of a newborn infant

in accordance with section 233.2.

3. For the purposes of subsection 1, "*person having control over a child or a minor*" means any of the following:

*a.* A person who has accepted, undertaken, or assumed supervision of a child or such a minor from the parent or guardian of the child or minor.

*b.* A person who has undertaken or assumed temporary supervision of a child or such a minor without explicit consent from the parent or guardian of the child or minor.

*c.* A person who operates a motor vehicle with a child or such a minor present in the vehicle.

4. A person who commits child endangerment resulting in the death of a child or minor is guilty of a class "B" felony. Notwithstanding section 902.9, subsection 2, a person convicted of a violation of this subsection shall be confined for no more than fifty years.

5. A person who commits child endangerment resulting in serious injury to a child or minor is guilty of a class "C" felony.

6. A person who commits child endangerment resulting in bodily injury to a child or minor or child endangerment in violation of subsection 1, paragraph "g", that does not result in a serious injury, is guilty of a class "D" felony.

7. A person who commits child endangerment that is not subject to penalty under subsection 4, 5, or 6 is guilty of an aggravated misdemeanor.

2007 Acts, ch 126, §109  
Definition of forcible felony; §702.11  
Subsection 7 amended

## CHAPTER 729

### INFRINGEMENT OF INDIVIDUAL RIGHTS

#### 729.6 Genetic testing.

1. As used in this section, unless the context otherwise requires:

*a.* "*Employer*" means the state of Iowa, or any political subdivision, board, commission, department, institution, or school district, and every other person employing employees within the state.

*b.* "*Employment agency*" means a person, including the state, who regularly undertakes to procure employees or opportunities for employment for any other person.

*c.* "*Genetic testing*" means a test of a person's genes, gene products, or chromosomes, for abnormalities or deficiencies, including carrier status, that are linked to physical or mental disorders or impairments, or that indicate a susceptibility to illness, disease, impairment, or other disorders, whether physical or mental, or that demonstrate genetic or chromosomal damage due to environmental factors.

*d.* "*Labor organization*" means any organiza-

tion which exists for the purpose in whole or in part of collective bargaining, or dealing with employers concerning grievances, terms, or conditions of employment, or of other mutual aid or protection in connection with employment.

*e.* "*Licensing agency*" means a board, commission, committee, council, department, or officer, except a judicial officer, in the state, or in a city, county, township, or local government, authorized to grant, deny, renew, revoke, suspend, annul, withdraw, or amend a license or certificate of registration.

*f.* "*Unfair genetic testing*" means any test or testing procedure that violates this section.

2. An employer, employment agency, labor organization, licensing agency, or its employees, agents, or members shall not directly or indirectly do any of the following:

*a.* Solicit, require, or administer a genetic test to a person as a condition of employment, pre-employment application, labor organization mem-

bership, or licensure.

b. Affect the terms, conditions, or privileges of employment, preemployment application, labor organization membership, or licensure, or terminate the employment, labor organization membership, or licensure of any person who obtains a genetic test.

3. Except as provided in subsection 7, a person shall not sell to or interpret for an employer, employment agency, labor organization, or licensing agency, or its employees, agents, or members, a genetic test of an employee, labor organization member, or licensee, or of a prospective employee, member, or licensee.

4. An agreement between a person and an employer, prospective employer, employment agency, labor organization, or licensing agency, or its employees, agents, or members offering the person employment, labor organization membership, licensure, or any pay or benefit in return for taking a genetic test is prohibited.

5. An employee, labor organization member, or licensee, or prospective employee, member, or licensee who acted in good faith shall not be discharged, disciplined, or discriminated against in any manner for filing a complaint or testifying in any proceeding or action involving violations of this section. An employee, labor organization member, or licensee, or prospective employee, member, or licensee discharged, disciplined, or otherwise discriminated against in violation of this section shall be compensated by the employer, employment agency, labor organization, or licensing agency in the amount of any loss of wages and benefits arising out of the discrimination.

6. This section may be enforced through a civil action.

a. A person who violates this section or who aids in the violation of this section is liable to an aggrieved employee, labor organization member, or licensee, or aggrieved prospective employee, member, or licensee, for affirmative relief includ-

ing reinstatement or hiring, with or without back pay, membership, licensing, or any other equitable relief as the court deems appropriate including attorney fees and court costs.

b. If a person commits, is committing, or proposes to commit, an act in violation of this section, an injunction may be granted through an action in district court to prohibit the person from continuing such acts. The action for injunctive relief may be brought by an aggrieved employee, labor organization member, or licensee, or aggrieved prospective employee, member, or licensee, the county attorney, or the attorney general.

A person who in good faith brings an action under this subsection alleging that an employer, employment agency, labor organization, or licensing agency has required or requested a genetic test in violation of this section shall establish that sufficient evidence exists upon which a reasonable person could find that a violation has occurred. Upon proof that sufficient evidence exists upon which a finding could be made that a violation has occurred as required under this paragraph, the employer, employment agency, labor organization, or licensing agency has the burden of proving that the requirements of this section were met.

7. This section does not prohibit the genetic testing of an employee who requests a genetic test and who provides written and informed consent to taking a genetic test for any of the following purposes:

a. Investigating a workers' compensation claim under chapters 85, 85A, 85B, and 86.

b. Determining the employee's susceptibility or level of exposure to potentially toxic chemicals or potentially toxic substances in the workplace, if the employer does not terminate the employee, or take any other action that adversely affects any term, condition, or privilege of the employee's employment as a result of the genetic test.

2007 Acts, ch 10, §183  
Subsection 1, paragraph e amended

## CHAPTER 730

### EMPLOYER-EMPLOYEE OFFENSES

#### **730.5 Private sector drug-free workplaces.**

1. *Definitions.* As used in this section, unless the context otherwise requires:

a. "*Alcohol*" means ethanol, isopropanol, or methanol.

b. "*Confirmed positive test result*" means, except for alcohol testing conducted pursuant to subsection 7, paragraph "f", subparagraph (2), the results of a blood, urine, or oral fluid test in which the level of controlled substances or metabolites in the specimen analyzed meets or exceeds national-

ly accepted standards for determining detectable levels of controlled substances as adopted by the federal substance abuse and mental health services administration. If nationally accepted standards for oral fluid tests have not been adopted by the federal substance abuse and mental health services administration, the standards for determining detectable levels of controlled substances for purposes of determining a confirmed positive test result shall be the same standard that has been established by the federal food and drug administration for the measuring instrument used

to perform the oral fluid test.

c. “*Drug*” means a substance considered a controlled substance and included in schedule I, II, III, IV, or V under the federal Controlled Substances Act, 21 U.S.C. § 801 et seq.

d. “*Employee*” means a person in the service of an employer in this state and includes the employer, and any chief executive officer, president, vice president, supervisor, manager, and officer of the employer who is actively involved in the day-to-day operations of the business.

e. “*Employer*” means a person, firm, company, corporation, labor organization, or employment agency, which has one or more full-time employees employed in the same business, or in or about the same establishment, under any contract of hire, express or implied, oral or written, in this state. “*Employer*” does not include the state, a political subdivision of the state, including a city, county, or school district, the United States, the United States postal service, or a Native American tribe.

f. “*Good faith*” means reasonable reliance on facts, or that which is held out to be factual, without the intent to be deceived, and without reckless, malicious, or negligent disregard for the truth.

g. “*Medical review officer*” means a licensed physician, osteopathic physician, chiropractor, nurse practitioner, or physician assistant authorized to practice in any state of the United States, who is responsible for receiving laboratory results generated by an employer’s drug or alcohol testing program, and who has knowledge of substance abuse disorders and has appropriate medical training to interpret and evaluate an individual’s confirmed positive test result together with the individual’s medical history and any other relevant biomedical information.

h. “*Prospective employee*” means a person who has made application, whether written or oral, to an employer to become an employee.

i. “*Reasonable suspicion drug or alcohol testing*” means drug or alcohol testing based upon evidence that an employee is using or has used alcohol or other drugs in violation of the employer’s written policy drawn from specific objective and articulable facts and reasonable inferences drawn from those facts in light of experience. For purposes of this paragraph, facts and inferences may be based upon, but not limited to, any of the following:

(1) Observable phenomena while at work such as direct observation of alcohol or drug use or abuse or of the physical symptoms or manifestations of being impaired due to alcohol or other drug use.

(2) Abnormal conduct or erratic behavior while at work or a significant deterioration in work performance.

(3) A report of alcohol or other drug use provided by a reliable and credible source.

(4) Evidence that an individual has tampered with any drug or alcohol test during the individu-

al’s employment with the current employer.

(5) Evidence that an employee has caused an accident while at work which resulted in an injury to a person for which injury, if suffered by an employee, a record or report could be required under chapter 88, or resulted in damage to property, including to equipment, in an amount reasonably estimated at the time of the accident to exceed one thousand dollars.

(6) Evidence that an employee has manufactured, sold, distributed, solicited, possessed, used, or transferred drugs while working or while on the employer’s premises or while operating the employer’s vehicle, machinery, or equipment.

j. “*Safety-sensitive position*” means a job wherein an accident could cause loss of human life, serious bodily injury, or significant property or environmental damage, including a job with duties that include immediate supervision of a person in a job that meets the requirement of this paragraph.

k. “*Sample*” means such sample from the human body capable of revealing the presence of alcohol or other drugs, or their metabolites, which shall include only urine, saliva, breath, and blood. However, “*sample*” does not mean blood except as authorized pursuant to subsection 7, paragraph “l”.

l. “*Unannounced drug or alcohol testing*” means testing for the purposes of detecting drugs or alcohol which is conducted on a periodic basis, without advance notice of the test to employees, other than employees whose duties include responsibility for administration of the employer’s drug or alcohol testing program, subject to testing prior to the day of testing, and without individualized suspicion. The selection of employees to be tested from the pool of employees subject to testing shall be done based on a neutral and objective selection process by an entity independent from the employer and shall be made by a computer-based random number generator that is matched with employees’ social security numbers, payroll identification numbers, or other comparable identifying numbers in which each member of the employee population subject to testing has an equal chance of selection for initial testing, regardless of whether the employee has been selected or tested previously. The random selection process shall be conducted through a computer program that records each selection attempt by date, time, and employee number.

2. *Applicability.* This section does not apply to drug or alcohol tests conducted on employees required to be tested pursuant to federal statutes, federal regulations, or orders issued pursuant to federal law. In addition, an employer, through its written policy, may exclude from the pools of employees subject to unannounced drug or alcohol testing pursuant to subsection 8, paragraph “a”, employee populations required to be tested as described in this subsection.

3. *Testing optional.* This section does not require or create a legal duty on an employer to conduct drug or alcohol testing and the requirements of this section shall not be construed to encourage, discourage, restrict, limit, prohibit, or require such testing. In addition, an employer may implement and require drug or alcohol testing at some but not all of the work sites of the employer and the requirements of this section shall only apply to the employer and employees who are at the work sites where drug or alcohol testing pursuant to this section has been implemented. A cause of action shall not arise in favor of any person against an employer or agent of an employer based on the failure of the employer to establish a program or policy on substance abuse prevention or to implement any component of testing as permitted by this section.

4. *Testing as condition of employment — requirements.* To the extent provided in subsection 8, an employer may test employees and prospective employees for the presence of drugs or alcohol as a condition of continued employment or hiring. An employer shall adhere to the requirements of this section concerning the conduct of such testing and the use and disposition of the results of such testing.

5. *Collection of samples.* In conducting drug or alcohol testing, an employer may require the collection of samples from its employees and prospective employees, and may require presentation of reliable individual identification from the person being tested to the person collecting the samples. Collection of a sample shall be in conformance with the requirements of this section. The employer may designate the type of sample to be used for this testing.

6. *Scheduling of tests.*

a. Drug or alcohol testing of employees conducted by an employer shall normally occur during, or immediately before or after, a regular work period. The time required for such testing by an employer shall be deemed work time for the purposes of compensation and benefits for employees.

b. An employer shall pay all actual costs for drug or alcohol testing of employees and prospective employees required by the employer.

c. An employer shall provide transportation or pay reasonable transportation costs to employees if drug or alcohol sample collection is conducted at a location other than the employee's normal work site.

7. *Testing procedures.* All sample collection and testing for drugs or alcohol under this section shall be performed in accordance with the following conditions:

a. The collection of samples shall be performed under sanitary conditions and with regard for the privacy of the individual from whom the specimen is being obtained and in a manner reasonably calculated to preclude contamination or substitution of the specimen. If the sample collected is urine,

procedures shall be established to provide for individual privacy in the collection of the sample unless there is a reasonable suspicion that a particular individual subject to testing may alter or substitute the urine specimen to be provided, or has previously altered or substituted a urine specimen provided pursuant to a drug or alcohol test. For purposes of this paragraph, "*individual privacy*" means a location at the collection site where urination can occur in private, which has been secured by visual inspection to ensure that other persons are not present, which provides that undetected access to the location is not possible during urination, and which provides for the ability to effectively restrict access to the location during the time the specimen is provided. If an individual is providing a urine sample and collection of the urine sample is directly monitored or observed by another individual, the individual who is directly monitoring or observing the collection shall be of the same gender as the individual from whom the urine sample is being collected.

b. Collection of a urine sample for testing of current employees shall be performed so that the specimen is split into two components at the time of collection in the presence of the individual from whom the sample or specimen is collected. The second portion of the specimen or sample shall be of sufficient quantity to permit a second, independent confirmatory test as provided in paragraph "i". The sample shall be split such that the primary sample contains at least thirty milliliters and the secondary sample contains at least fifteen milliliters. Both portions of the sample shall be forwarded to the laboratory conducting the initial confirmatory testing. In addition to any requirements for storage of the initial sample that may be imposed upon the laboratory as a condition for certification or approval, the laboratory shall store the second portion of any sample until receipt of a confirmed negative test result or for a period of at least forty-five calendar days following the completion of the initial confirmatory testing, if the first portion yielded a confirmed positive test result.

c. Sample collections shall be documented, and the procedure for documentation shall include the following:

(1) Samples, except for samples collected for alcohol testing conducted pursuant to paragraph "f", subparagraph (2), shall be labeled so as to reasonably preclude the possibility of misidentification of the person tested in relation to the test result provided, and samples shall be handled and tracked in a manner such that control and accountability are maintained from initial collection to each stage in handling, testing, and storage, through final disposition.

(2) An employee or prospective employee shall be provided an opportunity to provide any information which may be considered relevant to the

test, including identification of prescription or nonprescription drugs currently or recently used, or other relevant medical information. To assist an employee or prospective employee in providing the information described in this subparagraph, the employer shall provide an employee or prospective employee with a list of the drugs to be tested.

*d.* Sample collection, storage, and transportation to the place of testing shall be performed so as to reasonably preclude the possibility of sample contamination, adulteration, or misidentification.

*e.* All confirmatory drug testing shall be conducted at a laboratory certified by the United States department of health and human services' substance abuse and mental health services administration or approved under rules adopted by the Iowa department of public health.

*f.* Drug or alcohol testing shall include confirmation of any initial positive test results. An employer may take adverse employment action, including refusal to hire a prospective employee, based on a confirmed positive test result for drugs or alcohol.

(1) For drug or alcohol testing, except for alcohol testing conducted pursuant to subparagraph (2), confirmation shall be by use of a different chemical process than was used in the initial screen for drugs or alcohol. The confirmatory drug or alcohol test shall be a chromatographic technique such as gas chromatography/mass spectrometry, or another comparably reliable analytical method.

(2) Notwithstanding any provision of this section to the contrary, alcohol testing, including initial and confirmatory testing, may be conducted pursuant to requirements established by the employer's written policy. The written policy shall include requirements governing evidential breath testing devices, alcohol screening devices, and the qualifications for personnel administering initial and confirmatory testing, which shall be consistent with regulations adopted as of January 1, 1999, by the United States department of transportation governing alcohol testing required to be conducted pursuant to the federal Omnibus Transportation Employee Testing Act of 1991.

(3) Notwithstanding any provision of this section to the contrary, collection of an oral fluid sample for testing shall be performed in the presence of the individual from whom the sample or specimen is collected. The specimen or sample shall be of sufficient quantity to permit a second, independent, confirmatory test as provided in paragraph "i". In addition to any requirement for storage of the initial sample that may be imposed upon the laboratory as a condition for certification or approval, the laboratory shall store the unused portion of any sample until receipt of a confirmed negative test result or for a period of at least forty-five calendar days following the completion of the ini-

tial confirmatory testing, if the portion yielded a confirmed positive test result.

*g.* A medical review officer shall, prior to the results being reported to an employer, review and interpret any confirmed positive test results, including both quantitative and qualitative test results, to ensure that the chain of custody is complete and sufficient on its face and that any information provided by the individual pursuant to paragraph "c", subparagraph (2), is considered. However, this paragraph shall not apply to alcohol testing conducted pursuant to paragraph "f", subparagraph (2).

*h.* In conducting drug or alcohol testing pursuant to this section, the laboratory, the medical review officer, and the employer shall ensure, to the extent feasible, that the testing only measure, and the records concerning the testing only show or make use of information regarding, alcohol or drugs in the body.

*i.* (1) If a confirmed positive test result for drugs or alcohol for a current employee is reported to the employer by the medical review officer, the employer shall notify the employee in writing by certified mail, return receipt requested, of the results of the test, the employee's right to request and obtain a confirmatory test of the second sample collected pursuant to paragraph "b" at an approved laboratory of the employee's choice, and the fee payable by the employee to the employer for reimbursement of expenses concerning the test. The fee charged an employee shall be an amount that represents the costs associated with conducting the second confirmatory test, which shall be consistent with the employer's cost for conducting the initial confirmatory test on an employee's sample. If the employee, in person or by certified mail, return receipt requested, requests a second confirmatory test, identifies an approved laboratory to conduct the test, and pays the employer the fee for the test within seven days from the date the employer mails by certified mail, return receipt requested, the written notice to the employee of the employee's right to request a test, a second confirmatory test shall be conducted at the laboratory chosen by the employee. The results of the second confirmatory test shall be reported to the medical review officer who reviewed the initial confirmatory test results and the medical review officer shall review the results and issue a report to the employer on whether the results of the second confirmatory test confirmed the initial confirmatory test as to the presence of a specific drug or alcohol. If the results of the second test do not confirm the results of the initial confirmatory test, the employer shall reimburse the employee for the fee paid by the employee for the second test and the initial confirmatory test shall not be considered a confirmed positive test result for drugs or alcohol for purposes of taking disciplinary action pursuant to subsection 10.



(2) If a confirmed positive test result for drugs or alcohol for a prospective employee is reported to the employer by the medical review officer, the employer shall notify the prospective employee in writing of the results of the test, of the name and address of the medical review officer who made the report, and of the prospective employee's right to request records under subsection 13.

*j.* A laboratory conducting testing under this section shall dispose of all samples for which a negative test result was reported to an employer within five working days after issuance of the negative test result report.

*k.* Except as necessary to conduct drug or alcohol testing pursuant to this section and to submit the report required by subsection 16, a laboratory or other medical facility shall only report to an employer or outside entity information relating to the results of a drug or alcohol test conducted pursuant to this section concerning the determination of whether the tested individual has engaged in conduct prohibited by the employer's written policy with regard to alcohol or drug use.

*l.* Notwithstanding the provisions of this subsection, an employer may rely and take action upon the results of any blood test for drugs or alcohol made on any employee involved in an accident at work if the test is administered by or at the direction of the person providing treatment or care to the employee without request or suggestion by the employer that a test be conducted, and the employer has lawfully obtained the results of the test. For purposes of this paragraph, an employer shall not be deemed to have requested or required a test in conjunction with the provision of medical treatment following a workplace accident by providing information concerning the circumstance of the accident.

8. *Drug or alcohol testing.* Employers may conduct drug or alcohol testing as provided in this subsection:

*a.* Employers may conduct unannounced drug or alcohol testing of employees who are selected from any of the following pools of employees:

(1) The entire employee population at a particular work site of the employer except for employees not subject to testing pursuant to a collective bargaining agreement, or employees who are not scheduled to be at work at the time the testing is conducted because of the status of the employees or who have been excused from work pursuant to the employer's work policy prior to the time the testing is announced to employees.

(2) The entire full-time active employee population at a particular work site except for employees not subject to testing pursuant to a collective bargaining agreement, or employees who are not scheduled to be at work at the time the testing is to be conducted because of the status of the employee or who have been excused from work pursu-

ant to the employer's working policy.

(3) All employees at a particular work site who are in a pool of employees in a safety-sensitive position and who are scheduled to be at work at the time testing is conducted, other than employees not subject to testing pursuant to a collective bargaining agreement, or employees who are not scheduled to be at work at the time the testing is to be conducted or who have been excused from work pursuant to the employer's work policy prior to the time the testing is announced to employees.

*b.* Employers may conduct drug or alcohol testing of employees during, and after completion of, drug or alcohol rehabilitation.

*c.* Employers may conduct reasonable suspicion drug or alcohol testing.

*d.* Employers may conduct drug or alcohol testing of prospective employees.

*e.* Employers may conduct drug or alcohol testing as required by federal law or regulation or by law enforcement.

*f.* Employers may conduct drug or alcohol testing in investigating accidents in the workplace in which the accident resulted in an injury to a person for which injury, if suffered by an employee, a record or report could be required under chapter 88, or resulted in damage to property, including to equipment, in an amount reasonably estimated at the time of the accident to exceed one thousand dollars.

9. *Written policy and other testing requirements.*

*a.* (1) Drug or alcohol testing or retesting by an employer shall be carried out within the terms of a written policy which has been provided to every employee subject to testing, and is available for review by employees and prospective employees. If an employee or prospective employee is a minor, the employer shall provide a copy of the written policy to a parent of the employee or prospective employee and shall obtain a receipt or acknowledgment from the parent that a copy of the policy has been received. Providing a copy of the written policy to a parent of a minor by certified mail, return receipt requested, shall satisfy the requirements of this subparagraph.

(2) In addition, the written policy shall provide that any notice required by subsection 7, paragraph "i", to be provided to an individual pursuant to a drug or alcohol test conducted pursuant to this section, shall also be provided to the parent of the individual by certified mail, return receipt requested, if the individual tested is a minor.

(3) In providing information or notice to a parent as required by this paragraph, an employer shall rely on the information regarding the identity of a parent as provided by the minor.

(4) For purposes of this paragraph, "minor" means an individual who is under eighteen years of age and is not considered by law to be an adult,

and “parent” means one biological or adoptive parent, a stepparent, or a legal guardian or custodian of the minor.

b. The employer’s written policy shall provide uniform requirements for what disciplinary or rehabilitative actions an employer shall take against an employee or prospective employee upon receipt of a confirmed positive test result for drugs or alcohol or upon the refusal of the employee or prospective employee to provide a testing sample. The policy shall provide that any action taken against an employee or prospective employee shall be based only on the results of the drug or alcohol test. The written policy shall also provide that if rehabilitation is required pursuant to paragraph “g”, the employer shall not take adverse employment action against the employee so long as the employee complies with the requirements of rehabilitation and successfully completes rehabilitation.

c. Employers shall establish an awareness program to inform employees of the dangers of drug and alcohol use in the workplace and comply with the following requirements in order to conduct drug or alcohol testing under this section:

(1) If an employer has an employee assistance program, the employer must inform the employee of the benefits and services of the employee assistance program. An employer shall post notice of the employee assistance program in conspicuous places and explore alternative routine and reinforcing means of publicizing such services. In addition, the employer must provide the employee with notice of the policies and procedures regarding access to and utilization of the program.

(2) If an employer does not have an employee assistance program, the employer must maintain a resource file of alcohol and other drug abuse programs certified by the Iowa department of public health, mental health providers, and other persons, entities, or organizations available to assist employees with personal or behavioral problems. The employer shall provide all employees information about the existence of the resource file and a summary of the information contained within the resource file. The summary should contain, but need not be limited to, all information necessary to access the services listed in the resource file.

d. An employee or prospective employee whose drug or alcohol test results are confirmed as positive in accordance with this section shall not, by virtue of those results alone, be considered as a person with a disability for purposes of any state or local law or regulation.

e. If the written policy provides for alcohol testing, the employer shall establish in the written policy a standard for alcohol concentration which shall be deemed to violate the policy. The standard for alcohol concentration shall not be less than .04, expressed in terms of grams of alcohol per two hundred ten liters of breath, or its equivalent.

f. An employee of an employer who is designated by the employer as being in a safety-sensitive position shall be placed in only one pool of safety-sensitive employees subject to drug or alcohol testing pursuant to subsection 8, paragraph “a”, subparagraph (3). An employer may have more than one pool of safety-sensitive employees subject to drug or alcohol testing pursuant to subsection 8, paragraph “a”, subparagraph (3), but shall not include an employee in more than one safety-sensitive pool.

g. Upon receipt of a confirmed positive alcohol test which indicates an alcohol concentration greater than the concentration level established by the employer pursuant to this section, and if the employer has at least fifty employees, and if the employee has been employed by the employer for at least twelve of the preceding eighteen months, and if rehabilitation is agreed upon by the employee, and if the employee has not previously violated the employer’s substance abuse prevention policy pursuant to this section, the written policy shall provide for the rehabilitation of the employee pursuant to subsection 10, paragraph “a”, subparagraph (1), and the apportionment of the costs of rehabilitation as provided by this paragraph.

(1) If the employer has an employee benefit plan, the costs of rehabilitation shall be apportioned as provided under the employee benefit plan.

(2) If no employee benefit plan exists and the employee has coverage for any portion of the costs of rehabilitation under any health care plan of the employee, the costs of rehabilitation shall be apportioned as provided by the health care plan with any costs not covered by the plan apportioned equally between the employee and the employer. However, the employer shall not be required to pay more than two thousand dollars toward the costs not covered by the employee’s health care plan.

(3) If no employee benefit plan exists and the employee does not have coverage for any portion of the costs of rehabilitation under any health care plan of the employee, the costs of rehabilitation shall be apportioned equally between the employee and the employer. However, the employer shall not be required to pay more than two thousand dollars towards the cost of rehabilitation under this subparagraph.

Rehabilitation required pursuant to this paragraph shall not preclude an employer from taking any adverse employment action against the employee during the rehabilitation based on the employee’s failure to comply with any requirements of the rehabilitation, including any action by the employee to invalidate a test sample provided by the employee pursuant to the rehabilitation.

h. In order to conduct drug or alcohol testing under this section, an employer shall require supervisory personnel of the employer involved with drug or alcohol testing under this section to attend

a minimum of two hours of initial training and to attend, on an annual basis thereafter, a minimum of one hour of subsequent training. The training shall include, but is not limited to, information concerning the recognition of evidence of employee alcohol and other drug abuse, the documentation and corroboration of employee alcohol and other drug abuse, and the referral of employees who abuse alcohol or other drugs to the employee assistance program or to the resource file maintained by the employer pursuant to paragraph “c”, subparagraph (2).

10. *Disciplinary procedures.*

a. Upon receipt of a confirmed positive test result for drugs or alcohol which indicates a violation of the employer’s written policy, or upon the refusal of an employee or prospective employee to provide a testing sample, an employer may use that test result or test refusal as a valid basis for disciplinary or rehabilitative actions pursuant to the requirements of the employer’s written policy and the requirements of this section, which may include, among other actions, the following:

(1) A requirement that the employee enroll in an employer-provided or approved rehabilitation, treatment, or counseling program, which may include additional drug or alcohol testing, participation in and successful completion of which may be a condition of continued employment, and the costs of which may or may not be covered by the employer’s health plan or policies.

(2) Suspension of the employee, with or without pay, for a designated period of time.

(3) Termination of employment.

(4) Refusal to hire a prospective employee.

(5) Other adverse employment action in conformance with the employer’s written policy and procedures, including any relevant collective bargaining agreement provisions.

b. Following a drug or alcohol test, but prior to receipt of the final results of the drug or alcohol test, an employer may suspend a current employee, with or without pay, pending the outcome of the test. An employee who has been suspended shall be reinstated by the employer, with back pay, and interest on such amount at eighteen percent per annum compounded annually, if applicable, if the result of the test is not a confirmed positive test result for drugs or alcohol which indicates a violation of the employer’s written policy.

11. *Employer immunity.* A cause of action shall not arise against an employer who has established a policy and initiated a testing program in accordance with the testing and policy safeguards provided for under this section, for any of the following:

a. Testing or taking action based on the results of a positive drug or alcohol test result, indicating the presence of drugs or alcohol, in good faith, or on the refusal of an employee or prospective employee to submit to a drug or alcohol test.

b. Failure to test for drugs or alcohol, or failure to test for a specific drug or controlled substance.

c. Failure to test for, or if tested for, failure to detect, any specific drug or other controlled substance.

d. Termination or suspension of any substance abuse prevention or testing program or policy.

e. Any action taken related to a false negative drug or alcohol test result.

12. *Employer liability — false positive test results.*

a. Except as otherwise provided in paragraph “b”, a cause of action shall not arise against an employer who has established a program of drug or alcohol testing in accordance with this section, unless all of the following conditions exist:

(1) The employer’s action was based on a false positive test result.

(2) The employer knew or clearly should have known that the test result was in error and ignored the correct test result because of reckless, malicious, or negligent disregard for the truth, or the willful intent to deceive or to be deceived.

b. A cause of action for defamation, libel, slander, or damage to reputation shall not arise against an employer establishing a program of drug or alcohol testing in accordance with this section unless all of the following apply:

(1) The employer discloses the test results to a person other than the employer, an authorized employee, agent, or representative of the employer, the tested employee or the tested applicant for employment, an authorized substance abuse treatment program or employee assistance program, or an authorized agent or representative of the tested employee or applicant.

(2) The test results disclosed incorrectly indicate the presence of alcohol or drugs.

(3) The employer negligently discloses the results.

c. In any cause of action based upon a false positive test result, all of the following conditions apply:

(1) The results of a drug or alcohol test conducted in compliance with this section are presumed to be valid.

(2) An employer shall not be liable for monetary damages if the employer’s reliance on the false positive test result was reasonable and in good faith.

13. *Confidentiality of results — exception.*

a. All communications received by an employer relevant to employee or prospective employee drug or alcohol test results, or otherwise received through the employer’s drug or alcohol testing program, are confidential communications and shall not be used or received in evidence, obtained in discovery, or disclosed in any public or private proceeding, except as otherwise provided or authorized by this section.

b. An employee, or a prospective employee,

who is the subject of a drug or alcohol test conducted under this section pursuant to an employer's written policy and for whom a confirmed positive test result is reported shall, upon written request, have access to any records relating to the employee's drug or alcohol test, including records of the laboratory where the testing was conducted and any records relating to the results of any relevant certification or review by a medical review officer. However, a prospective employee shall be entitled to records under this paragraph only if the prospective employee requests the records within fifteen calendar days from the date the employer provided the prospective employee written notice of the results of a drug or alcohol test as provided in subsection 7, paragraph "i", subparagraph (2).

c. Except as provided by this section and as necessary to conduct drug or alcohol testing under this section and to file a report pursuant to subsection 16, a laboratory and a medical review officer conducting drug or alcohol testing under this section shall not use or disclose to any person any personally identifiable information regarding such testing, including the names of individuals tested, even if unaccompanied by the results of the test.

d. An employer may use and disclose information concerning the results of a drug or alcohol test conducted pursuant to this section under any of the following circumstances:

(1) In an arbitration proceeding pursuant to a collective bargaining agreement, or an administrative agency proceeding or judicial proceeding under workers' compensation laws or unemployment compensation laws or under common or statutory laws where action taken by the employer based on the test is relevant or is challenged.

(2) To any federal agency or other unit of the federal government as required under federal law, regulation or order, or in accordance with compliance requirements of a federal government contract.

(3) To any agency of this state authorized to license individuals if the employee tested is licensed by that agency and the rules of that agency require such disclosure.

(4) To a union representing the employee if such disclosure would be required by federal labor laws.

(5) To a substance abuse evaluation or treatment facility or professional for the purpose of evaluation or treatment of the employee.

However, positive test results from an employer drug or alcohol testing program shall not be used as evidence in any criminal action against the employee or prospective employee tested.

14. *Civil penalties — jurisdiction.*

a. Any laboratory or medical review officer

which discloses information in violation of the provisions of subsection 7, paragraph "h" or "k", or any employer who, through the selection process described in subsection 1, paragraph "l", improperly targets or exempts employees subject to unannounced drug or alcohol testing, shall be subject to a civil penalty of one thousand dollars for each violation. The attorney general or the attorney general's designee may maintain a civil action to enforce this subsection. Any civil penalty recovered shall be deposited in the general fund of the state.

b. A laboratory or medical review officer involved in the conducting of a drug or alcohol test pursuant to this section shall be deemed to have the necessary contact with this state for the purpose of subjecting the laboratory or medical review officer to the jurisdiction of the courts of this state.

15. *Civil remedies.* This section may be enforced through a civil action.

a. A person who violates this section or who aids in the violation of this section, is liable to an aggrieved employee or prospective employee for affirmative relief including reinstatement or hiring, with or without back pay, or any other equitable relief as the court deems appropriate including attorney fees and court costs.

b. When a person commits, is committing, or proposes to commit, an act in violation of this section, an injunction may be granted through an action in district court to prohibit the person from continuing such acts. The action for injunctive relief may be brought by an aggrieved employee or prospective employee, the county attorney, or the attorney general.

In an action brought under this subsection alleging that an employer has required or requested a drug or alcohol test in violation of this section, the employer has the burden of proving that the requirements of this section were met.

16. *Reports.* A laboratory doing business for an employer who conducts drug or alcohol tests pursuant to this section shall file an annual report with the Iowa department of public health by March 1 of each year concerning the number of drug or alcohol tests conducted on employees who work in this state pursuant to this section, the number of positive and negative results of the tests, during the previous calendar year. In addition, the laboratory shall include in its annual report the specific basis for each test as authorized in subsection 8, the type of drug or drugs which were found in the positive drug tests, and all significant available demographic factors relating to the positive test pool.

2007 Acts, ch 50, §1  
Subsection 8, paragraph a amended

## CHAPTER 802

### LIMITATION OF CRIMINAL ACTIONS

#### **802.2 Sexual abuse — first, second, or third degree.**

1. An information or indictment for sexual abuse in the first, second, or third degree committed on or with a person who is under the age of eighteen years shall be found within ten years after the person upon whom the offense is committed attains eighteen years of age, or if the person against whom the information or indictment is sought is identified through the use of a DNA profile, an information or indictment shall be found within three years from the date the person is identified by the person's DNA profile, whichever is later.

2. An information or indictment for any other sexual abuse in the first, second, or third degree shall be found within ten years after its commission, or if the person against whom the information or indictment is sought is identified through the use of a DNA profile, an information or indictment shall be found within three years from the date the person is identified by the person's DNA profile, whichever is later.

3. As used in this section, "*identified*" means a person's legal name is known and the person has

been determined to be the source of the DNA.

2007 Acts, ch 126, §110  
Section amended

#### **802.10 DNA profile of accused.**

1. As used in this section:

*a.* "*DNA profile*" means the same as defined in section 81.1.

*b.* "*Identified*" means the same as defined in section 802.2.

2. An indictment or information may be found containing only the DNA profile of the person sought. When an indictment or information is found containing only a DNA profile, the limitation of any action under section 802.3 is tolled.

3. However, notwithstanding subsection 2, an indictment or information shall be found against a person within three years from the date the person is identified by the person's DNA profile. If the action involves sexual abuse, the indictment or information shall be found as provided in section 802.2, if the person is identified by the person's DNA profile.

2007 Acts, ch 126, §111  
Section amended

## CHAPTER 805

### CITATIONS IN LIEU OF ARREST

#### **805.6 Uniform citation and complaint.**

1. *a.* (1) The commissioner of public safety, the director of transportation, and the director of natural resources, acting jointly, shall adopt a uniform, combined citation and complaint which shall be used for charging all traffic violations in Iowa under state law or local regulation or ordinance, and which shall be used for charging all other violations which are designated by sections 805.8A, 805.8B, and 805.8C to be scheduled violations. The filing fees and court costs in cases of parking meter and overtime parking violations which are denied are as stated in section 602.8106, subsection 1. The court costs in scheduled violation cases where a court appearance is not required are as stated in section 602.8106, subsection 1. The court costs in scheduled violation cases where a court appearance is required are as stated in section 602.8106, subsection 1. This subsection does not prevent the charging of any of those violations by information, by private complaint filed under chapter 804, or by a simple notice of fine where permitted by section 321.236, subsection 1. Each uniform citation and complaint shall be seri-

ally numbered and shall be in quintuplicate, and the officer shall deliver the original and a copy to the court where the defendant is to appear, two copies to the defendant, and a copy to the law enforcement agency of the officer. The court shall forward an abstract of the uniform citation and complaint in accordance with section 321.491 when applicable.

(2) The uniform citation and complaint shall contain spaces for the parties' names; the address of the alleged offender; the registration number of the offender's vehicle; the information required by section 805.2, a warning which states, "I hereby swear and affirm that the information provided by me on this citation is true under penalty of providing false information"; and a statement that providing false information is a violation of section 719.3; a list of the scheduled fines prescribed by sections 805.8A, 805.8B, and 805.8C, either separately or by group, and a statement of the court costs payable in scheduled violation cases, whether or not a court appearance is required or is demanded; a brief explanation of sections 805.9 and 805.10; and a space where the defendant may sign

an admission of the violation when permitted by section 805.9; and the uniform citation and complaint shall require that the defendant appear before a court at a specified time and place. The uniform citation and complaint also may contain a space for the imprint of a credit card, and may contain any other information which the commissioner of public safety and the director of natural resources may determine.

(3) Notwithstanding other contrary requirements of this section, a uniform citation and complaint may be originated from a computerized device. The officer issuing the citation through a computerized device shall electronically sign and date the citation or complaint and shall obtain electronically the signature of the person cited as provided in section 805.3 and shall give two copies of the citation to the person cited and shall provide a record of the citation to the court where the person cited is to appear and to the law enforcement agency of the officer by an electronic process which accurately reproduces or forms a durable medium for accurately and legibly reproducing an unaltered image or copy of the citation.

b. The uniform citation and complaint shall contain the following:

(1) A promise to appear as provided in section 805.3.

(2) The following statement:

I hereby give my unsecured appearance bond in the amount of . . . . . dollars and enter my written appearance. I agree that if I fail to appear in person or by counsel to defend against the offense charged in this citation the court is authorized to enter a conviction and render judgment against me for the amount of my appearance bond in satisfaction of the penalty plus court costs.

(3) A space immediately below the items in subparagraphs (1) and (2) for the signature of the person being charged which shall serve for each of the items in subparagraphs (1) and (2).

c. Unless the officer issuing the citation arrests the alleged offender, or permits admission or requires submission of bail as provided in section 805.9, subsection 3, the officer shall enter in the blank contained in the statement required by paragraph "b" one of the following amounts and shall require the person to sign the written appearance:

(1) If the offense is one to which an assessment of a minimum fine is applicable and the entry is otherwise not prohibited by this section, an amount equal to one and one-half times the minimum fine plus court costs.

(2) If the offense is one to which a scheduled fine is applicable, an amount equal to one and one-half times the scheduled fine plus court costs.

(3) If the violation is for any offense for which a court appearance is mandatory, and an assessment of a minimum fine is not applicable, the

amount of one hundred dollars plus court costs.

d. The written appearance defined in paragraph "b" shall not be used for any offense other than a simple misdemeanor and shall not be used for any offense under section 321.218 or 321A.32.

2. In addition to those violations which are required by subsection 1 to be charged upon a uniform citation and complaint, a violation of chapter 321 which is punishable as a simple, serious, or aggravated misdemeanor may be charged upon a uniform citation and complaint, whether or not the alleged offender is arrested by the officer making the charge.

3. The uniform citation and complaint shall contain a place for citing a person in violation of section 453A.2, subsection 2.

4. Supplies of the uniform citation and complaint for municipal corporations and county agencies shall be paid for out of the budget of the municipal corporation or county receiving the fine resulting from use of the citation and complaint. Supplies of the uniform citation and complaint form used by other agencies shall be paid for out of the budget of the agency concerned and not out of the budget of the judicial branch.

5. The uniform citation and complaint shall contain a place for the verification of the officer issuing the complaint. The complaint may be verified before the chief officer of the law enforcement agency, or the chief officer's designee. The chief officer of each law enforcement agency of the state may designate specific individuals to administer oaths and certify verifications.

6. The commissioner of public safety and the director of the department of natural resources, acting jointly, shall design and publish a compendium of scheduled violations and scheduled fines, containing other information which they deem appropriate, and shall distribute copies to all courts and law enforcement officers and agencies of the state upon request. The cost of the publication shall be paid out of the budget of the department of public safety and out of the budget of the department of natural resources, each budget being liable for half of those costs. Copies shall be made available to individuals upon request, and a charge may be collected which does not exceed the cost of printing.

7. Supplies of uniform citation and complaint forms existing or on order on July 1, 1995, may be used until exhausted.

2007 Acts, ch 33, §3; 2007 Acts, ch 215, §259  
Scheduled fine for purposes of calculating unsecured appearance bond, see §805.8A, subsection 1, paragraph a  
Subsection 1, paragraph a, former unnumbered paragraphs 1 and 2 editorially designated as subparagraphs (1) and (2)  
Subsection 1, paragraph a, former unnumbered paragraph 3 amended and editorially designated as subparagraph (3)

**805.8B Navigation, recreation, hunting, and fishing scheduled violations.**

1. *Navigation violations.*

a. For violations of registration, inspections,

identification, and record provisions under sections 462A.5, 462A.35, and 462A.37, and for unused or improper or defective lights and warning devices under section 462A.9, subsections 3, 4, 5, 9, and 10, the scheduled fine is ten dollars.

b. For violations of registration, identification, and record provisions under sections 462A.4 and 462A.10, and for unused or improper or defective equipment under section 462A.9, subsections 2, 6, 7, 8, 13, and 14, and section 462A.11, and for operation violations under sections 462A.26, 462A.31, and 462A.33, the scheduled fine is twenty dollars.

c. For operating violations under sections 462A.12, 462A.15, subsection 1, sections 462A.24, and 462A.34, the scheduled fine is twenty-five dollars. However, a violation of section 462A.12, subsection 2, is not a scheduled violation.

d. For violations of use, location, and storage of vessels, devices, and structures under sections 462A.27, 462A.28, and 462A.32, the scheduled fine is fifteen dollars.

e. For violations of all subdivision ordinances under section 462A.17, subsection 2, except those relating to matters subject to regulation by authority of section 462A.31, subsection 5, the scheduled fine is the same as prescribed for similar violations of state law. For violations of subdivision ordinances for which there is no comparable state law, the scheduled fine is ten dollars.

#### 2. *Snowmobile violations.*

a. For registration or user permit violations under section 321G.3, subsections 1 and 2, the scheduled fine is fifty dollars.

b. (1) For operating violations under section 321G.9, the scheduled fine is fifty dollars.

(2) For operating violations under sections 321G.11 and 321G.13, subsection 1, paragraph "d", the scheduled fine is twenty dollars.

(3) For operating violations under section 321G.13, subsection 1, paragraphs "a", "b", "e", "f", "g", and "h", and subsections 2 and 3, the scheduled fine is one hundred dollars.

c. For improper or defective equipment under section 321G.12, the scheduled fine is twenty dollars.

d. For violations of section 321G.19, the scheduled fine is twenty dollars.

e. For identification violations under section 321G.5, the scheduled fine is twenty dollars.

f. For stop signal violations under section 321G.17, the scheduled fine is one hundred dollars.

g. For violations of section 321G.20 and for safety certificate violations under section 321G.24, subsection 1, the scheduled fine is fifty dollars.

h. For violations of section 321G.21, the scheduled fine is one hundred dollars.

#### 2A. *All-terrain vehicle violations.*

a. For registration or user permit violations under section 321I.3, subsections 1 and 2, the scheduled fine is fifty dollars.

b. (1) For operating violations under sections 321I.12 and 321I.14, subsection 1, paragraph "d", the scheduled fine is twenty dollars.

(2) For operating violations under section 321I.10, subsections 1 and 4, the scheduled fine is fifty dollars.

(3) For operating violations under section 321I.14, subsection 1, paragraphs "a", "e", "f", "g", and "h", and subsections 2, 3, 4, and 5, the scheduled fine is one hundred dollars.

c. For improper or defective equipment under section 321I.13, the scheduled fine is twenty dollars.

d. For violations of section 321I.20, the scheduled fine is twenty dollars.

e. For identification violations under section 321I.6, the scheduled fine is twenty dollars.

f. For stop signal violations under section 321I.18, the scheduled fine is one hundred dollars.

g. For violations of section 321I.21 and for safety certificate violations under section 321I.26, subsection 1, the scheduled fine is fifty dollars.

h. For violations of section 321I.22, the scheduled fine is one hundred dollars.

#### 3. *Hunting and fishing violations.*

a. For violations of section 484A.2, the scheduled fine is ten dollars.

b. For violations of sections 481A.54, 481A.69, 481A.71, 481A.72, 482.6, 483A.3, 483A.6, 483A.19, and 483A.27, the scheduled fine is twenty dollars.

c. For violations of sections 481A.6, 481A.21, 481A.22, 481A.26, 481A.50, 481A.56, 481A.60 through 481A.62, 481A.83, 481A.84, 481A.92, 481A.123, 481A.145, subsection 3, sections 482.7, 483A.7, 483A.8, 483A.23, and 483A.24, the scheduled fine is twenty-five dollars.

d. For violations of sections 481A.7, 481A.24, 481A.47, 481A.52, 481A.53, 481A.55, 481A.58, 481A.76, 481A.90, 481A.91, 481A.97, 481A.122, 481A.126, 481A.142, 481A.145, subsection 2, sections 482.8, and 483A.37, the scheduled fine is fifty dollars.

e. For violations of sections 481A.57, 481A.85, 481A.93, 481A.95, 481A.120, 481A.137, 481B.5, 482.3, 482.9, 482.15, and 483A.42, the scheduled fine is one hundred dollars.

f. For violations of section 481A.38 relating to the taking, pursuing, killing, trapping or ensnaring, buying, selling, possessing, or transporting any game, protected nongame animals, fur-bearing animals, or fur or skin of the animals, mussels, frogs, or fish or part of them, the scheduled fines are as follows:

(1) For deer or turkey, the scheduled fine is one hundred dollars.

(2) For protected nongame, the scheduled fine is one hundred dollars.

(3) For mussels, frogs, spawn, or fish, the scheduled fine is twenty-five dollars.

(4) For other game, the scheduled fine is fifty dollars.

(5) For fur-bearing animals, the scheduled fine is seventy-five dollars.

*g.* For violations of section 481A.38 relating to an attempt to take, pursue, kill, trap, buy, sell, possess, or transport any game, protected nongame animals, fur-bearing animals, or fur or skin of the animals, mussels, frogs, or fish or part of them, the scheduled fines are as follows:

(1) For game or fur-bearing animals, the scheduled fine is fifty dollars.

(2) For protected nongame, the scheduled fine is fifty dollars.

(3) For mussels, frogs, spawn, or fish, the scheduled fine is ten dollars.

*h.* For violations of section 481A.48 relating to restrictions on game birds and animals, the scheduled fines are as follows:

(1) Out-of-season, the scheduled fine is one hundred dollars.

(2) Over limit, the scheduled fine is one hundred dollars.

(3) Attempt to take, the scheduled fine is fifty dollars.

(4) General waterfowl restrictions, the scheduled fine is fifty dollars.

(a) No federal stamp, the scheduled fine is fifty dollars.

(b) Unplugged shotgun, the scheduled fine is ten dollars.

(c) Possession of other than steel shot, the scheduled fine is twenty-five dollars.

(d) Early or late shooting, the scheduled fine is twenty-five dollars.

(5) Possession of a prohibited pistol or revolver while hunting deer, the scheduled fine is one hundred dollars.

*i.* For violations of section 481A.67 relating to general violations of fishing laws, the scheduled fine is twenty-five dollars.

(1) For over limit catch, the scheduled fine is thirty dollars.

(2) For under minimum length or weight, the scheduled fine is twenty dollars.

(3) For out-of-season fishing, the scheduled fine is fifty dollars.

*j.* For violations of section 481A.73 relating to trotlines and throwlines:

(1) For trotline or throwline violations in legal waters, the scheduled fine is twenty-five dollars.

(2) For trotline or throwline violations in illegal waters, the scheduled fine is fifty dollars.

*k.* For violations of section 481A.144, subsection 4, or section 481A.145, subsections 4, 5, and 6, relating to minnows:

(1) For general minnow violations, the scheduled fine is twenty-five dollars.

(2) For commercial purposes, the scheduled fine is fifty dollars.

*l.* For violations of section 481A.87 relating to the taking or possessing of fur-bearing animals out of season:

(1) For red fox, gray fox, or mink, the sched-

uled fine is one hundred dollars.

(2) For all other furbearers, the scheduled fine is fifty dollars.

*m.* For violations of section 482.4 relating to gear tags:

(1) For commercial license violations, the scheduled fine is one hundred dollars.

(2) For no gear tags, the scheduled fine is twenty-five dollars.

*n.* For violations of section 482.11 relating to turtles:

(1) For commercial turtle violations, the scheduled fine is one hundred dollars.

(2) For sport turtle violations, the scheduled fine is fifty dollars.

*o.* For violations of section 482.12 relating to mussels:

(1) For commercial mussel violations, the scheduled fine is one hundred dollars.

(2) For sport mussel violations, the scheduled fine is fifty dollars.

*p.* For violations of section 483A.1 relating to licenses and permits, the scheduled fines are as follows:

(1) For a license or permit costing ten dollars or less, the scheduled fine is twenty dollars.

(2) For a license or permit costing more than ten dollars but not more than twenty dollars, the scheduled fine is thirty dollars.

(3) For a license or permit costing more than twenty dollars but not more than forty dollars, the scheduled fine is fifty dollars.

(4) For a license or permit costing more than forty dollars but not more than fifty dollars, the scheduled fine is seventy dollars.

(5) For a license or permit costing more than fifty dollars, the scheduled fine is one hundred dollars.

*q.* For violations of section 483A.26 relating to false claims for licenses:

(1) For making a false claim for a license by a resident, the scheduled fine is fifty dollars.

(2) For making a false claim for a license by a nonresident, the scheduled fine is one hundred dollars.

*r.* For violations of section 483A.36 relating to the conveyance of guns:

(1) For conveying an assembled, unloaded gun, the scheduled fine is twenty-five dollars.

(2) For conveying a loaded gun, the scheduled fine is fifty dollars.

4. *Ginseng violations.* For a violation of section 456A.24, subsection 11, the scheduled fine is one hundred dollars.

5. *Aquatic invasive species violations.* For violations of section 456A.37, subsection 5, the scheduled fine is one hundred dollars.

6. *Misuse of parks and preserves.*

*a.* For violations under sections 461A.39, 461A.45, and 461A.50, the scheduled fine is ten dollars.

*b.* For violations under sections 461A.40,



461A.46, and 461A.49, the scheduled fine is fifteen dollars.

c. For violations of section 461A.44, the scheduled fine is fifty dollars.

d. For violations of section 461A.48, the scheduled fine is twenty-five dollars.

e. For violations under section 461A.43, the scheduled fine is thirty dollars.

2007 Acts, ch 28, §22; 2007 Acts, ch 141, §54, 55  
 Subsection 1, paragraph b amended  
 Subsection 2 amended  
 NEW subsection 2A

### 805.8C Miscellaneous scheduled violations.

1. *Energy emergency violations.* For violations of an executive order issued by the governor under the provisions of section 473.8, the scheduled fine is fifty dollars.

2. *Alcoholic beverage violations.* For violations of section 123.49, subsection 2, paragraph "h", the scheduled fine for a licensee or permittee is one thousand five hundred dollars, and the scheduled fine for a person who is employed by a licensee or permittee is five hundred dollars.

3. *Smoking violations.*

a. For violations of section 142B.6, the scheduled fine is twenty-five dollars, and is a civil penalty, and the criminal penalty surcharge under section 911.1 shall not be added to the penalty, and the court costs pursuant to section 805.9, subsection 6, shall not be imposed. If the civil penalty assessed for a violation of section 142B.6 is not paid in a timely manner, a citation shall be issued for the violation in the manner provided in section 804.1. However, a person under age eighteen shall not be detained in a secure facility for failure to pay the civil penalty. The complainant shall not be charged a filing fee.

b. For violations of section 453A.2, subsection 1, by an employee of a retailer, the scheduled fine is as follows:

(1) If the violation is a first offense, the scheduled fine is one hundred dollars.

(2) If the violation is a second offense, the scheduled fine is two hundred fifty dollars.

(3) If the violation is a third or subsequent offense, the scheduled fine is five hundred dollars.

c. For violations of section 453A.2, subsection 2, the scheduled fine is as follows and is a civil penalty, and the criminal penalty surcharge under

section 911.1 shall not be added to the penalty, and the court costs pursuant to section 805.9, subsection 6, shall not be imposed:

(1) If the violation is a first offense, the scheduled fine is fifty dollars.

(2) If the violation is a second offense, the scheduled fine is one hundred dollars.

(3) If the violation is a third or subsequent offense, the scheduled fine is two hundred fifty dollars.

4. *Electrical and mechanical amusement device violations.*

a. For violations of legal age for operating an electrical and mechanical amusement device required to be registered as provided in section 99B.10, subsection 1, paragraph "j", pursuant to section 99B.10C, subsection 1, the scheduled fine is two hundred fifty dollars. Failure to pay the fine by a person under the age of eighteen shall not result in the person being detained in a secure facility.

b. For first offense violations concerning electrical and mechanical amusement devices as provided in section 99B.10, subsection 3, the scheduled fine is two hundred fifty dollars.

5. *Gambling violations.* For violations of legal age for gambling wagering under section 99D.11, subsection 7, section 99F.9, subsection 5, and section 725.19, subsection 1, the scheduled fine is five hundred dollars. Failure to pay the fine by a person under the age of eighteen shall not result in the person being detained in a secure facility.

6. *Pseudoephedrine sales violations.* For violations of section 126.23A, subsection 1, by an employee of a retailer, or for violations of section 126.23A, subsection 2, paragraph "a", by a purchaser, the scheduled fine is as follows:

a. If the violation is a first offense, the scheduled fine is one hundred dollars.

b. If the violation is a second offense, the scheduled fine is two hundred fifty dollars.

c. If the violation is a third or subsequent offense, the scheduled fine is five hundred dollars.

7. *Alcoholic beverage violations by persons under legal age.* For first offense violations of section 123.47, subsection 3, the scheduled fine is two hundred dollars.

2007 Acts, ch 173, §9  
 Subsection 4 amended

## CHAPTER 809

### DISPOSITION OF SEIZED PROPERTY

#### 809.5 Disposition of seized property.

1. Seized property which is no longer required as evidence or for use in an investigation shall be

returned to the owner, provided that the person's possession of the property is not prohibited by law and there is no forfeiture claim filed on behalf of

the state.

*a.* The seizing agency shall send notice by restricted certified mail, return receipt requested, to the last known address of any person having an ownership or possessory right in the property stating that the property must be claimed within thirty days from the date of receipt of the notice. Refusal of restricted certified mail, return receipt requested, shall be construed as receipt of the notice. Such notice shall state that if no written claim for the property is filed with the seizing agency within thirty days from the date of receipt of the notice, the property shall be deemed abandoned and disposed of accordingly.

*b.* The seizing agency shall not release the property to any party until the expiration of the date for filing claims. In the event that there is more than one claim filed for the return of property under this section, at the expiration of the period for filing claims the seizing agency shall file a copy of all such claims with the clerk of court and the clerk shall proceed as if such claims were filed by the parties under section 809.3. In the event that no owner can be located or no claim is filed under this section for property having a value of less than five hundred dollars, the property shall be deemed abandoned and the seizing agency shall become the owner of such property and may dispose of it in any reasonable manner.

*c.* For unclaimed property having a value equal to or greater than five hundred dollars, forfeiture proceedings shall be initiated pursuant to

the provisions of chapter 809A. If the court does not order the property forfeited to the state in the forfeiture proceedings pursuant to chapter 809A, the seizing agency shall become the owner of the property and may dispose of it in any reasonable manner. Unclaimed firearms and ammunition, if not forfeited pursuant to chapter 809A, shall be disposed of by the department of public safety or the department of natural resources pursuant to section 809.21.

2. Upon the filing of a claim and following hearing by the court, property which has been seized shall be returned to the person who demonstrates a right to possession, unless one or more of the following is true:

*a.* The possession of the property by the claimant is prohibited by law.

*b.* There is a forfeiture notice on file and not disposed of in favor of the claimant prior to or in the same hearing.

*c.* The state has demonstrated that the evidence is needed in a criminal investigation or prosecution.

3. The court shall, subject to any unresolved forfeiture hearing, make orders appropriate to the final disposition of the property including, but not limited to, the destruction of contraband once it is no longer needed in an investigation or prosecution.

2007 Acts, ch 107, §1  
Subsection 1 amended and editorially divided into unnumbered paragraph 1 and paragraphs a – c of subsection 1

## CHAPTER 809A

### FORFEITURE REFORM ACT

#### **809A.3 Conduct giving rise to forfeiture.**

The following conduct may give rise to forfeiture:

1. An act or omission which is a public offense and which is a serious or aggravated misdemeanor or felony.

2. An act or omission occurring outside of this state, that would be punishable by confinement of one year or more in the place of occurrence and would be a serious or aggravated misdemeanor or felony if the act or omission occurred in this state.

3. An act or omission committed in furtherance of any act or omission described in subsection

1, which is a serious or aggravated misdemeanor or felony, including any inchoate or preparatory offense.

4. Notwithstanding subsections 1 through 3, violations of chapter 321 or 321J shall not be considered conduct giving rise to forfeiture, except for violations of the following:

*a.* Section 321.232.

*b.* A second or subsequent violation of section 321J.4B, subsection 2, paragraph “b”.

*c.* Section 321J.4B, subsection 9.

2007 Acts, ch 38, §11  
Subsection 4 amended

## CHAPTER 811

### PRETRIAL AND POST-TRIAL RELEASE — BAIL

**811.2A Pretrial release.** Repealed by 2007 Acts, ch 215, § 134.

## CHAPTER 815

### COSTS — COMPENSATION AND FEES — INDIGENT DEFENSE

#### 815.7 Fees to attorneys.

1. An attorney who has not entered into a contract authorized under section 13B.4 and who is appointed by the court to represent any person pursuant to section 814.11 or 815.10 shall be entitled to reasonable compensation and expenses.

2. For appointments made on or after July 1, 1999, through June 30, 2006, the reasonable compensation shall be calculated on the basis of sixty dollars per hour for class “A” felonies, fifty-five dollars per hour for class “B” felonies, and fifty dollars per hour for all other cases.

3. For appointments made on or after July 1, 2006, through June 30, 2007, the reasonable compensation shall be calculated on the basis of sixty-five dollars per hour for class “A” felonies, sixty dollars per hour for all other felonies, sixty dollars per hour for misdemeanors, and fifty-five dollars per hour for all other cases.

4. For appointments made on or after July 1, 2007, the reasonable compensation shall be calculated on the basis of seventy dollars per hour for class “A” felonies, sixty-five dollars per hour for class “B” felonies, and sixty dollars per hour for all other cases.

5. The expenses shall include any sums as are necessary for investigations in the interest of justice, and the cost of obtaining the transcript of the trial record and briefs if an appeal is filed. The attorney need not follow the case into another county or into the appellate court unless so directed by the court. If the attorney follows the case into an-

other county or into the appellate court, the attorney shall be entitled to compensation as provided in this section. Only one attorney fee shall be so awarded in any one case except that in class “A” felony cases, two may be authorized.

2007 Acts, ch 213, §25  
Compensation rates for attorneys appointed prior to July 1, 1999; determination of appointment date and compensation rate in juvenile cases;  
2000 Acts, ch 1115, §10  
Section amended

#### 815.11 Appropriations for indigent defense — fund created.

Costs incurred under chapter 229A, 665, 822, or 908, or section 232.141, subsection 3, paragraph “d”, or section 598.23A, 600A.6B, 814.9, 814.10, 814.11, 815.4, 815.7, or 815.10 on behalf of an indigent shall be paid from moneys appropriated by the general assembly to the office of the state public defender in the department of inspections and appeals and deposited in an account to be known as the indigent defense fund. Costs incurred representing an indigent defendant in a contempt action, or representing an indigent juvenile in a juvenile court proceeding under chapter 600, are also payable from the fund. However, costs incurred in any administrative proceeding or in any other proceeding under this chapter or chapter 598, 600, 600A, 633, 633A, 814, or 915 or other provisions of the Code or administrative rules are not payable from the fund.

2007 Acts, ch 22, §106  
Section amended

## CHAPTER 904

### DEPARTMENT OF CORRECTIONS

#### 904.119 Private sector housing of inmates — prohibition.

The department shall not enter into any agreement with a private sector for-profit entity for the purpose of housing inmates committed to the custody of the director.

2007 Acts, ch 103, §1  
NEW section

#### 904.205 Clarinda correctional facility.

The state correctional facility at Clarinda shall be utilized as a secure men’s correctional facility primarily for offenders with chemical dependence, mental retardation, or mental illness.

2007 Acts, ch 105, §1  
Section amended

**904.312A Motor vehicles.**

1. A motor vehicle purchased by the department shall not operate on gasoline other than ethanol blended gasoline as defined in section 214A.1. A state-issued credit card used to purchase gasoline shall not be valid to purchase gasoline other than ethanol blended gasoline. The motor vehicle shall also be affixed with a brightly visible sticker which notifies the traveling public that the motor vehicle is being operated on ethanol blended gasoline. However, the sticker is not required to be affixed to an unmarked vehicle used for purposes of providing law enforcement or security.

2. *a.* Of all new passenger vehicles and light pickup trucks purchased by the department, a minimum of ten percent of all such vehicles and trucks purchased shall be equipped with engines which utilize alternative methods of propulsion, including but not limited to any of the following:

(1) A flexible fuel which is any of the following:

(a) E-85 gasoline as provided in section 214A.2.

(b) B-20 biodiesel blended fuel as provided in section 214A.2.

(c) A renewable fuel approved by the office of renewable fuels and coproducts pursuant to section 159A.3.

(2) Compressed or liquefied natural gas.

(3) Propane gas.

(4) Solar energy.

(5) Electricity.

*b.* The provisions of this subsection do not apply to vehicles and trucks purchased and directly used for law enforcement or off-road maintenance work.

2007 Acts, ch 22, §107

Subsection 2, unnumbered paragraph 1 editorially designated as paragraph a, unnumbered paragraph 1

Subsection 2, former paragraph a, unnumbered paragraph 1 amended and editorially redesignated as subparagraph (1) of paragraph a

Subsection 2, former subparagraphs (1) – (3) of paragraph a editorially redesignated as subparagraph subdivisions (a) – (c) of paragraph a, subparagraph (1)

Subsection 2, former paragraphs b – e editorially redesignated as subparagraphs (2) – (5) of paragraph a

Subsection 2, former unnumbered paragraph 2 editorially designated as paragraph b

**904.701 Services required — gratuitous allowances — hard labor — rules.**

1. An inmate of an institution shall be required to perform hard labor which is suited to the inmate's age, gender, physical and mental condition, strength, and attainments in the institution proper, in the industries established in connection with the institution, or at such other places as may be determined by the director. Substantially equivalent hard labor programs shall be available

to both male and female inmates. When an inmate of an institution is working outside the institution proper, the inmate shall be deemed at all times to be in the actual custody of the superintendent of the institution. Inmates performing hard labor on chain gangs at a location other than within or on the grounds of a correctional institution shall be attired in brightly colored uniforms that readily identify them as inmates of correctional institutions. Inmates performing other types of hard labor at locations other than within or on the grounds of a correctional institution may also be required by the department to wear the brightly colored uniforms. Inmates not required to wear brightly colored uniforms while performing hard labor shall be otherwise clearly designated as inmates of correctional institutions. The employment of inmates in hard labor shall not displace employed workers, shall not be applied to skills, crafts, or trades in which a local surplus of labor exists, and shall not impair existing contracts for employment or services.

2. The director may when practicable pay the inmate an allowance as the director deems proper in view of the circumstances, and in view of the cost attending the maintenance of the inmate. The allowance is a gratuitous payment and is not a wage arising out of an employment relationship. The payment shall not exceed the amount paid to free labor for a like or equivalent service.

3. For purposes of this section, "*hard labor*" means physical or mental labor which is performed for a period of time which shall average, as nearly as possible, forty hours each week, and may include useful and productive work, chain gangs, menial labor, treatment or education programs, any training necessary to perform any work required, and, if possible, work providing an inmate with marketable vocational skills. "*Hard labor*" does not include labor which is dangerous to an inmate's life or health, is unduly painful, or is required to be performed under conditions that would violate occupational safety and health standards applicable to such labor if performed by a person who is not an inmate.

4. Notwithstanding subsection 1, an inmate who has been determined by the director to be unsuitable for the performance of hard labor due to the inmate's age, gender, physical or mental condition, strength, or security status shall not be required to perform hard labor.

5. The department shall adopt rules to implement this section.

Reports concerning inmate labor; 2002 Acts, 2nd Ex, ch 1003, §158, 172; 2003 Acts, ch 174, §7; 2004 Acts, ch 1175, §186; 2005 Acts, ch 174, §7; 2006 Acts, ch 1183, §8; 2007 Acts, ch 213, §7

Section not amended; footnote revised

## CHAPTER 908

### VIOLATIONS OF PAROLE OR PROBATION

#### 908.11 Violation of probation.

1. A probation officer or the judicial district department of correctional services having probable cause to believe that any person released on probation has violated the conditions of probation shall proceed by arrest or summons as in the case of a parole violation.

2. The functions of the liaison officer and the board of parole shall be performed by the judge or magistrate who placed the alleged violator on probation if that judge or magistrate is available, otherwise by another judge or magistrate who would have had jurisdiction to try the original offense.

3. If the probation officer proceeds by arrest, any magistrate may receive the complaint, issue an arrest warrant, or conduct the initial appearance and probable cause hearing if it is not convenient for the judge who placed the alleged violator on probation to do so. The initial appearance, probable cause hearing, and probation revocation hearing, or any of them, may at the discretion of the court be merged into a single hearing when it appears that the alleged violator will not be prejudiced by the merger.

4. If the violation is established, the court may continue the probation or youthful offender status with or without an alteration of the conditions of

probation or a youthful offender status. If the defendant is an adult or a youthful offender the court may hold the defendant in contempt of court and sentence the defendant to a jail term while continuing the probation or youthful offender status, order the defendant to be placed in a violator facility established pursuant to section 904.207 while continuing the probation or youthful offender status, or revoke the probation or youthful offender status and require the defendant to serve the sentence imposed or any lesser sentence, and, if imposition of sentence was deferred, may impose any sentence which might originally have been imposed.

5. Notwithstanding any other provision of law to the contrary, if the court revokes the probation of a defendant who received a deferred judgment and imposes a fine, the court shall reduce the amount of the fine by an amount equal to the amount of the civil penalty previously assessed against the defendant pursuant to section 907.14. However, the court shall assess any required surcharge, court cost, or fee upon the total amount of the fine prior to reduction pursuant to this subsection.

2007 Acts, ch 180, §12  
NEW subsection 5

## CHAPTER 909

### FINES

#### 909.3A Community service option.

The court may, in its discretion, order the defendant to perform community service work of an equivalent value to the fine imposed where it appears that the community service work will be adequate to deter the defendant and to discourage

others from similar criminal activity. The rate at which community service shall be calculated shall be the federal or state minimum wage, whichever is higher.

2007 Acts, ch 215, §124  
Section amended

## CHAPTER 910

### RESTITUTION

#### 910.10 Restitution lien.

1. The state or a person entitled to restitution under a court order may file a restitution lien.

2. The restitution lien shall set forth all of the following information, if known:

*a.* The name and date of birth of the person whose property or other interests are subject to the lien.

*b.* The present address of the residence and

principal place of business of the person named in the lien.

*c.* The criminal proceeding pursuant to which the lien is filed, including the name of the court, the title of the action, and the court's file number.

*d.* If applicable, any juvenile delinquency proceeding pursuant to which the lien is filed, including only the name of the court, the title of the action, and the court's file number.

e. The name and business address of the attorney representing the state in the proceeding pursuant to which the lien is filed or the name and residence and business address of each person entitled to restitution pursuant to a court order.

f. A statement that the notice is being filed pursuant to this section.

g. The amount of restitution the person has been ordered to pay or is likely to be ordered to pay.

3. A restitution lien may be filed by any of the following:

a. A prosecuting attorney in a criminal proceeding in which restitution is likely to be sought after the filing of an information or indictment. At the time of arraignment, the prosecuting attorney shall give the defendant notice of any restitution lien filed.

b. A victim in a criminal proceeding after restitution is determined and ordered by the trial court following pronouncement of the judgment and sentence.

c. A victim in a juvenile delinquency proceeding after restitution has been determined and ordered by the juvenile court and the juvenile offender has been discharged from the jurisdiction of the juvenile court due to reaching the age of eighteen years.

4. The filing of a restitution lien in accordance with this section creates a lien in favor of the state and the victim in any personal or real property identified in the lien to the extent of the interest held in that property by the person named in the lien.

5. This section does not limit the right of the state or any other person entitled to restitution to obtain any other remedy authorized by law.

2007 Acts, ch 22, §108

Subsection 3, unnumbered paragraph 1 amended

### **910.15 Distribution of moneys received as a result of the commission of crime.**

1. *Definitions.* As used in this section, unless the context otherwise requires:

a. *“Convicted felon”* means a person initially convicted, or found not guilty by reason of insanity, of a felony committed in Iowa, either by a court or jury trial or by entry of a guilty plea in court.

b. *“Escrow account”* includes, but is not limited to, property in which the attorney general has assumed the powers of a receiver as provided in this section.

c. *“Felony”* means a felony defined by any Iowa or United States statute.

d. *“Fruits of the crime”* means any profit which, were it not for the commission of the felony, would not have been realized.

e. *“Proceeds”* means all of the fruits of the crime from whatever source received by or owing to a felon or the felon’s representatives, whether earned, accrued, or paid before or after the conviction. It includes any interest, earnings, or accretions upon proceeds, and any property received in

exchange for proceeds.

f. *“Representative of the convicted felon”* means any person or entity receiving proceeds by designation of that convicted felon, or on behalf of that convicted felon, or in the stead of that convicted felon, whether by the felon’s designation or by operation of law.

g. *“Victim”* means a person who has suffered physical, mental, or emotional harm or financial loss as the result of a felony committed in this state, for which the felon was convicted. The term also includes the father, mother, son, or daughter of a victim who died or was rendered incompetent as a result of the offense or who was under eighteen years of age at the time of the offense.

2. *Due process hearing — action by attorney general.*

a. The attorney general may bring an action to require all proceeds received by a convicted felon or representative of the convicted felon to be deposited in an escrow account as provided in this section.

b. The action may be brought in the county where the convicted felon resides, or the county in which the proceeds are located.

c. The action shall be preceded by notice to any interested party.

d. The court shall order that all proceeds be deposited in the escrow account until an order of disposition is made by the court pursuant to subsection 3, 4, or 5 or until the expiration of the escrow account as specified in subsection 8, if the attorney general proves both of the following:

(1) The proceeds are fruits of the crime for which the convicted felon was convicted.

(2) It is more probable than not that there are victims who may recover a money judgment against the felon for physical, mental, or emotional injury or pecuniary loss proximately caused by the convicted felon as a result of the felony for which the felon was convicted or there is an unpaid order of restitution under this chapter against the convicted felon for the felony for which the felon was convicted.

e. If the court orders that proceeds be deposited in an escrow account and the nature of the proceeds to the person initially convicted of the crime is such that it cannot be placed in an escrow account, the attorney general shall assume the powers of a receiver under chapter 680 in taking charge of the property for benefit of and payable to any victim or representative of the victim. In those instances, the date the attorney general assumed the power of a receiver shall be considered the date the escrow account was established for purposes of this section.

3. *Notice of establishment of escrow account.* Once an escrow account is established, the attorney general shall make reasonable efforts to notify victims and representatives of victims of the escrow account and their possible rights under this section. The reasonable efforts shall include,

but are not limited to, mailing the notification to known victims or representatives of known victims. The cost of notification shall be paid from the escrow account or from the sale of property held in receivership.

4. *Proceeds for legal defense of felon.* The attorney general shall make payments from the escrow account or property held in receivership to the person accused of the crime upon the order of a court of competent jurisdiction after a showing by the person that the money or other property shall be used for the exclusive purpose of retaining legal representation at any stage of the criminal proceedings against the person, including the appeals process.

5. *Payment of escrow funds to victims.* The remaining proceeds in escrow may be levied upon to satisfy an order for restitution under this chapter or a money judgment entered against the convicted felon, by a court of competent jurisdiction, for physical, mental, or emotional injury, or pecuniary loss proximately caused by the convicted felon as a result of the felony for which the felon was convicted.

6. *Priority and proration of claims.* Proceeds distributed under subsection 3 shall have first priority, and proceeds distributed for the cost of legal defense under subsection 4 shall have second priority in the distribution of proceeds in the escrow account. If there are multiple orders for restitution and judgments by victims under subsection 5 against the convicted felon, and the remaining proceeds in the escrow account are insufficient to satisfy all of the orders for restitution and judgments, the proceeds shall be distributed on a pro rata basis based on the ratio that the amount of an

order for restitution or an individual victim's judgment bears to the total amount of all restitution orders and victims' judgments against the convicted felon which have been claimed under this section.

7. *Limitation of action.* Notwithstanding section 614.1, a victim or the victim's representative who has a cause of action for a crime for which an escrow account or receivership is established pursuant to this section may bring the action against the escrow account or against the property in receivership within five years of the date the escrow account is established.

8. *Duration of escrow account.* Notwithstanding the other provisions of this section, upon a disposition of charges favorable to the person accused of committing the felony, or upon a showing by the person that five years have elapsed from the date of establishment of the escrow account and further that no actions are pending against the person or unpaid orders for restitution or monetary judgments outstanding relating to the felony for which the felon was convicted, the attorney general shall immediately pay over any money in the escrow account to the person.

9. *Purpose.* The purpose of this section is to meet the following compelling state interests:

a. The state has an interest in ensuring that victims of crime are compensated by those who harm them.

b. The state has an interest in ensuring that criminals do not profit from their felonious crimes at the expense of their victims.

2007 Acts, ch 22, §109, 110  
Subsection 2, paragraph d, subparagraph (2) amended  
Subsection 5 amended

## CHAPTER 911

### SURCHARGE ADDED TO CRIMINAL PENALTIES

#### **911.3 Law enforcement initiative surcharge.**

1. In addition to any other surcharge, the court or clerk of the district court shall assess a law enforcement initiative surcharge of one hundred twenty-five dollars if an adjudication of guilt or a deferred judgment has been entered for a criminal violation under any of the following:

a. Chapter 124, 155A, 453B, 713, 714, 715A, or 716.

b. Section 719.7, 719.8, 725.1, 725.2, or 725.3.

2. In the event of multiple offenses, the surcharge shall be imposed for each applicable offense.

3. The surcharge shall be remitted by the clerk of court as provided in section 602.8108, subsection 5.

2007 Acts, ch 89, §2  
Subsection 1, paragraph b amended

## CHAPTER 915

## VICTIM RIGHTS

**915.10 Definitions.**

As used in this subchapter, unless the context otherwise requires:

1. *“Notification”* means mailing by regular mail or providing for hand delivery of appropriate information or papers. However, this notification procedure does not prohibit an office, agency, or department from also providing appropriate information to a registered victim by telephone, electronic mail, or other means.

2. *“Registered”* means having provided the county attorney with the victim’s written request for registration and current mailing address and telephone number. *“Registered”* also means having provided the county attorney notice in writing that the victim has filed a request for registration with the automated victim notification system established pursuant to section 915.10A.

3. *“Victim”* means a person who has suffered physical, emotional, or financial harm as the result of a public offense or a delinquent act, other than a simple misdemeanor, committed in this state. *“Victim”* also includes the immediate family members of a victim who died or was rendered incompetent as a result of the offense or who was under eighteen years of age at the time of the offense.

4. *“Victim impact statement”* means a written or oral presentation to the court by the victim or the victim’s representative that indicates the physical, emotional, financial, or other effects of the offense upon the victim.

5. *“Violent crime”* means a forcible felony, as defined in section 702.11, and includes any other felony or aggravated misdemeanor which involved the actual or threatened infliction of physical or emotional injury on one or more persons.

2007 Acts, ch 27, §3  
Subsection 2 amended

**915.10A Automated victim notification system.**

1. An automated victim notification system is established within the crime victim assistance division of the department of justice to assist public officials in informing crime victims, the victim’s family, or other interested persons as provided in this subchapter and where otherwise specifically provided. The system shall disseminate the information to registered users through telephonic, electronic, or other means of access.

2. An office, agency, or department may satisfy a notification obligation to registered victims required by this subchapter through participation in the system to the extent information is available for dissemination through the system. Nothing in this section shall relieve a notification obligation under this subchapter due to the unavailability of

information for dissemination through the system.

3. Notwithstanding section 232.147, information concerning juveniles charged with a felony offense shall be released to the extent necessary to comply with this section.

2007 Acts, ch 27, §4  
Subsection 1 amended

**915.11 Initial notification by law enforcement.**

A local police department or county sheriff’s department shall advise a victim of the right to register with the county attorney, and shall provide a request-for-registration form to each victim. A local police department or county sheriff’s department shall provide a telephone number and website to each victim to register with the automated victim notification system established pursuant to section 915.10A.

2007 Acts, ch 27, §5  
Section amended

**915.12 Registration.**

1. A victim may register by filing a written request-for-registration form with the county attorney. The county attorney shall notify the victims in writing and advise them of their registration and rights under this subchapter.

The county attorney shall provide a registered victim list to the offices, agencies, and departments required to provide information under this subchapter for notification purposes.

2. A victim, the victim’s family, or other interested person may register with the automated victim notification system established pursuant to section 915.10A by filing a request for registration through written, telephonic, or electronic means.

3. Notwithstanding chapter 22 or any other contrary provision of law, the registration of a victim, victim’s family, or other interested person shall be strictly maintained in a separate confidential file or other confidential medium, and shall be available only to the offices, agencies, and departments required to provide information under this subchapter.

2007 Acts, ch 27, §6  
Subsection 2 amended

**915.43 Testing, reporting, and counseling — penalties.**

1. The physician or other practitioner who orders the test of a convicted or alleged offender for HIV under this subchapter shall disclose the results of the test to the convicted or alleged offender, and to the victim counselor or a person requested by the victim to provide counseling regarding the HIV-related test and results who shall disclose



the results to the petitioner.

2. All testing under this chapter shall be accompanied by counseling as required under section 141A.7.

3. Subsequent testing arising out of the same incident of exposure shall be conducted in accordance with the procedural and confidentiality requirements of this subchapter.

4. Results of a test performed under this subchapter, except as provided in subsection 13, shall be disclosed only to the physician or other practitioner who orders the test of the convicted or alleged offender; the convicted or alleged offender; the victim; the victim counselor or person requested by the victim to provide counseling regarding the HIV-related test and results; the physician of the victim if requested by the victim; the parent, guardian, or custodian of the victim, if the victim is a minor; and the county attorney who filed the petition for HIV-related testing under this chapter, who may use the results to file charges of criminal transmission of HIV under chapter 709C. Results of a test performed under this subchapter shall not be disclosed to any other person without the written informed consent of the convicted or alleged offender. A person to whom the results of a test have been disclosed under this subchapter is subject to the confidentiality provisions of section 141A.9, and shall not disclose the results to another person except as authorized by section 141A.9, subsection 2, paragraph "i".

5. If testing is ordered under this subchapter, the court shall also order periodic testing of the convicted offender during the period of incarceration, probation, or parole or of the alleged offender during a period of six months following the initial test if the physician or other practitioner who ordered the initial test of the convicted or alleged offender certifies that, based upon prevailing scientific opinion regarding the maximum period during which the results of an HIV-related test may be negative for a person after being HIV-infected, additional testing is necessary to determine whether the convicted or alleged offender was HIV-infected at the time the sexual assault or alleged sexual assault was perpetrated. The results of the test conducted pursuant to this subsection shall be released only to the physician or other practitioner who orders the test of the convicted or alleged offender, the convicted or alleged offender, the victim counselor or person requested by the victim to provide the counseling regarding the HIV-related test and results who shall disclose the results to the petitioner, the physician of the victim, if requested by the victim, and the county attorney who may use the results as evidence in the prosecution of the sexual assault or in the prosecution of the offense of criminal transmission of HIV under chapter 709C.

6. The court shall not consider the disclosure of an alleged offender's serostatus to an alleged

victim, prior to conviction, as a basis for a reduced plea or reduced sentence.

7. The fact that an HIV-related test was performed under this subchapter and the results of the test shall not be included in the convicted offender's medical or criminal record unless otherwise included in department of corrections records.

8. The fact that an HIV-related test was performed under this subchapter and the results of the test shall not be used as a basis for further prosecution of a convicted offender in relation to the incident which is the subject of the testing, to enhance punishments, or to influence sentencing.

9. If the serologic status of a convicted offender, which is conveyed to the victim, is based upon an HIV-related test other than a test which is authorized as a result of the procedures established in this subchapter, legal protections which attach to such testing shall be the same as those which attach to an initial test under this subchapter, and the rights to a predisclosure hearing and to appeal provided under section 915.42 shall apply.

10. HIV-related testing required under this subchapter shall be conducted by the state hygienic laboratory.

11. Notwithstanding the provisions of this subchapter requiring initial testing, if a petition is filed with the court under section 915.42 requesting an order for testing and the order is granted, and if a test has previously been performed on the convicted or alleged offender while under the control of the department of corrections, the test results shall be provided in lieu of the performance of an initial test of the convicted or alleged offender, in accordance with this subchapter.

12. In addition to the counseling received by a victim, referral to appropriate health care and support services shall be provided.

13. In addition to persons to whom disclosure of the results of a convicted or alleged offender's HIV-related test results is authorized under this subchapter, the victim may also disclose the results to the victim's spouse, persons with whom the victim has engaged in vaginal, anal, or oral intercourse subsequent to the sexual assault, or members of the victim's family within the third degree of consanguinity.

14. A person to whom disclosure of a convicted or alleged offender's HIV-related test results is authorized under this subchapter shall not disclose the results to any other person for whom disclosure is not authorized under this subchapter. A person who intentionally or recklessly makes an unauthorized disclosure in violation of this subsection is subject to a civil penalty of one thousand dollars. The attorney general or the attorney general's designee may maintain a civil action to enforce this subchapter. Proceedings maintained under this subsection shall provide for the anonymity of the test subject and all documentation

shall be maintained in a confidential manner.

2007 Acts, ch 70, §11  
Subsection 4 amended

### 915.80 Definitions.

As used in this subchapter, unless the context otherwise requires:

1. “*Compensation*” means moneys awarded by the department as authorized in this subchapter.

2. “*Crime*” means conduct that occurs or is attempted in this state, poses a substantial threat of personal injury or death, and is punishable as a felony or misdemeanor, or would be so punishable but for the fact that the person engaging in the conduct lacked the capacity to commit the crime under the laws of this state. “*Crime*” does not include conduct arising out of the ownership, maintenance, or use of a motor vehicle, motorcycle, motorized bicycle, train, boat, or aircraft except for violations of section 321.261, 321.277, 321J.2, 462A.7, 462A.12, 462A.14, or 707.6A, or when the intention is to cause personal injury or death. A license revocation under section 321J.9 or 321J.12 shall be considered by the department as evidence of a violation of section 321J.2 for the purposes of this subchapter. A license suspension or revocation under section 462A.14, 462A.14B, or 462A.23 shall be considered by the department as evidence of a violation of section 462A.14 for the purposes of this subchapter.

3. “*Department*” means the department of justice.

4. “*Dependent*” means a person wholly or partially dependent upon a victim for care or support and includes a child of the victim born after the victim’s death.

5. “*Secondary victim*” means the victim’s spouse, children, parents, and siblings, and any person who resides in the victim’s household at the time of the crime or at the time of the discovery of the crime. “*Secondary victim*” does not include persons who are the survivors of a victim who dies as a result of a crime.

6. “*Victim*” means a person who suffers personal injury or death as a result of any of the following:

- a. A crime.
- b. The good faith effort of a person attempting to prevent a crime.
- c. The good faith effort of a person to apprehend a person suspected of committing a crime.

2007 Acts, ch 27, §7  
Subsection 2 amended

### 915.86 Computation of compensation.

The department shall award compensation, as appropriate, for any of the following economic losses incurred as a direct result of an injury to or death of the victim:

1. Reasonable charges incurred for medical care not to exceed twenty-five thousand dollars.

Reasonable charges incurred for mental health care not to exceed five thousand dollars which includes services provided by a psychologist licensed under chapter 154B, a person holding at least a master’s degree in social work or counseling and guidance, or a victim counselor as defined in section 915.20A.

2. Loss of income from work the victim would have performed and for which the victim would have received remuneration if the victim had not been injured, not to exceed six thousand dollars.

3. Loss of income from work that the victim’s parent or caretaker would have performed and for which the victim’s parent or caretaker would have received remuneration for up to three days after the crime or the discovery of the crime to allow the victim’s parent or caretaker to assist the victim and when the victim’s parent or caretaker accompanies the victim to medical and counseling services, not to exceed one thousand dollars per parent or caretaker.

4. Loss of income from work that the victim, the victim’s parent or caretaker, or the survivor of a homicide victim as described in subsection 10 would have performed and for which that person would have received remuneration, where the loss of income is a direct result of cooperation with the investigation and prosecution of the crime or attendance at criminal justice proceedings including the trial and sentencing in the case, not to exceed one thousand dollars.

5. Reasonable replacement value of clothing that is held for evidentiary purposes not to exceed two hundred dollars.

6. Reasonable funeral and burial expenses not to exceed seven thousand five hundred dollars.

7. Loss of support for dependents resulting from death or a period of disability of the victim of sixty days or more not to exceed four thousand dollars per dependent.

8. In the event of a victim’s death, reasonable charges incurred for counseling the victim’s spouse, children, parents, siblings, or persons cohabiting with or related by blood or affinity to the victim if the counseling services are provided by a psychologist licensed under chapter 154B, a victim counselor as defined in section 915.20A, subsection 1, or an individual holding at least a master’s degree in social work or counseling and guidance, and reasonable charges incurred by such persons for medical care counseling provided by a psychiatrist licensed under chapter 147 or 150A. The allowable charges under this subsection shall not exceed five thousand dollars per person.

9. In the event of a homicide, reasonable charges incurred for health care for the victim’s spouse; child, foster child, stepchild, son-in-law, or daughter-in-law; parent, foster parent, or stepparent; sibling, foster sibling, stepsibling, brother-in-law, or sister-in-law; grandparent; grandchild; aunt, uncle, or first cousin; legal ward; or person cohabiting with the victim, not to exceed three

thousand dollars per survivor.

10. In the event of a homicide, loss of income from work that, but for the death of the victim, would have been earned by the victim's spouse; child, foster child, stepchild, son-in-law, or daughter-in-law; parent, foster parent, or stepparent; sibling, foster sibling, stepsibling, brother-in-law, or sister-in-law; grandparent; grandchild; aunt, uncle, or first cousin; legal ward; or person cohabiting with the victim, not to exceed six thousand dollars.

11. Reasonable expenses incurred for cleaning the scene of a crime, if the scene is a residence, not to exceed one thousand dollars.

12. Reasonable charges incurred for mental health care for secondary victims which include the services provided by a psychologist licensed under chapter 154B, a person holding at least a master's degree in social work, counseling, or a related field, a victim counselor as defined in section 915.20A, or a psychiatrist licensed under chapter 147, 148, or 150A. The allowable charges under this subsection shall not exceed two thousand dollars per secondary victim.

13. Reasonable dependent care expenses incurred by the victim, the victim's parent or caretaker, or the survivor of a homicide victim as described in subsection 10 for the care of dependents while attending criminal justice proceedings or medical or counseling services, not to exceed one thousand dollars per person.

14. Reasonable expenses incurred by a victim, the victim's parent or caretaker, or the survivor of a victim as described in subsection 10 to replace locks, windows, and other residential security items at the victim's residence or at the residential

scene of a crime, not to exceed five hundred dollars per residence.

15. Reasonable expenses incurred by the victim, a secondary victim, the parent or guardian of a victim, or the survivor of a homicide victim as described in subsection 10 for transportation to medical, counseling, funeral, or criminal justice proceedings, not to exceed one thousand dollars per person.

2007 Acts, ch 27, §8, 9  
Subsections 1, 3, 5, 7, 8, and 12 amended  
NEW subsections 13 – 15

#### **915.94 Victim compensation fund.**

A victim compensation fund is established as a separate fund in the state treasury. Moneys deposited in the fund shall be administered by the department and dedicated to and used for the purposes of section 915.41 and this subchapter. In addition, the department may use moneys from the fund for the purpose of the department's prosecutor-based victim service coordination, including the duties defined in sections 910.3 and 910.6 and this chapter, and for the award of funds to programs that provide services and support to victims of domestic abuse or sexual assault as provided in chapter 236, to victims under section 710A.2, and for the support of an automated victim notification system established in section 915.10A. The department may also use up to one hundred thousand dollars from the fund to provide training for victim service providers. Notwithstanding section 8.33, any balance in the fund on June 30 of any fiscal year shall not revert to the general fund of the state.

2007 Acts, ch 22, §111; 2007 Acts, ch 27, §10  
See Code editor's note to §29A.28  
Section amended



## CODE EDITOR'S NOTES

### Code Section

- 16.2** 2007 Acts, ch 22, §10, amends this section by renumbering and making other technical changes throughout the section to separate out distinct subject matter. 2007 Acts, ch 54, §11, strikes the language that was contained in the second paragraph in subsection 1, as well as the lettered paragraphs “a” through “g” which followed, and made other substantive changes in the first paragraph of the subsection. The strike prevails and the changes made in 2007 Acts, ch 54, §11, were implemented. The renumbering of subsections 2 through 8 as subsections 3 through 9 in 2007 Acts, ch 22, §10, was reversed as a result of the strike, but the balance of the technical changes from that Act were implemented.
- 29A.28 (1)** The multiple amendments do not conflict, so they were harmonized to give effect to each as required by Code sections 2B.13 and 4.11. In some cases where the note for this section is referred to, the amendments are identical. Under Code section 2B.13, a strike or repeal prevails over an amendment to the same material and does not create a conflict.
- 52.25, unnumbered paragraph 2** 2007 Acts, ch 59, §16, strikes language at the end of this paragraph requiring the printing of a summary of a public measure in the largest type possible on special paper ballots or inserts used in voting machines and adds two new sentences requiring that a question, amendment, or measure, and summaries thereof, be printed on special paper ballots or on the inserts used in the voting machines, in a font size no smaller than ten point type. These amendments apply to elections held on or after January 1, 2008. 2007 Acts, ch 190, §32, effective July 1, 2007, strikes language providing for the display of election measures on the left-hand side and inside the curtain of voting machines and strikes the words “special paper” and “inserts used in” from language at the end of the paragraph. The amendment in 2007 Acts, ch 59, §16, was codified, along with the strike of the words “or on the left-hand side inside the curtain of each voting machine,” from 2007 Acts, ch 190, §32. The portion of the amendment in 2007 Acts, ch 190, §32, striking the words “special paper” and “inserts used in” is superseded by the strike of that language at the end of the paragraph in 2007 Acts, ch 59, §16. Footnotes were placed within the new sentences added by 2007 Acts, ch 59, §16, indicating that the words “special paper” and “the inserts used in” are probably not intended.
- 422.111** 2007 Acts, ch 161, §10, amends subsection 1 by striking a reference to Code section 422.12B. The amendment is effective May 15, 2007, and applies retroactively to January 1, 2007, for tax years beginning on or after that date. Pursuant to subsection 5, the entire Code section is repealed on December 31, 2007. The repeal was codified, and although the effective date of the amendment occurs before the date of the Code section repeal, because this Code section applies only to tax years ending after June 30, 2005, and beginning before January 1, 2007, pursuant to 2005 Acts, ch 146, §3, the amendment by 2007 Acts, ch 161, §10, did not apply.
- 455G.31(2)** 2007 Acts, ch 22, §80, makes technical changes to this subsection to improve readability. 2007 Acts, ch 211, §48, strikes almost all of the language in which the 2007 Acts, ch 22, §80, amendments are made and rewrites that language in such a way that implementation of the changes from 2007 Acts, ch 22, §80, to the remaining language would conflict with and corrupt the changes made by 2007 Acts, ch 211, §48. Because the amendments cannot be reconciled and because 2007 Acts, ch 211, §48, is the later amendment, only the changes made by 2007 Acts, ch 211, §48, were codified.

**Chapter 533**

2007 Acts, ch 54, §42, amends Code section 533.16 by revising an internal reference; 2007 Acts, ch 162, §12, amends Code section 533.24 by adding new language; and 2007 Acts, ch 126, §91, amends Code section 533.27 by correcting a problem associated with an amendment made during the 2006 legislative session. 2007 Acts, ch 174, repeals Code chapter 533 and enacts a new Code chapter 533. The repeal prevails and was codified, and the new Code chapter 533 was codified. Pursuant to the Code editor directive contained in 2007 Acts, ch 174, §99, the new language that was to be added to former Code section 533.24 by 2007 Acts, ch 162, §12, was treated as an amendment to new Code section 533.329 (2007 Acts, ch 174, §60). The issues that needed correction in former Code sections 533.16 and 533.27 are not present in new Code sections 533.315 and 533.324 (2007 Acts, ch 174, §46, 55) and were not codified.

**554.1201**

2007 Acts, ch 30, §47, amends the definition of “conspicuous” in subsection 10. 2007 Acts, ch 41, §11, makes identical amendments to the same definition and redesignates the subsection as paragraph “j” of subsection 2. The amendments do not conflict substantively, but 2007 Acts, ch 41, §11, was codified to conform the provision to the revised internal numbering scheme of the section enacted in 2007 Acts, ch 41. 2007 Acts, ch 30, §47, amends the definition of “send” in subsection 38. 2007 Acts, ch 41, §11, makes identical amendments to the same definition, but also changes the word “any” to “a”, and redesignates the subsection as paragraph “aj” of subsection 2. Although the amendments do not conflict substantively, the changes made by 2007 Acts, ch 41, §11, were codified to conform to the revised internal numbering scheme of the section enacted in 2007 Acts, ch 41, and because the use of the word “a” conforms more closely to the style of the Iowa Code.

**CONVERSION TABLES OF SENATE AND HOUSE FILES  
AND JOINT RESOLUTIONS TO  
CHAPTERS OF THE ACTS OF THE GENERAL ASSEMBLY**

2007 REGULAR SESSION

SENATE FILES

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40	5	305	7	480	67
41	60	311	85	485	120
42	61	319	23	489	121
58	18	333	126	499	171
61	9	336	127	502	88
67	19	337	101	503	172
70	27	339	109	509	44
74	10	340	163	510	173
75	20	344	151	512	193
78	28	346	169	518	152
90	149	347	118	528	103
95	203	351	65	529	89
109	3	354	75	530	153
110	47	358	51	535	41
116	36	360	170	538	132
128	17	361	39	539	133
129	48	369	190	540	134
130	21	381	86	546	154
137	72	384	110	548	31
140	62	400	52	551	211
155	117	403	206	554	201
161	63	405	53	557	174
162	6	406	111	558	194
169	49	407	87	559	175
175	107	414	119	562	212
200	64	416	112	563	210
202	37	421	128	564	195
204	38	427	191	566	165
205	73	430	192	575	213
212	123	431	54	578	176
254	124	435	129	579	155
263	188	444	76	580	177
265	125	447	130	586	178
270	74	448	77	588	214
272	22	450	40	590	161
277	108	457	160	592	179
278	150	463	102	593	180
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219 .....	1 .....	Note under 100B.22, 327F.13, 327H.20A and partially item vetoed		33 .....	100B.22[1a(3, 8)]
	2 .....	Note under 100B.22, 327F.13, 327H.20A		34 .....	47.9
	3 .....	Omitted		35 .....	249K.1
	4, 5 .....	Item vetoed		36 .....	249K.2
	6 – 13 .....	Omitted		37 .....	249K.3
	14, 15 .....	Note under 8.57C		38 .....	249K.4
	16 .....	Note under 328.56		39 .....	249K.5
	17 – 26 .....	Omitted		40 .....	328.56(2)
	27 .....	8.57(6h)		41 .....	Note under ch 249K, 249K.1 – 249K.5
	28 .....	8.57A(5)		42 .....	Repealing
	29 .....	8.57B(5)		43 .....	Omitted
	30 .....	8.57C(4)	220 .....	1, 2 .....	Omitted
			221 .....	1, 2 .....	Omitted
			222 .....		Omitted
			223 .....	1, 2 .....	Omitted

**TABLE OF CORRESPONDING SECTIONS  
OF THE  
CODE 2007 to CODE SUPPLEMENT 2007**  
R means Repealed

Code 2007	Code Supplement 2007
2C.11, unb. par. 1 and (1 – 4) . . . . .	2C.11(1a – d)
2C.11(5) . . . . .	2C.11(1e, 2)
6A.23 . . . . .	R per its own terms
6B.53 . . . . .	R 2007 Acts-54-45
7A.3, unb. par. 1 . . . . .	7A.3(1)
7A.3(1) . . . . .	Stricken 2007 Acts-115-2
7A.3(2 – 11) . . . . .	7A.3(1a – j)
7E.4(2b) . . . . .	7E.4(2a)
7E.4(8) . . . . .	7E.4(2b)
7E.4(9, 10) . . . . .	7E.4(8, 9)
7E.7(2) . . . . .	Stricken 2007 Acts-215-78
7E.7(3 – 5) . . . . .	7E.7(2 – 4)
8.6(15, unb. par. 1 and a – c) . . . . .	8.6[15, unb. par. 1 and a(1 – 3)]
8.64 . . . . .	8.65 – 8.67;
(1) . . . . .	8.67(1)
(2) . . . . .	Stricken 2007 Acts-117-1; see 8.65
(3) . . . . .	8.66(3), 8.67(2)
(4a) . . . . .	Stricken 2007 Acts-117-1
(4b) . . . . .	8.66(4)
(5) . . . . .	8.67(3)
8A.204(2c) . . . . .	Stricken 2007 Acts-115-4
8A.204(2d – f) . . . . .	8A.204(2c – e)
8A.321(12) . . . . .	Stricken 2007 Acts-115-7
8A.321(13 – 15) . . . . .	8A.321(12 – 14)
8A.330 . . . . .	R 2007 Acts-219-42
8A.362(5, unb. par. 1 and a – e) . . . . .	8A.362[5a(1 – 5)];
[5a(1 – 3)] . . . . .	[5a(1a – c)]
12.61(2) . . . . .	12.61(2 – 5)
13B.8A . . . . .	R 2007 Acts-126-113
15.104(10, 11) . . . . .	Stricken per its own terms
15.108[7c(1 – 4)] . . . . .	15.108[7c(2 – 5)]
15.269 . . . . .	R per its own terms
15E.131 – 15E.149 . . . . .	R 2007 Acts-126-114
15E.197, unb. par. 1 and (1, 2) . . . . .	15E.197, unb. par. 1 and (1a, b)
15E.197(3) . . . . .	15E.197(2, 3)
15E.305(4) . . . . .	Stricken 2006 Acts-1151-3
15E.305(5) . . . . .	15E.305(4)
15G.111[1a(2)] . . . . .	15G.111[1a(2, 3)]
15G.111[1a(3)] . . . . .	15G.111[1a(4)]
15G.111(2, unb. par. 3) . . . . .	Stricken and substituted 2007 Acts-122-3
15G.111(8) . . . . .	15G.111(9)
16.1 . . . . .	16.1;
unb. par. 1 and (1 – 10) . . . . .	(1a – i)
(11, 12) . . . . .	Stricken 2007 Acts-54-3
(13a, b) . . . . .	[1j(1, 2)]
(15, 16) . . . . .	(1m, n);
(16a, b) . . . . .	[1n(1, 2)]
(17 – 19) . . . . .	(1o – q)
(20, 21) . . . . .	Stricken 2007 Acts-54-5
(22 – 29A) . . . . .	(1t – ab)
(30 – 32) . . . . .	(1ae – ag);
(32a – c) . . . . .	[1ag(1 – 3)]
(33 – 35) . . . . .	Stricken 2007 Acts-54-9
(36) . . . . .	Stricken 2007 Acts-54-9; see 422.7(12C), 422.35(6c)

Code 2007	Code Supplement 2007
(37 – 40) .....	(1ah – ak)
16.2(1) .....	16.2(1), 16.2A;
(1a – g) .....	Stricken 2007 Acts-54-11; see 16.2A(2 – 8)
16.4(8) .....	Stricken 2007 Acts-54-18; see 16.5(1t)
16.5 .....	16.5;
unb. par. 1 and (1 – 5) .....	(1a – e)
(6 – 15) .....	(1g – p)
(16) .....	Stricken 2007 Acts-54-19
(17, 18) .....	(1r, s)
16.5A, 16.5B .....	R 2007 Acts-54-45
16.11 .....	R 2007 Acts-54-45
16.12 .....	R 2007 Acts-54-45;
(1) .....	see 16.5C(1)
16.13 .....	R 2007 Acts-54-45;
(1) .....	see 16.5C(2)
16.14 .....	R 2007 Acts-54-45
16.15(1) .....	16.15
16.15(2 – 8) .....	Stricken 2007 Acts-54-23
16.16 .....	R 2007 Acts-54-45
16.17 .....	R 2007 Acts-54-45; see 16.5C(3)
16.18 .....	R 2007 Acts-54-45; see 16.5C(4, 5)
16.19 .....	R 2007 Acts-54-45; see 16.5C(5)
16.22 .....	R 2007 Acts-54-45
16.23 .....	R 2007 Acts-54-45; see 16.5C(6)
16.24, 16.25 .....	R 2007 Acts-54-45
16.29 .....	R 2007 Acts-54-45
16.32 .....	R 2007 Acts-54-45
16.35 .....	R 2007 Acts-54-45; see 16.3A
16.36 .....	R 2007 Acts-54-45; see 16.5(1f)
16.38, 16.39 .....	R 2007 Acts-54-45
16.40 .....	Stricken and substituted 2007 Acts-54-24;
(1) .....	see [4a(1)]
(2) .....	see [4a(3)]
(3) .....	see (4b)
(4) .....	see [4a(2)]
16.43 .....	R 2007 Acts-54-45; see 16.5C(7)
16.45 .....	R 2007 Acts-54-45
16.61 – 16.65 .....	R 2007 Acts-54-45
16.71 .....	R 2007 Acts-54-45
16.72 .....	R 2007 Acts-54-45;
(1, 2) .....	see 16.5C(8, 9)
16.81 – 16.84 .....	R 2007 Acts-54-45
16.92(1b – h) .....	16.92(1c – i)
16.101 .....	R 2007 Acts-54-45;
(1) .....	see 16.3(16)
(3 – 5) .....	see 16.3(17 – 19)
16.102(1) .....	Stricken 2007 Acts-54-29
16.102(2, 3) .....	16.102(1, 2)
16.121 – 16.125 .....	R 2007 Acts-54-45
16A.2(7) .....	Stricken 2007 Acts-54-31
18A.1 .....	8A.371
18A.2 .....	8A.372
18A.3 .....	8A.373
18A.4 .....	8A.374
18A.5 .....	8A.375
18A.6 .....	8A.376
18A.6A .....	8A.377
18A.7 .....	8A.378
18A.11 .....	R 2007 Acts-115-17
20.4(12) .....	Stricken 2007 Acts-88-1
20.4(13) .....	20.4(12)

Code 2007	Code Supplement 2007
22.7(52, unb. par. 1 and a – e) . . . . .	22.7[52a(1 – 5)]
22.7(52f, g) . . . . .	22.7(52b, c)
29B.18(1, unb. par. 1 and a – e) . . . . .	29B.18[1a(1 – 5), b]
35A.3(2, 3) . . . . .	Stricken and substituted 2007 Acts-202-3
35A.5(1 – 10) . . . . .	35A.5(2 – 11)
35A.5(11) . . . . .	35A.5(14)
36.1(3) . . . . .	Stricken 2007 Acts-202-8
36.1(4, 5) . . . . .	36.1(3, 4)
42.3(2) . . . . .	42.3(1a), (2)
42.3(4) . . . . .	Stricken 2007 Acts-78-5;
(4b) . . . . .	(1b)
42.4(4a) . . . . .	Stricken 2007 Acts-78-6
42.4(4b) . . . . .	42.4(4a);
[4b(1)] . . . . .	Stricken 2007 Acts-78-6
[4b(2, 3)] . . . . .	(4a)
42.4(4c) . . . . .	42.4(4b);
[4c(1, 2)] . . . . .	Stricken 2007 Acts-78-6
42.4(8b) . . . . .	42.4(8b, d)
42.6(3) . . . . .	42.2(4)
42.6(4) . . . . .	42.6(3)
43.14(1) . . . . .	43.14(1 – 3)
43.14(2) . . . . .	43.14(3 – 5);
(2a – e) . . . . .	(4a – e)
43.45(5) . . . . .	Stricken 2007 Acts-190-16
45.1(10) . . . . .	Stricken 2007 Acts-25-2
45.5(1) . . . . .	45.5(1, 2, 4)
45.5(2) . . . . .	45.5(3)
45.5(3) . . . . .	45.5(4 – 6);
(3a – d) . . . . .	(5a – d)
46.15 . . . . .	46.14A, 46.15
49.8(7) . . . . .	49.8(8)
49.30(2) . . . . .	Stricken 2007 Acts-190-21
49.30(3) . . . . .	49.30(2)
49.53 . . . . .	49.53, 52.9(2), 52.35(1)
49.57(4 – 6) . . . . .	49.57(5 – 7)
50.25, unb. par. 1 and (1 – 6) . . . . .	50.25(1a – f)
50.25(7) . . . . .	50.25(2)
52.1(2) . . . . .	52.1(2);
(2c) . . . . .	Stricken 2007 Acts-190-5
(2d, e) . . . . .	(2e, f)
(2f) . . . . .	(2d)
(2g) . . . . .	(2c)
(2h) . . . . .	(2g)
52.11 . . . . .	R 2007 Acts-190-13
52.12 . . . . .	R 2007 Acts-190-13; see 52.7(1)
52.13, 52.14 . . . . .	R 2007 Acts-190-13
52.15 . . . . .	R 2007 Acts-190-13; see 49.28(3)
52.16 . . . . .	R 2007 Acts-190-13
52.21, 52.22 . . . . .	R 2007 Acts-190-13
52.32 . . . . .	R 2007 Acts-190-13
52.34 . . . . .	R 2007 Acts-190-13
52.36 . . . . .	R 2007 Acts-190-13
52.37(1) . . . . .	Stricken 2007 Acts-190-39
52.37(2 – 4) . . . . .	52.37(1 – 3)
52.38 . . . . .	R 2007 Acts-190-13; see 52.35
52.40 . . . . .	R 2007 Acts-190-13
53.11(2c, d) . . . . .	53.11(2d, e)
53.17 . . . . .	53.17;
(1c) . . . . .	Stricken 2007 Acts-215-226
(4a – c) . . . . .	Stricken 2007 Acts-215-227
(4d) . . . . .	(4);
[4d(1 – 4)] . . . . .	(4a – d)

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[4d(5)] .....	(4f)
[4d(6)] .....	Stricken 2007 Acts-215-227
(4e, f) .....	Stricken 2007 Acts-215-227
(5) .....	Stricken 2007 Acts-215-228
53.35 .....	Stricken 2007 Acts-59-37
53.37, unb. par. 3 and (1 – 5) .....	53.37(3a – e)
68A.401(3) .....	Stricken and substituted 2007 Acts-14-5
68A.402(8a, b) .....	Stricken 2007 Acts-65-8
68B.3(1) .....	68B.3(1, 2, 4)
68B.3(2) .....	68B.3(3)
69.15, unb. par. 1 and (1, 2) .....	69.15(1a, b)
80B.11, unb. par. 1 and (1 – 12) ....	80B.11(1a – “I”)
80D.1A(1 – 3) .....	80D.1A(3 – 5)
80D.3(3a, b) .....	Stricken 2007 Acts-47-2
80D.3(4a) .....	80D.3(4)
80D.3(4b) .....	Stricken 2007 Acts-47-2
80D.3(4c) .....	80D.3(4)
84A.5(1, unb. par. 2) .....	84A.5(2)
84A.5(1, unb. par. 3 and a – c) .....	84A.5[1b(1 – 3)]
84A.5(2 – 10) .....	84A.5(3 – 11)
85.61(11, unb. par. 4 and a, b) .....	85.61[11d(1, 2)]
85.61(12, 13) .....	85.61(11f, g);
(13a – e) .....	[11g(1 – 5)];
[13c(1 – 6)] .....	[11g(3a – f)]
87.11, unb. par. 2 and (1 – 3) .....	87.11(2a – c)
88.5(11) .....	Stricken 2007 Acts-36-1
88.5(12) .....	88.5(11)
89.3(3, 4) .....	Stricken 2007 Acts-135-1; see 89.7A(1, 2)
89.3(5 – 13) .....	89.3(3 – 11)
89.7(1) .....	89.7(1, 2)
89.7(2) .....	89.7(3)
89.7(3) .....	Stricken 2007 Acts-135-5; see 89.7A(1)
89.7(4) .....	89.7(4, 5), 89.7A(1)
89A.1(3 – 7) .....	89A.1(4 – 8)
89A.1(8) .....	89A.1(3)
89A.3 .....	89A.3;
(1, unb. par. 2 and a – i) .....	(2a – i)
(2) .....	(3, 4)
(3 – 6) .....	(5 – 8)
91A.3(3, unb. par. 1 and a – c) .....	91A.3[3a(1 – 3)]
96.5[3a, unb. par. 1 and (1 – 4)] ....	96.5[3a(1a – d, 2)]
96.5(4, unb. par. 1 and a, b) .....	96.5[4a(1, 2)]
96.5(5, unb. par. 1 and a – c) .....	96.5[5a(1 – 3)]
99B.10 .....	99B.10;
(1) .....	(1a)
(2, 3) .....	(1c, d)
(4) .....	(1f, g, i)
(5 – 9) .....	(1k – o)
99B.10B(1) .....	99B.10B(1, 3)
99B.10B(2) .....	99B.10B(2, 3)
99F.1(12 – 19) .....	99F.1(13 – 20)
99F.11(3e) .....	99F.11(3f)
100B.22(1, unb. par. 1 and a – k) ...	100B.22[1a(1 – 11)]
100B.22(3, unb. par. 1 and a – f) ....	100B.22[3a(1 – 6)]
100C.1(1 – 10) .....	100C.1(4 – 13);
(10a, b) .....	(13a)
100C.2(2, 3) .....	100C.2(3, 4)
100C.10(2d, e) .....	100C.10(2e, f)
103A.19, unb. par. 2 and (1 – 6) ....	103A.19(2a – f)
123.183(3a) .....	Stricken 2007 Acts-211-41
123.183(3b) .....	123.183(3)

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124.206[6a(1)]	124.206(6a)
124.208(6)	124.208(6, 7);
(6a)	(6 <sup>1</sup> )
(6b)	Stricken 2007 Acts-8-11
(6c, d)	(6n, o)
(6e)	(6q)
(6f – i)	(6r – u)
(6j, k)	(6aa, ab)
(6 <sup>1</sup> )	Stricken 2007 Acts-8-11
(6m)	(6ac)
(6n)	Stricken 2007 Acts-8-11
(6o)	(6ad)
(6p, q)	(6ak, al)
(6r)	(6an)
(6s)	(6aw)
(6t, u)	(6ay, az)
(6v)	(6ba)
(6w)	Stricken 2007 Acts-8-11
(6x)	(6bb)
(6y, z)	(6bd, be)
(6aa)	(6bg)
124.208(7, 8)	124.208(8, 9)
124.210(4a)	124.210(4)
126.2, unb. par. 2	126.2A
135.22B(6d)	135.22B(6d, 7a)
135.22B(7a, b)	135.22B(7b, c)
135.24(5)	135.24(6);
(5b, c)	(6c, d)
135.43(5, unb. par. 1 and a – c)	135.4[5a(1 – 3)]
135.43(5d)	Stricken 2007 Acts-159-20
135.43(5e – g)	135.43[5a(4 – 6)]
135.105D(2, 3)	135.105D(6, 7)
136C.10(1b)	136C.10(3, 4)
136C.10(1c)	136C.10(1b)
136C.10(2)	136C.10(2, 4)
137C.6, unb. par. 3 and (1 – 4)	137C.6(3a – d);
(2a – e)	[3b(1 – 5)]
137C.9, unb. par. 1 and (1 – 5)	137C.9(1a – e)
137F.1(7)	Stricken 2007 Acts-215-210
137F.1(8 – 18)	137F.1(7 – 17)
137F.2	Stricken and substituted 2007 Acts-215-212
137F.3, unb. par. 4 and (1 – 3)	137F.3(4a – c);
(2a – e)	[4b(1 – 5)]
137F.3(4)	137F.3(4e)
137F.6	137F.6;
unb. par. 1 and (1 – 4)	(1a – d);
(4a – e)	[1d(1 – 5)]
(5)	(1e);
(5a – e)	[1e(1 – 5)]
(6)	(1f);
(6a – d)	[1f(1 – 4)]
(7)	(1g)
141A.1(11 – 17)	141A.1(12 – 18)
141A.3(3)	Stricken 2007 Acts-70-4
141A.4(1c)	141A.4(1, unb. par. 1)
141A.4(1d)	141A.4(1c)
141A.5(2)	Stricken 2007 Acts-70-5
141A.5(3 – 6)	141A.5(2 – 5);
[3c, unb. par. 1 and (1, 2)]	[3c(1a, b)]
141A.6(1)	141A.6(1, 2)
141A.6(2 – 8)	141A.6(3 – 9)

Code 2007	Code Supplement 2007
141A.7(1) .....	141A.6(1), 141A.7(1)
141A.8(3) .....	Stricken 2007 Acts-70-9; see 141A.6(1)
141A.8(4 – 10) .....	141A.8(3 – 9)
141A.9(1) .....	141A.9(1, 2);
(1g – j) .....	(3 – 6)
(1k – n) .....	(2g – j)
141A.9(2) .....	141A.9(7)
142C.2 .....	142C.2;
(1) .....	(3)
(2) .....	Stricken 2007 Acts-44-2
(3) .....	(4)
(4, 5) .....	(6, 7)
(6) .....	(8, 16)
(7) .....	Stricken 2007 Acts-44-2; see (34)
(8) .....	(13)
(9) .....	(18)
(10) .....	(20)
(11) .....	(22)
(12) .....	(24)
(13) .....	(25)
(14, 15) .....	(33, 34)
142C.3 .....	142C.3;
(2) .....	(1, 2)
(3) .....	(2)
(4) .....	Stricken and substituted 2007 Acts-44-3
(5) .....	(2d)
(6) .....	(3a – d);
(6c) .....	Stricken 2007 Acts-44-3
(7) .....	(3e)
(8) .....	(5)
(9) .....	(4)
(10) .....	(5e, f)
(11) .....	(5b)
(12) .....	(2)
142C.4 .....	142C.4;
(1f) .....	(1g)
(1g) .....	(1i)
(2a) .....	(2b)
(2b) .....	Stricken 2007 Acts-44-4; see 142C.3(4d)
(2c) .....	(2a)
(4) .....	(4, 5)
(5) .....	Stricken 2007 Acts-44-4
142C.4A .....	142C.4A;
(1a) .....	(2)
(1b – e) .....	Stricken 2007 Acts-44-5
(1f) .....	(8a)
(1g, h) .....	Stricken 2007 Acts-44-5
(1i) .....	(9)
(2) .....	Stricken and substituted 2007 Acts-44-5
142C.5 .....	142C.5;
(1a) .....	(1ab)
(1b) .....	(1a)
(2) .....	(2 – 7)
(3) .....	(10)
142C.8 .....	142C.8;
(1 – 4) .....	(8 – 11)
(5) .....	Stricken 2007 Acts-44-10
142C.11(1) .....	142C.8(3 – 5)
142C.11(2) .....	Stricken 2007 Acts-44-14; see 142C.4A
142C.11(3, 4) .....	142C.11(1, 2)
144.46A(2) .....	Stricken 2007 Acts-159-28
144.46A(3) .....	144.46A(2)



Code 2007	Code Supplement 2007
147.1(2a) .....	147.1(2b)
147.1(2b) .....	147.1(2a)
147.28A .....	R per its own terms
147.80, unb. par. 1 and (1 – 12) .....	147.80(1a – “I”)
147.80(13, 14) .....	147.80[1m(1, 2)]
147.80(15 – 33) .....	147.80(1n – af)
147.82 .....	Stricken and substituted 2006 Acts-1155-6
147.91, unb. par. 1 and (1 – 3) .....	147.91(1a – c)
147.103A(4) .....	147.82, 147.103A(4)
147.152, unb. par. 1 and (1 – 6) .....	147.152(1a – f)
149.1(2, 3) .....	149.1(3, 4)
151.4, unb. par. 1 and (1 – 3) .....	151.4(1a – c)
152.3(3) .....	Stricken 2006 Acts-1155-9; see 147.82
152.3(4 – 6) .....	152.3(3 – 5)
152.7, unb. par. 1 and (1 – 3) .....	152.7(1a – c)
152B.6(2) .....	147.82, 152B.6(2)
152D.5(4) .....	147.82, 152D.5(4)
154.1, unb. par. 1 and (1 – 3) .....	154.1(2a – c)
154.3(1, unb. par. 1 and a – c) .....	154.3, unb. par. 1 and (1 – 3)
154.3(2 – 8) .....	Stricken 2007 Acts-159-2
154.4 – 154.7 .....	R 2007 Acts-159-4
154A.22 .....	R 2006 Acts-1155-13; see 147.82
154B.6, unb. par. 1 and (1 – 3) .....	154B.6(1a – c)
154E.2(3) .....	Stricken 2006 Acts-1155-12; see 147.82
154E.2(4 – 7) .....	154E.2(3 – 6)
155.2, unb. par. 1 and (1 – 3) .....	155.2(1a – c)
155.6 .....	R 2006 Acts-1155-13; see 147.82
155A.3(23) .....	155A.3(24)
155A.3(24 – 41) .....	155A.3(26 – 43)
155A.6 .....	155A.6, 155A.6A;
(5) .....	155A.6A(1, 2)
(6) .....	155A.6A(2)
(7) .....	155A.6A(5)
(8) .....	155A.6A(4)
156.1, unb. par. 2 .....	156.1A
156.13 .....	R 2007 Acts-159-12
169C.1(2 – 7) .....	169C.1(3 – 8)
196.3, unb. par. 1 and (1 – 6) .....	196.3(1a – f)
203.5, unb. par. 3 and (1, 2) .....	203.5(3a, b)
203C.18, unb. par. 1 and (1 – 4) .....	203C.18(1a – d)
216.2(10 – 12) .....	216.2(11 – 13)
216.2(13) .....	216.2(15)
216.9, unb. par. 1 and (1 – 4) .....	216.9(1a – d)
216.10, unb. par. 1 and (1 – 3) .....	216.10(1a – c)
216.12, unb. par. 1 and (1 – 6) .....	216.12(1a – f);
(4a, b) .....	[1d(1, 2)]
216A.132, unb. par. 1 and (1 – 3) .....	216A.132[1, unb. par. 1 and a(1 – 3)]
229.19(1, unb. par. 1) .....	229.19(1a – d)
229.19(1a – f) .....	229.19[1d(1 – 6)]
231B.1A(3) .....	Stricken 2007 Acts-215-136
231D.2(2) .....	Stricken 2007 Acts-215-185
231D.2(3, 4) .....	231D.2(2, 3)
232.2(52 – 58) .....	232.2(53 – 59)
232.58(6, 7) .....	232.58(7, 8)
232.102[10b(1)] .....	232.102(10b)
232.102[10b(2)] .....	Stricken 2007 Acts-172-9
232.104(5, 6) .....	232.104(6, 7)
237.8[2a(2)] .....	237.8[2a(4)]
237A.13(4 – 8) .....	237A.13(5 – 9)
249A.3(2i, j) .....	249A.3(2k, “I”)
249A.3(2k) .....	249A.3(2i)
249A.26A .....	R 2007 Acts-218-122; see 249A.26(4)

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249A.31(2) .....	Stricken 2007 Acts-218-120
252H.8(2 – 11) .....	252H.8(3 – 12)
256.11(10a – d) .....	256.11[10b(1a – d)]
256.25 .....	R 2007 Acts-214-43
256A.2, unb. par. 1 and (1 – 9) .....	256A.2(1a – i)
257.6(1, unb. par. 1 and a – f) .....	257.6[1a(1 – 6)]
257.11[2c(1)] .....	257.11(2c)
257.11[2c(2)] .....	Stricken 2007 Acts-130-2
257.11(6 – 8) .....	257.11(7 – 9)
257.11A(4) .....	257.11A(3)
257.31(7, unb. par. 1 and a, b) .....	257.31[7a(1, 2)]
260C.19A(2, unb. par. 1 and a – e) ..	260C.19A[2a(1 – 5)];
[2a(1 – 3)] .....	[2a(1a – c)]
260C.36(3) .....	Stricken 2007 Acts-214-22
260C.36(4) .....	260C.36(3)
260F.10 .....	R 2007 Acts-126-115
260G.10 .....	R 2007 Acts-126-115
261.23 .....	Stricken and substituted 2007 Acts-214-26
261.111(10) .....	Stricken 2007 Acts-214-30
262.14(3, unb. par. 3 and a – c) .....	262.14[3c(1 – 3)]
262.25A(3, unb. par. 1 and a – e) ..	262.25A[3a(1 – 5)];
[3a(1 – 3)] .....	[3a(1a – c)]
262B.22 .....	R 2007 Acts-122-6
272.4, unb. par. 1 and (1 – 4) .....	272.4(1a – d)
279.17, unb. par. 7 and (1 – 3) .....	279.17(6a – c)
279.50(1) .....	279.50(1 – 3, 5, 6)
279.50(2, 3) .....	279.50(7, 8)
284.1(4) .....	Stricken 2007 Acts-108-12
284.1(5) .....	284.1(4)
284.4(1c) .....	Stricken and substituted 2007 Acts-108-17
284.4(1g) .....	Stricken 2007 Acts-108-19
284.7(4) .....	Stricken 2007 Acts-108-28
284.7(5, 6) .....	284.7(4, 5)
284.12 .....	284.12;
(1c) .....	Stricken 2007 Acts-108-34
(1d) .....	(1c)
(3) .....	Stricken 2007 Acts-108-35
(4) .....	(3)
284.13(1e) .....	Stricken and substituted 2007 Acts-108-38
284.14(1 – 3) .....	284.14(2 – 4)
284.14(4) .....	Stricken 2007 Acts-108-48
284A.1 .....	284A.2;
(3) .....	(4)
(4 – 6) .....	(7 – 9)
284A.2 .....	284A.5;
(4) .....	(5)
284A.3 .....	284A.8;
(1) .....	Stricken 2007 Acts-214-39
(2) .....	284A.8
(3) .....	Stricken 2007 Acts-214-39
307.21(5, unb. par. 1 and a – e) .....	307.21[5a(1 – 5)];
[5a(1 – 3)] .....	[5a(1a – c)]
315.4, unb. par. 1 and (1 – 3) .....	315.4(1a – c)
315.6, unb. par. 1 and (1 – 3) .....	315.6(1a – c)
321.30 .....	321.30;
unb. par. 1 and (1 – 12) .....	(1a – “I”)
(13) .....	(2)
(14) .....	Stricken 2007 Acts-126-53; see 321.40(6)
(15, 16) .....	(3a, b)
321.34(12Aa) .....	321.34(12Aa, b)
321.34(12Ab) .....	321.34(12Ac)

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321.101(3) .....	321.101(3, 4)
321.210A, unb. par. 1 and (1 – 3) ...	321.210A(1a – c)
321.215(1, unb. par. 1 and a – e) ....	321.215[1a(1 – 5)]
321.215(2, unb. par. 1 and a – d) ....	321.215[2a(1 – 4)]
321A.34(2) .....	321A.34(1b)
321G.1(6 – 20) .....	321G.1(8 – 22)
321G.2, unb. par. 1 and (1 – 7) .....	321G.2(1a – g)
321G.4(4) .....	Stricken 2007 Acts-141-5
321G.4(5) .....	321G.4(4)
321G.6(3, 4) .....	Stricken 2007 Acts-141-8
321G.6(5, 6) .....	321G.6(3, 4)
321G.8(2, 3) .....	Stricken 2007 Acts-141-10
321G.8(4) .....	321G.8(2)
321G.21 .....	321G.21;
(6) .....	Stricken 2007 Acts-141-14
(7) .....	(6)
(8) .....	Stricken 2007 Acts-141-14
(9) .....	(7)
(10) .....	Stricken 2007 Acts-141-16
(11) .....	(8)
321G.29(10) .....	Stricken 2007 Acts-141-22
321I.1(6 – 9) .....	321I.1(11 – 14)
321I.1(10 – 21) .....	321I.1(17 – 28)
321I.4(4) .....	Stricken 2007 Acts-141-29
321I.7(3, 4) .....	Stricken 2007 Acts-141-32
321I.7(5, 6) .....	321I.7(3, 4)
321I.9(2 – 4) .....	Stricken 2007 Acts-141-34
321I.9(5, 6) .....	321I.9(2, 3)
321I.22 .....	321I.22;
(6) .....	Stricken 2007 Acts-141-42
(7) .....	(6)
(8) .....	Stricken 2007 Acts-141-42
(9) .....	(7)
(10) .....	Stricken 2007 Acts-141-44
(11) .....	(8)
321I.31(10) .....	Stricken 2007 Acts-141-50
321I.31(11) .....	321I.31(10)
321J.8, unb. par. 1 and (1 – 3) .....	321J.8(1a – c)
322.4, unb. par. 1 and (1 – 8) .....	322.4(1a – h);
(1a – c) .....	[1a(1 – 3)]
322.4(9) .....	322.4(1j)
322.7(1a) .....	Stricken 2007 Acts-143-23
322.7(1b – d) .....	322.7(1a – c)
327B.1(1 – 5) .....	327B.1(1a – e)
327B.1(6, 7) .....	327B.1(3, 4)
327B.4 .....	R 2007 Acts-143-34; see 327B.1(2)
327B.7 .....	R 2007 Acts-143-34
331.401(1r) .....	331.401(1s)
331.438(1b) .....	Stricken 2007 Acts-218-78
331.438(1c – e) .....	331.438(1b – d)
331.438(2a) .....	331.438(2)
331.438(2b – d) .....	Stricken 2007 Acts-218-79
331.440A .....	R 2007 Acts-218-86
331.557A(4 – 6) .....	331.557A(5 – 7)
403.23 .....	R 2007 Acts-186-28; see 331.434(1), 384.16(1)
421.9(3) .....	421.9(3, 4)
422.11I .....	R per its own terms
422.16(7, unb. par. 1 and a – e) .....	422.16[7a(1 – 5)]
422.33(19) .....	Stricken per its own terms
422.33(20 – 23) .....	422.33(19 – 22)
422.73(3) .....	Stricken 2007 Acts-186-18
423.2(8) .....	Stricken and substituted 2006 Acts-1158-70

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423.3(89c) . . . . .	423.3(89c, d, f);
[89c(1 – 4)] . . . . .	[89d(1 – 4)]
423.4(1b) . . . . .	423.4(1b, c)
423.4(1c) . . . . .	423.4(1d)
423.16(3) . . . . .	Stricken 2007 Acts-179-2
423.16(4, 5) . . . . .	423.16(3, 4)
423.18 . . . . .	R 2007 Acts-179-9
423.20(1“l”, m) . . . . .	423.20(1m, n)
426B.5 . . . . .	426B.5;
(1b) . . . . .	Stricken 2007 Acts-218-82
(1c) . . . . .	(1b – d);
[1c(1)] . . . . .	[1d(1a)]
[1c(2)] . . . . .	Stricken 2007 Acts-218-82
[1c(3)] . . . . .	[1d(1b)]
[1c(4)] . . . . .	(1e)
(1d) . . . . .	[1d(2), e]
(1e) . . . . .	(1g)
[2a(1)] . . . . .	Stricken 2007 Acts-218-89
[2a(2)] . . . . .	(2a)
[2d(1 – 3)] . . . . .	(2d – f)
[2d(4)] . . . . .	Stricken 2007 Acts-218-89
[2d(5, 6)] . . . . .	(2g, h)
(2e – g) . . . . .	(2i – k)
430A (Ch) . . . . .	R 2007 Acts-185-6
437A.19[2b(1)] . . . . .	437A.19(2b)
437A.19[2b(2)] . . . . .	Stricken 2007 Acts-150-4
446.38 . . . . .	R 2007 Acts-126-115
446.39 . . . . .	R 2007 Acts-54-45
452A.79, unb. par. 2 and (1 – 5) . . . . .	Stricken 2006 Acts-1179-59; see 452A.79A
453A.36(8, 9) . . . . .	453A.36(9, 10)
453A.42(12 – 16) . . . . .	453A.42(13 – 17)
453A.43 . . . . .	453A.43;
(1a – c) . . . . .	[1e(1 – 3)]
(2a) . . . . .	[2e(1)]
(2b) . . . . .	(4c)
(2c) . . . . .	[2e(2)]
(3 – 6) . . . . .	(5 – 8)
455B.131(7 – 11) . . . . .	455B.131(8 – 12)
455D.10A(5) . . . . .	Stricken 2007 Acts-151-1; see 455D.22, 455D.25
455D.11(9) . . . . .	Stricken 2007 Acts-151-2; see 455D.22, 455D.25
455D.11I(8) . . . . .	Stricken 2007 Acts-151-4; see 455D.22, 455D.25
455D.19(8) . . . . .	Stricken 2007 Acts-151-7
455G.17 . . . . .	R 2007 Acts-171-11; see 455B.474(10)
455G.18 . . . . .	R 2007 Acts-171-12; see 455B.474(9)
455G.31(2b) . . . . .	Stricken and substituted 2007 Acts-211-48
459.103(3) . . . . .	Stricken 2007 Acts-82-2; see 459.601(2a)
459.601(2) . . . . .	459.601(3)
459A.208(1a) . . . . .	459A.208(1)
459A.208(1b) . . . . .	Stricken per its own terms
462A.2(9 – 43) . . . . .	462A.2(11 – 45)
462A.9(13) . . . . .	462A.9(14)
466A.4(1, 2) . . . . .	466A.4(2, 3)
473.7(1g, h) . . . . .	Stricken 2007 Acts-168-15
476.33(5) . . . . .	Stricken per its own terms
490.140(12 – 30) . . . . .	490.140(13 – 31)
490.601(4) . . . . .	490.601(6)
490.602 . . . . .	490.602;
(1) . . . . .	(2)
(2) . . . . .	Stricken 2007 Acts-140-5
(3) . . . . .	Stricken 2007 Acts-140-5; see 490.601(5)
(4) . . . . .	(3);
(4a – d) . . . . .	Stricken 2007 Acts-140-5

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490.1006(4, 5) .....	Stricken 2007 Acts-140-8
490.1006(6) .....	490.1006(4a)
505.26 .....	R 2007 Acts-137-30
508.10, unb. par. 2 and (1 - 4) .....	508.10(2a - d)
509.1(8) .....	509.1(9)
515.6 .....	515.100
515.25 .....	515.10
515.35(2b - g) .....	515.35(2c - h)
515.50 .....	R 2007 Acts-152-84
515.65 .....	515.146
515.67 .....	R 2007 Acts-152-84
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515.76 .....	515.74
515.77 .....	515.75
515.79 .....	R 2007 Acts-152-84
515.80 .....	515.125
515.81 .....	515.126
515.81A .....	515.127
515.81B .....	515.128
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515.82 .....	515.130
515.83 .....	515.131
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515.88 .....	515.142
515.89 .....	515.143
515.90 .....	515.144
515.91 .....	R 2007 Acts-152-84; see 507B.4(2b)
515.92 .....	R 2007 Acts-152-84; see 507B.4(2c)
515.93 .....	R 2007 Acts-152-84
515.94 .....	515.133
515.95 .....	515.134
515.96 .....	515.135
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515.98 .....	515.137
515.99 .....	515.78
515.100 .....	515.138
515.102 .....	R 2007 Acts-152-84; see 515.101(2)
515.105 .....	R 2007 Acts-152-84; see 515.101(3)
515.106 .....	R 2007 Acts-152-84; see 515.101(4)
515.108 .....	515.110
515.109 .....	R 2007 Acts-152-84; see 515.102(1, 2)
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515.110 .....	R 2007 Acts-152-84; see 515.102(3)
515.111 .....	515.104
515.119 .....	515.149
515.120 .....	515.150
515.121 .....	515.151
515.125 .....	515.105
515.125A .....	515.106
515.127 .....	515.107
515.128 .....	515.147
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515.130 .....	R 2007 Acts-152-84; see 507B.4(8c)
515.131 .....	515.140
515.133 .....	515.141
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515.140 .....	515.112
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515.142 .....	R 2007 Acts-152-84; see 515.114(1)
515.146 .....	R 2007 Acts-152-84; see 515.114(2)
515.147 .....	515.120
515.147A .....	515.121
515.148 .....	R 2007 Acts-152-84; see 515.122(1)
515.149 .....	R 2007 Acts-152-84; see 515.122(2)
515.150 .....	515.139
516E.3(2a) .....	Stricken 2007 Acts-137-16
516E.3(2b, c) .....	516E.3(2a, b)
523.5 .....	R 2007 Acts-137-30
523.6 .....	R 2007 Acts-137-30
523A.102(11) .....	Stricken 2007 Acts-175-3
523A.102(12 – 26) .....	523A.102(11 – 25)
523A.201(5a – d) .....	Stricken 2007 Acts-175-7
523A.204 .....	523A.204;
(1a – i) .....	Stricken 2007 Acts-175-11
(2 – 4) .....	Stricken 2007 Acts-175-11
(5) .....	(2);
(5a – d) .....	Stricken 2007 Acts-175-11
(6 – 7) .....	Stricken 2007 Acts-175-11
(8) .....	(3)
523A.206(3) .....	523A.206(6)
523A.501(3, 4) .....	Stricken and substituted 2007 Acts-175-16
523A.502(4) .....	Stricken and substituted 2007 Acts-175-17
523A.502(6 – 9) .....	523A.502(7 – 10)
523A.503(6) .....	Stricken 2007 Acts-175-19; see 523A.807(3)
523A.703 .....	523A.703;
(3) .....	Stricken and substituted 2007 Acts-175-25
(4) .....	Stricken 2007 Acts-175-25; see 523A.807(3)
(5) .....	Stricken 2007 Acts-175-25; see 523A.704
(6) .....	(3, 4)
523A.806, unb. par. 1 and (1 – 4) ...	523A.806(1a – d)
523I.813(1a – h) .....	Stricken 2007 Acts-175-49
524.103(38 – 44) .....	524.103(39 – 45)
524.215, unb. par. 2 and (1 – 5) .....	524.215(2a – e)
524.216, unb. par. 2 and (1 – 4) .....	524.216(2a – d)
533 (Ch) .....	R 2007 Acts-174-98;
533.1 .....	see 533.102(3), 533.104(5), 533.201;
(1) .....	see 533.201(2b)
(2, 3) .....	see 533.201(3, 4)
(4, 5) .....	see 533.201(5)
(6) .....	see 533.201(6)
(8) .....	see 533.201(10)
533.2 .....	see 533.201(7, 8)
533.3 .....	see 533.212(2, 3)
533.4 .....	see 533.301;
(1 – 19) .....	see (1 – 19)
(20) .....	see (21)
(22 – 25) .....	see (22 – 25)
(26) .....	see (24)
(28) .....	see (27)
533.5 .....	see 533.202
533.6 .....	see 533.113, 533.330, 533.501, 533.502;
(1) .....	see 533.330
(2, 3) .....	see 533.113(1 – 3, 5)
(4) .....	see 533.501(1b), 533.502
(5) .....	see 533.501(1a)

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533.6A .....	see 533.501(2);
(1) .....	see (2a)
(2) .....	see (2f)
(3 – 6) .....	see (2b – 2e)
533.7 .....	see 533.203
533.8 .....	see 533.204
533.9 .....	see 533.205, 533.206, 533.209;
(1) .....	see 533.205(1)
(2 – 4) .....	see 533.205(2)
(5, 6) .....	see 533.205(3, 4)
(7) .....	see 533.206
(8) .....	see 533.209
533.10 .....	see 533.207
533.11 .....	see 533.208
533.12 .....	see 533.302
533.13 .....	see 533.309(2 – 4)
533.14 .....	see 533.316
533.15 .....	see 533.306
533.16 .....	see 533.315
533.17 .....	see 533.303;
(1) .....	see (1 – 3)
(2) .....	see (6)
(3) .....	see (4)
533.18 .....	see 533.312(1, 2)
533.19 .....	see 533.210
533.19A .....	see 533.111
533.20 .....	see 533.405;
(1 – 3) .....	see (1 – 3)
(4) .....	see (6)
(5) .....	see (5)
(6) .....	see (4)
533.21 .....	see 533.503
533.22 .....	see 533.404
533.23 .....	see 533.327
533.24 .....	see 533.329;
(1, 2) .....	see (1, 2a – c)
(3, 4) .....	see (2h, i)
(5) .....	see (2 <sup>“l”</sup> )
(6) .....	see (2k)
(7) .....	see (2m)
(8) .....	see (2e)
(9) .....	see (2d)
(10) .....	see (2j)
533.25 .....	see 533.117
533.26 .....	see 533.322
533.27 .....	see 533.324
533.28 .....	see 533.323
533.29 .....	see 533.506
533.30 .....	see 533.401;
(1) .....	see (1, 3, 5)
(3 – 5) .....	see (6 – 8)
533.31 .....	see 533.509
533.32 .....	see 533.326
533.33 .....	see 533.504
533.34 .....	see 533.403
533.35 .....	see 533.402
533.37 .....	see 533.116
533.38 .....	see 533.213;
(4 – 7) .....	see (3a – d)
(8 – 10) .....	see (3f – h)
(11) .....	see (3e)
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533.39 .....	see 533.115
533.42 .....	see 533.313
533.43 .....	see 533.314
533.46 .....	see 533.311
533.47 .....	see 533.304;
(1) .....	see (2)
(2) .....	see (1)
533.48 .....	see 533.305
533.49 .....	see 533.317;
(1) .....	see (1, 2)
(2 – 4) .....	see (3 – 5)
533.49B .....	see 533.319
533.49C .....	see 533.320;
(1) .....	see (1, 2)
(2 – 5) .....	see (3 – 6)
533.49D .....	see 533.321
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